



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

**Case reference** : **LON/00AY/F77/2024/0102**

**Property** : **30 Lansdowne Gardens, London, SW8  
2EG**

**Tenant** : **Mr & Mrs John Elgar**

**Representative** : **Mr Terrence Drew**

**Landlord** : **Dartlaunch Limited**

**Representative** : **Mr Julius Seal**

**Type of application** : **Determination of Fair Rent under  
Schedule 11 of the Rent Act 1977**

**Tribunal members** : **Judge H. Lumby  
Mr J Naylor FRICS**

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

**Date of inspection** : **28 May 2024**

**Date of hearing** : **28 May 2024**

**Date of decision** : **12 July 2024**

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**WRITTEN REASONS**

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## **Decisions of the Tribunal**

The Tribunal determines that the fair rent of the Property is £255.50 per week with effect from 28 May 2024.

### **Written reasons**

#### **Background**

1. The Property is subject to a lease protected by Schedule 11 of the Rent Act 1977. The effect of this Act is that there is a maximum rent set for the Property, calculated by reference to a formula. If the fair rent calculated by reference to open market rents is in excess of that maximum rent, then the maximum rent will apply. If it is below the maximum, then the lower fair rent will apply.
2. There is normally a two year gap between registration or confirmation of a registered rent and a fresh application to the Rent Officer. However, if there has been such a change in the condition of the property within the two year period that the registered rent is no longer a fair rent, an earlier application is permitted. If that change means that the fair rent is 15% higher as a result (having disregarded extraneous factors such as inflation), then the capping arrangements will cease to apply to that application.
3. In this case, the Property has been the subject of improvements and the Landlord is arguing that the rent is no longer a fair rent. It contends that the resultant increase is more than 15% and so the cap should be removed. The claimed improvements are the installation of central heating and double sockets in place of the existing single sockets (including some additional double sockets), repairs to the windows, the installation of doors to the second floor rooms and the repair of a hole in the second floor store cupboard.
4. The lease of the Property dates from 1964 with a current rent of £239 per week.
5. The fair rent has previously been assessed in relation to the Property on 14 September 2023. The Landlord applied to register a new fair rent on 20 November 2023. Following an inspection on 28 December 2023, the Rent Officer agreed that due to improvement works, the Landlord can apply to register a fair rent, notwithstanding that less than two years have passed since the last registration. The Valuation Office Agency on 18 January 2024 registered a fair rent of £250.50 per week.
6. The Landlord objected to this assessment on 24 January 2024 which was as a result referred to the Tribunal for determination.

7. The Tribunal inspected on the same date as the hearing.
8. The Tribunal has issued its notice of determination today. That determination contains the calculation of the maximum fair rent, using the prescribed formula. These are the reasons for its determination.

### **Property**

9. The Property is located in a conservation area and overlooks a communal square. It comprises the upper part of a period Grade 2 listed terraced house with two flats below, both of which are in the possession of the Landlord. The Property is accessed via a communal front door and a staircase to the first floor, where there is the entrance to the Property. The first floor contains two bedrooms, a living room, a kitchen and bathroom/WC. The second floor, sitting in the roof of the Property, contains two further bedrooms.
10. Central heating has been provided by the Landlord, in place of coal and gas fires and heaters provided by the Tenant. It also has new double sockets provided by the Landlord. However, the wiring has not been changed other than extra wiring for additional sockets.
11. The Landlord has also carried out repair works to the windows, although on inspection they did still show signs of disrepair and those on the second floor did not open and close properly.
12. New doors had been installed by the Landlord on the second floor which were claimed by it to be fire rated. However, the doors did not have many of the elements required to make the door opening fire resistant. The Landlord submitted a specification at the hearing which was claimed to be for the doors.
13. The second floor sits in the roof of the building, which was pitched to an apex, but without a flat cap. There was evidence of a damp stain due to missing tiles.
14. The carpets, curtains and white goods are provided by the Tenant, who is also responsible for internal decoration; the Property appeared on inspection to be well decorated internally. The kitchen was fitted by the Tenant, together with the shower.
15. The Landlord's responsibility for repair reflects the duties imposed on landlords by section 11 of the Landlord and Tenant Act 1985.

### **Hearing**

16. The hearing was held in person and attended by the Landlord and the Tenant. Submissions had been received from both parties by the Tribunal prior to the hearing. These submissions together with the arguments put forward by the parties at the hearing were all considered by the Tribunal.

### **Tenant's submissions**

17. The Tenant says that they have lived in the Property for sixty years and always paid the rent on time. They oppose the proposed increase.
18. The Tenant argued that the Property was in a poor state of repair, citing the lack of gas and electric safety checks, the poor state of the garden and the exterior of the building, damp, draughts and cold arising from rotten windows and from windows fixed open in other areas of the house. Heating has been installed at the insistence of the council. Whilst improvements had been made, they were not such as to warrant a rent increase.
19. It was argued that the now replaced electric sockets were dangerous, causing flickering and fizzing; replacing the sockets should therefore be treated as a repair not an improvement. In addition, the window frames were still showing a level of disrepair and their repair should be treated as such rather than an improvement. They also pointed to the poor quality of the window repair.
20. The Tenant also contended that the cold nature of the building due to the open windows meant that their utility bills were higher and suggest this is taken into account to reflect five years of higher bills by halving any increase due to the installation of central heating.
21. They also point to the poor condition of the exterior and the common parts of the building which they say is dilapidated and damp. They also say that the Landlord had asked them not to use the garden which was allowed to become overgrown.
22. In submissions at the hearing, the Tenant argued that the references by the Landlord to figures from 2017 were irrelevant. They argue that the windows and door works are repairs, carried out poorly. The central heating is an improvement but there has always been heating; the new system just works slightly better. The building overall is in a poor state of repair which would impact on the rent. Scarcity is a crucial factor. Without providing comparables, they argue that the registered rent is fine and should not be altered.
23. There were references by both parties to a potential move from the Property by the Tenant to accommodation provided elsewhere by the Landlord. In addition, there were mutual accusations about the

behaviour and motives of the other side. None of these were relevant to the valuation issues in this case and so were disregarded by the Tribunal.

### **Landlord's submissions**

24. The Landlord argued that substantial improvements had been carried out, with a new boiler and central heating system installed, the old single electrical sockets had been replaced with new double sockets, the window frames had been repaired and new doors installed for the second floor rooms. These were in response to the Tenant reporting the condition of the Property to the Environmental Health Department of Lambeth Council who served a notice of disrepair. It was claimed that repairs had not been carried out before as it was anticipated that the Tenant would move out.
25. The Landlord's case was that they needed to show that the effect on the rent of the improvements meant that the rent assessed in September 2023 was no longer a fair rent; this would allow an increase in the Tenant's rent. Secondly, if they could show that the effect of the improvements was an increase in excess of 15%, then the rent cap would be removed in relation to this increase.
26. They argued that the Rent Officer had agreed that the September 2023 rent was no longer a fair rent by agreeing an increase in the rent. However, they contended that the lack of repair to the Property meant that the uncapped fair rent as determined by the Rent Officer had not kept pace with inflation, declining in real terms by about 37% between August 2017 and September 2023. In support, they argued that if the fair rent had kept track with inflation from 2017, the fair rent in January 2024 would have been £450.10. They argue that against this low base, the effect of the improvements is to increase the uncapped rent by at least 50% and more realistically by 100%. This is far in excess of the 15% required to remove the cap.
27. In addition, they contend that the increase in the rental value is not linked to inflation because between September 2023 and January 2024 the RPI index had actually fallen, from 378.4 to 378. They argued that there is no difference between repairs and improvements, both should be taken into account.
28. A report by Knight Frank has been provided as evidence of the open market rent for the Property of at least £3,500 per calendar month in its current condition. Taking this as a starting point, the Landlord argues that the fair rent should be between £650 and £700 per week.

### **Law**

29. The lease to the Tenant is subject to the Rent Act 1977.

30. Section 67(3) of the Rent Act 1977 provides:

*(3) Subject to subsection (4) below and sections 67A and 70A of this Act, where a rent for a dwelling-house has been registered under this Part of this Act, no application by the tenant alone or by the landlord alone for the registration of a different rent for that dwelling-house shall be entertained before the expiry of 2 years from the relevant date (as defined in subsection (5) below) except on the ground that, since that date, there has been such a change in—*

*(a) the condition of the dwelling-house (including the making of any improvement therein),*  
*(b) the terms of the tenancy,*  
*(c) the quantity, quality or condition of any furniture provided for use under the tenancy (deterioration by fair wear and tear excluded), or*  
*(d) any other circumstances taken into consideration when the rent was registered or confirmed,*

*as to make the registered rent no longer a fair rent.*

The effect of this provision in the current case is that if there a change in the condition of the Property which means that the registered rent is no longer a fair rent, the Landlord can apply for a new fair rent to be registered notwithstanding that there has not been two years since the previous registration.

31. Article 2 of the Rent Acts (Maximum Fair Rent) Order 1999 sets out the formula for calculating the maximum fair rent from time to time. An exception to the application of a maximum fair rent is in Article 2(7), which provides:

*(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.*

The effect of this provision in the current case is that if there a change in the condition of the Property or the common parts as a result of works carried out by the Landlord (including repairs) which mean that the new registered rent exceeds by at least 15% the previous registered rent, the maximum fair rent provisions will not apply to that rent.

### **Consideration of the impact of the works on the fair rent**

32. Following the case of *London Housing and Commercial Properties v Cowan* [1977] QB 148, the Tribunal cannot go behind a Rent Officer's decision to accept an application for a re-assessment of the rent less than two years from the previous registration. Accordingly, on the basis that the Rent Officer accepted this application, the Tribunal did not need to consider whether the works carried out by the Landlord meant that the registered rent was no longer a fair rent.
33. The Tribunal therefore considered whether the effect of the works would be to increase the fair rent by at least 15%. In doing so, it considered the submissions made by the parties and the evidence submitted by them, both before and at the hearing and its own assessment from the inspection.
34. The Landlord had argued that the movement in the assessed fair rent of the Property should be viewed from 2017 to the date of the assessment. The Tribunal does not accept that argument. The question to be considered is whether the works carried out would cumulatively increase the fair rent by at least 15%.
35. It therefore considered each of the works in turn, beginning with the new doors on the second floor. Based on the specification provided, whilst they were fire rated, these were not fire doors. They were cheap looking, thin and aesthetically unpleasing. The Tribunal makes a finding of fact that the installation of these doors would not affect the fair rent.
36. Next it considered the hole in the second floor store cupboard. It was hidden from view and was irrelevant in the context of the dilapidations in the building overall. The Tribunal makes a finding of fact that the repair of this hole would not affect the fair rent.
37. The Tribunal then turned to the window repairs. The quality of the workmanship was poor and clearly incomplete, for example the fact that the second floor windows did not open and close properly. The Landlord argued that these works would be completed but the Tribunal has to make its assessment on what it saw rather than on some promise of future works which might or might not occur. The Tribunal makes a finding of fact that the window repairs would not affect the fair rent.
38. The installation of the double sockets was then considered. Their installation should have an effect on the fair rent, although it was noted that the Property had not been rewired as part of the works and no electric safety certificate had been provided to the Tribunal. The Tribunal makes a finding of fact that the installation of the double sockets would increase the fair rent by no more than 2%.
39. Finally, the Tribunal considered the effect of the installation of central heating. The Tenant had argued that any increase related to its

installation should be halved to reflect the increased utility bills incurred in the past due to the condition of the building overall and the windows the Landlord had left open. The Tribunal does not accept this argument, the question before it is to assess the increase in the fair rent that flows from the installation of central heating; the past actions of either party are not relevant to this assessment. The Tribunal considered that the installation of central heating would increase the fair rent. It makes a finding of fact that the installation of central heating would increase the fair rent by no more than 10%.

40. Based on these assessments, the Tribunal finds that effect of the works carried out would be to increase the fair rent by no more than 12%.
41. The method of assessment adopted by the Tribunal means that there is no need to assess the difference in rental values between September 2023 and a later date and then disaggregate any part of the increase not due to the changes carried out. The Landlord has argued that, because there was a slight fall in the RPI index between September 2023 and January 2024, any increase must be solely due to the works carried out. The Tribunal disagrees with that argument because it assumes that the rents only increase with changes in the RPI index; this is not correct, rental levels can move for other reasons, including scarcity. The Office of National Statistics publishes indexes of national and regional rent changes which would be pointless if they simply tracked RPI.
42. The 12% increase found by the Tribunal means that the 15% figure required by Article 2(7) of the Rent Acts (Maximum Fair Rent) Order 1999 has not been achieved and so the fair rent payable by the Tenant will remain subject to the capping provisions set out in that order.

### **Consideration of fair rent payable**

43. The Tribunal then considered what the fair rent should be.
44. Based on the Landlord's comparables, the Tenant's comments and the comparables considered by the Rent Officer, the Tribunal has assessed that the open market rent of the Property in full repair is £600 per week. The Tribunal has deducted 22.5% from this figure to reflect the Tenant's repair and decoration liability, the works carried out by the Tenant to the kitchen and in installing the shower, the lack of floor coverings, carpets and white goods and the condition of the building overall including the resultant damp issues. It has then deducted a further 20% from the resultant figure for scarcity. This gives a fair rent of £372 per week.

### **Maximum Rent**



45. The Tribunal next considered the maximum rent pursuant to the Rent Acts (Maximum Fair Rent) Order 1999. This requires the Tribunal to follow a prescribed formula to generate an uplift to the last registered fair rent. That formula is set out in the Notice of Determination issued by the Tribunal today.
46. Applying that formula gave a maximum rent figure as at the date of the hearing of £255.50 per week.

**Decision**

47. As the fair rent figure of £372 per week is higher than the maximum fair rent figure of £255.50 per week, the Tribunal determines that the fair rent is £255.50 per week.

**Name:** Tribunal Judge Lumby      **Date:** 12 July 2024

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## **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 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.

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