



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case reference** : **TR/LON/00AY/F77/2023/0400**

**Property** : **16 Whittlesey Street, London, SE1 8SZ**

**Tenant** : **Mrs S Brittain**

**Representative** : **Mrs M Smith & Mr J Brittain**

**Landlord** : **Northumberland & Durham Property  
Trust Ltd**

**Landlord's  
Representative** : **Grainger PLC**

**Date of objection** : **10 November 2023**

**Type of application** : **Determination of the registered rent  
under Section 70 Rent Act 1977**

**Tribunal  
member(s)** : **Mr O Dowty MRICS**

**Venue** : **10 Alfred Place, London, WC1E 7LR**

**Date of decision** : **8 May 2024**

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**REASONS FOR DECISION**

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## **Background**

1. The landlord applied to the Rent Officer for the registration of a fair rent for this property on 4 August 2023.
2. A fair rent of £3,242 per quarter was registered on 27 October 2023 following the application, such rent to have effect from 29 October 2023. The tenant subsequently challenged the registered rent on 10 November 2023, and the Rent Officer has requested the matter be referred to the tribunal for determination.
3. Directions were issued on 7 December 2023 by the Tribunal. The parties were asked to submit a reply form and provide any other submissions they wished to make. Neither party replied to those directions.
4. The Tribunal observed that, despite neither party's having replied to its directions, the tenant's representatives (who hold power of attorney) in making the objection had referred to the condition of the property, and had previously provided the rent officer with a letter dated 15 August 2023 which set out the disrepairs they felt were present at the property.
5. The Tribunal's case officer therefore made contact with the tenant's representatives, who confirmed they had received the Tribunal's directions.
6. Whilst it is disappointing that the tenant did not (nor, indeed, the landlord) reply to the Tribunal's directions, the Tribunal is aware that the tenant is not a professionally represented party – and that the tenant's representatives are acting through a power of attorney. They had provided a letter to the Rent Officer setting out the disrepairs they felt were present at the property, the condition of the property being specifically referenced in their objection, and the Tribunal had been provided with that letter. The Tribunal therefore considered that it would not be in keeping with the Tribunal's overriding objective to deal with cases fairly and justly to simply blind itself to the contents of that letter.
7. Accordingly, on 13 March 2024, the Tribunal provided to the landlord a copy of the tenant's letter to the Rent Officer dated 15 August 2023, and invited the landlord's submissions on its contents - the Tribunal not being certain that the landlord had been provided with a copy of that letter beforehand. No such submissions have since been received by the Tribunal.
8. The Tribunal's Directions provided that, if no hearing were requested, the Tribunal would make its decision based on the documents received. No hearing was requested, and the Tribunal considered that this was a matter suitable for a determination on the papers. Accordingly, the Tribunal did so.

## The Property

9. The property is a mid-terrace period house with a garden located on a predominantly residential street nearby to the north of Waterloo East Station, in (south) Central London.
10. The landlord's application form, the accuracy of which was not disputed by the tenant in this regard, indicates that the property offers 3 rooms and a kitchen at ground floor level, and 2 rooms and a bathroom on the 1<sup>st</sup> floor; as well as a cellar and an additional outside toilet.
11. The tenant, in their letter, averred that the original (single glazed) sash windows at the property are ill fitting and draughty. The kitchen and bathroom are unmodernised and basic, and there is "evidence of damp penetration in places". The tenant provided all of the furniture as well as the carpets, curtains and white goods at the property. The property does not benefit from central heating.

## The Law

12. When determining a fair rent the Tribunal, in accordance with the Rent Act 1977, section 70, "the Act", had regard to all the circumstances (other than personal circumstances) including the age, location and state of repair of the property. It also disregarded the effect of (a) any relevant tenant's improvements and (b) the effect of any disrepair or other defect attributable to the tenant or any predecessor in title under the regulated tenancy, on the rental value of the property.
13. The tenant, in their letter of objection, observes that the Rent Officer registered a rent higher than the one that the landlord had requested they register in their application form (£3,242 per quarter as against £3,062.40 per quarter). This, they submitted, was "excessive and outside of the fair rent application".
14. Whilst the Tribunal is sympathetic to the submissions of the tenant, they are wrong in this regard. The Rent Officer's (and indeed the Tribunal's) role under section 70 of the Act is to determine the maximum fair rent that might be charged for a property. Neither the Rent Officer's, nor the Tribunal's, determination is restricted by the amount the landlord indicates they wish the Rent Officer to register on their application form – and may be the same, higher or lower than it.
15. In **Spath Holme Ltd v Chairman of the Greater Manchester etc. Committee (1995)** and **Curtis v London Rent Assessment Committee [1999]** the Court of Appeal emphasised that ordinarily a fair rent is the market rent for the property discounted for 'scarcity'. This is that element, if any, of the market rent, that is

attributable to there being a significant shortage of similar properties in the wider locality available for letting on similar terms.

16. The Tribunal is aware that **Curtis v London Rent Assessment Committee (1999) QB.92** is a relevant authority in registered rent determination. This authority states where good market rental comparable evidence i.e., assured shorthold tenancies is available enabling the identification of a market rent as a starting point it is wrong to rely on registered rents. The decision stated: *“If there are market rent comparables from which the fair rent can be derived why bother with fair rent comparables at all”*.
17. The market rents charged for assured tenancy lettings often form appropriate comparable transactions from which a scarcity deduction is made.
18. These market rents are also adjusted where appropriate to reflect any relevant differences between those of the subject and comparable rental properties.
19. The Upper Tribunal in **Trustees of the Israel Moss Children’s Trust v Bandy [2015]** explained the duty of the First Tier Tribunal to present comprehensive and cogent fair rent findings. These directions are applied in this decision.
20. **The Rent Acts (Maximum Fair Rent) Order 1999** applies to all dwelling houses where an application for the registration of a new rent is made after the date of the Order and there is an existing registered rent under part IV of the Act. This article restricts any rental increase to 5% above the previously registered rent plus retail price indexation (RPI) since the last registered rent. The relevant registered rent in this matter was registered on 22 September 2021 at £2,552 per quarter. The rent registered on 27 October 2023 subject to the present objection and determination by the Tribunal is not relevant to this calculation.

## **Valuation**

21. In the first instance the Tribunal determined what rent the landlord could be expected to obtain for the subject property in the open market if it were let today in the condition and on the terms that are considered usual for such an open market letting.
22. Neither party provided any evidence of value for the Tribunal to consider. Accordingly, the Tribunal considered the value of the property in light of its local knowledge and experience of general rental levels.
23. The Tribunal considered that a rent in the region of £9,750 per quarter (£3,250 per calendar month) for the subject property, were it let on the open market in the condition and on the terms considered

usual for such a letting, would be appropriate. The Tribunal considered this would reflect a letting on 'unfurnished' terms (noting that some items such as white goods, carpets and curtains are typically provided by landlords in the market even in 'unfurnished' lettings).

24. This hypothetical rent is adjusted as necessary to allow for the differences between the terms and conditions considered usual for such a letting and the condition of the actual property at the date of the determination. Any rental benefit derived from tenant's improvements is disregarded. It is also necessary to disregard the effect of any disrepair or other defects attributable to the tenant or any predecessor in title.
25. The responsibility for internal decoration at the property under the tenancy agreement is borne by the tenant. This is a material valuation consideration and a deduction of 7.5% from the hypothetical rent is made to reflect this liability.
26. The Tribunal made a deduction of 5% from the hypothetical rent to account for the tenant's providing white goods, carpets, curtains and other similar furnishings that would usually be provided by landlords in the market.
27. The Tribunal made a deduction of 10% to account for the single glazing at the property, and its being in poor condition.
28. The Tribunal made a deduction of 2.5% each (a total of 5%) to account for the dated and basic kitchen and bathroom at the property.
29. The Tribunal made a deduction of 10% to reflect the lack of central heating at the property.
30. The Tribunal made a further deduction of 15% to account for the damp at the property. The Tribunal notes that this allowance reflects the taking of the tenant's submissions at their highest reasonable extent.
31. The provisions of section 70(2) of the Rent Act 1977 in effect require the elimination of what is called "scarcity". The required assumption is of a neutral market. Where a Tribunal considers that there is, in fact, substantial scarcity, it must make an adjustment to the rent to reflect that circumstance. In the present case neither party provided evidence with regard to scarcity.
32. The Tribunal then considered the decision of the High Court in **Yeomans Row Management Ltd v London Rent Assessment Committee [2002] EWHC 835 (Admin)** which required it to consider scarcity over a wide area rather than limit it to a particular locality. Central London is now considered to be an appropriate area

to use as a yardstick for measuring scarcity and it is clear that there is a substantial measure of scarcity in Central London.

33. Assessing a scarcity percentage cannot be a precise arithmetical calculation. It can only be a judgement based on the years of experience of members of the Tribunal. The Tribunal therefore relied on its own knowledge and experience of the supply and demand for similar properties on the terms of the regulated tenancy (other than as to rent) and in particular to unfulfilled demand for such accommodation. In doing so, the Tribunal found that there was substantial scarcity in the locality of Central London and therefore made a further deduction of 20% from the adjusted market rent (excluding the amount attributable to services) to reflect this element.
34. The valuation of a fair rent is an exercise that relies upon relevant market rent comparable transactions and property specific adjustments. The fair rents charged for other similar properties in the locality do not form relevant transaction evidence.
35. Table 1 below provides details of the fair rent calculation:

Property:		16 Whittlesey Street, London, SE1 8SZ	
Fair rent calculation in accordance with s(70) Rent Act 1977			
Market Rent		£9,750 per quarter	
<b>Disregards</b>			
		Deduction per quarter	as % of quarterly rent
Lease terms		£731.25	7.5%
White goods, carpets, curtains, etc		£487.50	5.00%
Single Glazing in poor condition		£975.00	10.00%
Dated and basic kitchen		£243.75	2.50%
Dated and basic bathroom		£243.75	2.50%
No central heating		£975.00	10.00%
Damp		£1,462.50	15.00%
	Total deductions	£5,118.75	52.50%
	Market rent less deductions	£4,631.25 per quarter	
Less Scarcity	20.00% of Market rent less deductions	£926.25	
Adjusted Market Rent		£3,705.00 per quarter uncapped rent	
Maximum capped rent in accordance with Rent Acts (Maximum Fair Rent) Order 1999		£3,295.00 per quarter maximum capped rent	
	Fair Rent	£3,295.00 per quarter	

Table 1

## Decision

36. As the value of £3,705 per quarter arrived at by the Tribunal is higher than the maximum rent prescribed by The Rent Acts (Maximum Fair

Rent) Order of £3,295 per quarter, the fair rent that can be registered is restricted by that Order to the lower, capped amount of £3,295 per quarter.

37. The statutory formula applied to the previously registered rent is at Appendix A.
38. Details of the maximum fair rent calculations are provided in the separate notice of the Tribunal's decision.
39. Accordingly, the sum that will be registered as a fair rent with effect from 8 May 2024 is **£3,295 per quarter**.

Valuer Chairman: Mr Oliver Dowty MRICS

Dated: 14 June 2024

## **Appendix A**

### **The Rents Act (Maximum Fair Rent) Order 1999**

- (1) Where this article applies, the amount to be registered as the rent of the dwelling-house under Part IV shall not, subject to paragraph (5), exceed the maximum fair rent calculated in accordance with the formula set out in paragraph (2).
- (2) The formula is:

$$\text{MFR} = \text{LR} \left[ 1 + \frac{(x-y)}{y} + P \right]$$

where:

- 'MFR' is the maximum fair rent;
- 'LR' is the amount of the existing registered rent to the dwelling-house;
- 'x' is the index published in the month immediately preceding the month in which the determination of a fair rent is made under Part IV;
- 'y' is the published index for the month in which the rent was last registered under Part IV before the date of the application for registration of a new rent; and
- 'P' is 0.075 for the first application for rent registration of the dwelling-house after this Order comes into force and 0.05 for every subsequent application.

- (3) Where the maximum fair rent calculated in accordance with paragraph (2) is not an integral multiple of 50 pence the maximum fair rent shall be that amount rounded up to the nearest integral multiple of 50 pence.
- (4) If  $(x-y) + P$  is less than zero the maximum fair rent shall be the  $y$  existing registered rent.

### **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the Regional Office which has been dealing with the case. The application should be made on Form RP PTA available at <https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber>

The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking. **Please note that if you are seeking permission to appeal against a decision made by the Tribunal under the Rent Act 1977, the Housing Act 1988 or the Local Government and Housing Act 1989, this can only be on a point of law.**

If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).