



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

Case reference : **LON/00BJ/F77/2024/0028**

Property : **346 Southcroft Road, London, SW16
6QU**

Landlord : **Castle Lane Securities Ltd**

Representative : **Hamways**

Tenant : **Mrs Lynn Mary Broughton**

Representative : **None**

Date of application : **27 November 2023**

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

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

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

Date of decision : **29 May 2024**

REASONS FOR DECISION

© CROWN COPYRIGHT 2024

Background

1. The Landlord applied to the Rent Officer for the registration of a fair rent for this property on 8 September 2023.

2. A (capped) fair rent of £511 per calendar month was registered on 16 November 2023 following the application, such rent to have effect from that date. The landlord subsequently challenged the registered rent on 27 November 2023, and the Rent Officer has requested the matter be referred to the tribunal for determination.
3. The background to the registration is slightly unusual. The tenant, Ms Broughton, had previously occupied a nearby property (356 Southcroft Road) with her late husband – who was the regulated tenant of that property. The tenant and her late husband then transferred to the subject property, 346 Southcroft Road, which had previously been let on an Assured Shorthold Tenancy by the landlord. Subsequently, the tenant’s husband passed away – and the tenant succeeded to the tenancy.
4. The subject property - 346 Southcroft Road - had, however, previously been registered for the purposes of fair rent regulation – and the last registration of the property (of £41 per week in October 1991) was still extant.
5. From the information provided to the Tribunal, it would appear that rent is payable (calendar) monthly under the current tenancy agreement – whereas it was payable weekly under the tenancy which was the subject of the prior registration at the subject property.
6. The Rent Officer, having not identified any improvements carried out at the subject property by the landlord, registered a ‘capped’ rent for the subject property – applying the capping formula to the rent registered at 346 Southcroft Road in October 1991.
7. The landlord’s objection was made on the basis that they had made “considerable improvements” to the property since its last registration in 1991, and they wished them to be “taken into account”.
8. Directions were issued on 8 February 2024 by the Tribunal.
9. The parties were directed to provide reply forms, and invited to submit any relevant information and submissions. The tenant provided no such reply form or submissions, and the landlord provided a reply form only – indicating amongst other things that they did not wish the Tribunal either to inspect the property or hold a hearing regarding it.
10. The Tribunal had advised the parties that, unless a hearing was requested (which it was not by either party), the matter would be dealt with on the basis of the papers provided. However, on review of the documents provided and the wider circumstances, the Tribunal, in a letter dated 8 May 2024, informed the parties that it was the Tribunal’s view that the matter was not suitable for a paper determination – and instead the Tribunal considered that a hearing and an inspection were necessary.

11. Amongst other things, the Tribunal's letter of 8 May 2024 highlighted the basis of the landlord's objection, and that:

...As provided at paragraph 7 of Article 2 of The Rent Acts (Maximum Fair Rent) Order 1999, where works of improvement carried out by the landlord increase the value of the property by at least 15% of the previous rent registered, the 'capping' provisions of that Order do not apply – and the increase in rent between registrations is not limited. In this case, the previous rent registered for the property was £41 per week.

...

12. The Tribunal therefore arranged a face-to-face hearing to be followed by an inspection on 29 May 2024.
13. Despite the Tribunal's having provided sufficient notice of that hearing, neither party attended it. The member of staff from the landlord's representative indicated in an email dated 23 May 2024 that they were on annual leave that day (but did not request the hearing date be moved nor suggest an alternative member of staff who might attend). The tenant provided no comment in advance of the hearing as to their attendance. However, the Tribunal was later informed by her granddaughter (Ms Pheobe Connor-Broughton – who permitted the Tribunal access to the subject property on the tenant's behalf so that it might inspect it) that the tenant was in Birmingham that day.
14. The Tribunal considered it would be prudent to enquire as to whether the tenant wished to request a further hearing. Having done so, and following a discussion between the tenant and Ms Connor-Broughton by phone, the Tribunal was informed that the tenant did not wish to attend a hearing.
15. Whilst the Tribunal had wished to hold a hearing in this matter - and had made itself available to do so at the time and place indicated – it was frustrated from so doing by both parties' failure to attend it. The Tribunal considered that it would therefore determine the matter on the basis of the written submissions provided to it, in conjunction with its inspection.

The Inspection

16. The Tribunal inspected the property on 29 May 2024 in the presence of Ms Pheobe Connor-Broughton – the tenant's adult granddaughter. The landlord did not attend the inspection.

17. The property is a 3 bed flat located on the ground floor of a larger, circa 1940s block of flats. Whilst it is on the ground floor, the area in front of the wider building slopes downwards significantly from the road level, with a number of shallow steps leading down to the level of the subject flat.
18. The property has its own front door (which is dated and wooden), in the middle of a set of three front doors (the other 2 offering access to flats above). This leaves a somewhat unusual layout for the flat, with a narrow entrance corridor leading to another corridor perpendicular to it which it meets at a 'T' junction, which serves as the connecting passageway for the property (offering two storage areas presumably located under the stairs for the flats above). Other than that provided through the small area of (single) glazing in the old door, this area does not benefit from any natural light.
19. The property offers 3 bedrooms, which have bare board floors. There is a minor crack in the ceiling of one of those bedrooms. The kitchen fittings are modern. There is a free-standing fridge provided by the tenant, who also provided the washing machine. There is a door in the kitchen area which leads out, via some steps, to a large communal garden area.
20. The property also offers a living/dining room (which is not physically separated from the kitchen area), a bathroom/wc and an additional separate toilet. The bathroom fittings are modern.
21. The property is centrally heated and double glazed throughout (except for the front door), with the landlord providing the blinds/curtains and what floor coverings there are at the property.

The Fair Rent 'Capping' Provisions

22. The landlord objected to the Rent Officer's registration on the basis that the rent officer incorrectly stated that the property did not have central heating. The landlord averred that they had installed central heating, amongst other improvements since the property's last registration, which they believed should be "taken into account".
23. The Tribunal (and indeed the Rent Officer) – when determining a fair rent – is usually required to do two things. First, it is to make a determination of what it thinks the fair rent should be (the way in which this is done is explained in more detail below). Second, as a result of the The Rent Acts (Maximum Fair Rent) Order 1999 (the Maximum Fair Rent Order), it is to calculate a maximum 'capped' rental amount. Where that 'capped' amount is lower than the amount the Tribunal determines, the Tribunal can only register the lower 'capped' amount. In other words, the Tribunal must register the lower of either its opinion of the 'uncapped' fair rent or the 'capped' amount set out by the Maximum Fair Rent Order.

24. However, the Maximum Fair Rent Order does not apply in all circumstances. In particular, it does not apply where the landlord has carried out improvements since the last registration of the property that have increased the fair rent that might be determined by 15% or more of the previously registered rent for that property. This is set out at paragraph 7 of Article 2 of that Order:

(7) This article does not apply in respect of a dwelling-house if because of a change in the condition of the dwelling-house or the common parts as a result of repairs or improvements (including the replacement of any fixture or fitting) carried out by the landlord or a superior landlord, the rent that is determined in response to an application for registration of a new rent under Part IV exceeds by at least 15% the previous rent registered or confirmed.

25. The previously registered rent for the subject property is £41 per week (registered on 24 October 1991). This means that, if the improvements carried out by the landlord increase the value of the property by more than 15% of £41 per week (£6.15 per week) the Maximum Fair Rent Order does not apply.

26. If that is so, the Tribunal would simply register its opinion of what the fair rent should be, and there would be no capping of the increase since the last registration – as the Maximum Fair Rent Order would not apply.

The Law Generally

27. 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.

28. 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.

29. The Tribunal are 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”.

30. The market rents charged for assured tenancy lettings often form appropriate comparable transactions from which a scarcity deduction is made.
31. These market rents are also adjusted where appropriate to reflect any relevant differences between those of the subject and comparable rental properties.
32. 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.

Valuation

33. Neither party provided any evidence of value for the Tribunal to consider. The landlord had, however, provided a description of the property – across both their reply form and an email dated 23 May 2024 (that was not provided to the tenant) – which the Tribunal did not feel was accurate in a number of ways.
34. The property was said by the landlord to be floored throughout by them, when in fact a large proportion of it is bare board; the property was said to offer an en-suite, when in fact what was apparently being referred to was a standalone toilet (in addition to the bathroom/wc) that is not an en-suite for any bedroom; the property was said to offer good natural light, when in fact parts of it are quite gloomy; the landlord averred that they had provided the white goods, and that they were “built in” – but the fridge and the washing machine were provided by the tenant, and the former was visibly free-standing.
35. The Tribunal notes for completeness that, other than observing the errors partially contained within it as above – and the comments regarding the landlord’s representative being busy on the day of the Tribunal’s hearing and inspection - the Tribunal had no regard to the contents of the email from the landlord dated 23 May 2024. A copy of it was not provided to the tenant, despite this being a clear requirement of the directions in this matter, and all it sought to do was either repeat submissions the landlord had made previously in their reply form (regarding the EPC rating of the property and the fact the landlord installed a new boiler in 2022), or describe what the Tribunal would see on its inspection and the location of local transport links.
36. The landlord had already been given an opportunity to make submissions regarding all of this in their reply form, and in the specific instance it offered no further assistance to the Tribunal, as the Tribunal saw the property for itself and is well-aware of the

location of the property and public transport provision in the locality of it.

37. Accordingly, having not been provided with any evidence of value by the parties, the Tribunal considered the rent in line with its own expert knowledge of rents in the local area of the subject property.
38. The Tribunal considered that the property might be expected to let for £2,100 per calendar month (pcm), were the property let on the market in the condition and on the terms considered usual for such a letting.
39. 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.
40. The lease terms of the tenancy are such that the tenant is responsible for internal fixtures, fittings and decoration at the property. This is a material valuation consideration, and a deduction of 7.5% from the hypothetical rent is made to reflect these lease terms.
41. The Tribunal made a deduction of 2.5% to reflect the fact the tenant provided the fridge and the washing machine, and that a large amount of the property has bare board flooring.
42. The Tribunal made a further deduction of 2.5% to reflect the front door at the property being wooden and dated, and that parts of the property are quite gloomy.
43. 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.
44. 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. South 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 south London.
45. 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 south London and therefore made a further deduction of 20% from the adjusted market rent to reflect this element.

46. 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.

47. Table 1 below provides details of the fair rent calculation:

Property: 346 Southcroft Road, London, SW16 6QU			
Fair rent calculation in accordance with s(70) Rent Act 1977			
Market Rent		£2,100 per month	
Disregards		Deduction per month	as % of monthly rent
Lease terms		£157.50	7.5%
Partial white goods and lack of flooring in some rooms		£52.50	2.50%
Dated front door and gloomy in places		£52.50	2.50%
		Total deductions	£262.50 12.50%
		Market rent less deductions	£1,837.50 per month
Less Scarcity	20.00% of Market rent less deductions	£367.50	
Adjusted Market Rent		£1,470.00 per month	
		Fair Rent	£1,470 per month

Table 1

The Impact of the Landlord's Improvements

48. The reason for the landlord's objection was that they considered that the property's value had been increased by the installation of central heating at the property, as well as other works. As set out above, if these improvements increase the fair rent of the property by more than 15% of the previously registered rent, then the Maximum Fair Rent Order does not apply, and the amount that can be registered by the Tribunal as the fair rent is not limited by that Order.

49. In this case, the Tribunal considered that – were the property not to have central heating (and ignoring any other improvements undertaken by the landlord since the last registration, which were less clear) – the value of the property would be reduced by 10% of its current level. As is shown in Table 2 below, this would provide a fair rent of £1,302pcm.

Property:	346 Southcroft Road, London, SW16 6QU				
ALTERNATIVE Fair rent calculation in accordance with s(70) Rent Act 1977					
Market Rent				£2,100	per month
Disregards				Deduction per month	as % of monthly rent
Lease terms				£157.50	7.5%
Partial white goods and lack of flooring in some rooms				£52.50	2.50%
Dated front door and gloomy in places				£52.50	2.50%
NO CENTRAL HEATING				£210.00	10.00%
Total deductions				£472.50	22.50%
Market rent less deductions				£1,627.50	per month
Less Scarcity	20.00%	of Market rent less deductions		£325.50	
Adjusted Market Rent				£1,302.00	per month
Fair Rent				£1,302	per month

Table 2

50. The difference in fair rent value between the property with central heating and without is therefore £1,470pcm - £1,302pcm = £168pcm. This equates to approximately £38.77 per week.

51. The previously registered rent (on 24 October 1991) was £41 per week, 15% of which is £6.15 per week. £38.77 per week is significantly greater than £6.15 per week, and the installation of the central heating (alone) has therefore increased the value of the property by more than 15% of the previously registered rent. Accordingly, the Maximum Fair Rent Order does not apply, and the Tribunal's determination is not restricted by it.

Decision

52. Accordingly, the sum that will be registered as a fair rent with effect from 29 May 2024 is **£1,470 per calendar month**. The Tribunal notes that this is the maximum rent that might be charged at the property, and that the landlord may charge a lower rent should they wish.

Valuer Chairman: Mr O Dowty MRICS

Dated: 11 July 2024

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).