



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

Case reference : LON/00AM/F77/2024/0160

Property : Flat B, 35 Denver Road, London, N16 5JL

Tenant : Mr Schtraks & Mrs Schtraks

Landlord : The Riverside Group

Date of application : 22 February 2024

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

**Tribunal
member(s)** : Mr A Parkinson MRICS
Ms A Hamilton-Farey FRICS

Venue : 10 Alfred Place, London, WC1E 7LR

Date of decision : 20 November 2024

REASONS FOR DECISION

Background

1. The landlord applied to the Rent Officer for the registration of a fair rent for this property in an application dated 21 December 2023.
2. A fair rent of £157.50 per week was registered on 19 February 2024 following the application, such rent to have effect from 19 February 2024. The tenant subsequently challenged the registered rent on 22 February 2024, and the Rent Officer has requested the matter be referred to the tribunal for determination.
3. Directions were issued on 1 May 2024 by the Tribunal.
4. The parties were invited to submit any relevant information and submissions. The tenant provided a reply form and photographs of the property.
5. In their reply form, the tenant had indicated that they wished a hearing be held in this matter. Accordingly, a face-to-face hearing was held in this matter on 20 November 2024 at 10 Alfred Place, London, WC1E 7LR.
6. In their reply form the tenant requested that the property be inspected. Accordingly the property was inspected by the Tribunal on 20 November 2024.

The Hearing

7. The tenant, Mrs Schtraks attended the hearing in person. The landlord did not attend. The Tribunal considered that sufficient notice of the hearing had been provided to the landlord, and that it was appropriate to continue with the hearing in their absence.
8. The tenant described the layout and accommodation and listed several items of disrepair.
9. The tenant submitted that there has been mould within the property, that there is internal cracking which the tenants repair and redecorate on an ongoing basis. Further that there is an ongoing leak from the boiler and the central heating system can be problematic whereby some radiators do not always heat and there are no radiators in the entrance lobby of the property.
10. The tenant averred that when she moved in there were no curtains or floor coverings within the property and a basic kitchen, one bathroom and a further WC with hand basin. The tenants had a new kitchen fitted including cabinets, worktops and white goods. The tenants had installed all of the floor coverings at the property, as well as window coverings throughout. In addition, the tenant had upgraded both

bathrooms so that are now two bathrooms rather than the original one bathroom and additional WC with hand basin.

11. The tenant also stated that since the tenants moved in they have improved the garden to which the property benefits from exclusive use, by adding fence panels above the boundary wall and the installation of a resin bound path/patio area within the garden.
12. The tenant also averred that, structural movement within the property creates ongoing internal cracking. The result being that the tenants undertake ongoing repairs to plaster and redecoration. The tenant also stated that the landlord had requested that the tenants do not open the windows to the main reception room.
13. Turning to the rental value, the tenant stated that she had not investigated local rental levels but was unhappy that the increase in rent was so significant based on the £157.50 rent registered by the rent officer in February 2024 when compared to the previous rent of £86.50 that was registered in 2009.

Inspection

14. The Tribunal inspected the property on 20 November 2024, accompanied by the tenant Mrs Schtraks. The landlord did not attend the inspection, but had received prior notification of the inspection.
15. The property is a 3-bedroom maisonette, with accommodation located on the 1st and 2nd floors – accessed via a ground floor private entrance door which leads to an internal staircase leading to the upper floors. There is a private garden to the front of the property with a brick-built boundary wall with timber fence above and an entrance gate to the garden to which the tenants have exclusive use. Externally the building is in a generally fair condition although cracking and evidence of re-pointing of the solid brickwork external elevations was visible.
16. On the ground floor, the property offers an entrance lobby with a staircase leading to the 1st floor. On the 1st floor, the property comprises 2 bedrooms, a bathroom, kitchen and reception room with a further staircase leading to the 2nd floor. On the second floor is the second bathroom and third bedroom.
17. The property has UPVC double-glazed windows throughout being in a good condition, and benefits from central heating and a pressurised hot water system. The windows and central heating boiler and hot water cylinder were replaced by the landlord.
18. The cosmetic condition of the property is generally good, aside from the visible cracks to plaster in the majority of the rooms within the property.

The Law

19. 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.
20. 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.
21. 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”*.
22. The market rents charged for assured tenancy lettings often form appropriate comparable transactions from which a scarcity deduction is made.
23. These market rents are also adjusted where appropriate to reflect any relevant differences between those of the subject and comparable rental properties.
24. 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.
25. **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 19 August 2009 at £86.50 per week. The rent registered on 19 February 2024 subject to the present objection and determination by the Tribunal is not relevant to this calculation.

Valuation

26. In the first instance the Tribunal determined what rent the landlord could reasonably be expected to obtain for the subject property in the open market if it were let today in the condition that is considered usual for such an open market letting.
27. The landlord did not provide any evidence of value for the Tribunal to consider.
28. The tenant did not submit any evidence in relation to rental values in the locality to the Tribunal.
29. Accordingly, the Tribunal considered the value of the property in light of its local knowledge and experience in combination with the tenant's submissions.
30. The Tribunal felt that a hypothetical rent of £500 per week – were the property let in the condition and on the terms considered usual for such a letting was appropriate as a starting point.
31. 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.
32. The responsibility for internal fixtures, fittings and 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.
33. The Tribunal made further deductions totalling a further 20% from the hypothetical rent to account for the tenant's providing white goods, floor coverings, curtains and other furnishings at the property, and to account for the tenant's having installed the kitchen at the property, for the bathrooms being refurbished and upgraded by the tenants and the ongoing cracking and inability to open the windows in the reception room.
34. 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.
35. 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. North 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 north London.

36. 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 north London and therefore made a further deduction of 20% from the adjusted market rent (excluding the amount attributable to services) to reflect this element.
37. 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.
38. The result is an adjusted market rent of £296 per week.

Decision

39. As the value of £296 per week arrived at by the Tribunal is higher than the maximum rent prescribed by The Rent Acts (Maximum Fair Rent) Order of £161.50 per week, the fair rent that can be registered is restricted by that Order.
40. The statutory formula applied to the previously registered rent is provided at Appendix A.
41. Details of the maximum fair rent calculations are provided in the separate notice of the Tribunal's decision.
42. Accordingly, the sum that will be registered as a fair rent with effect from 20 November 2024 is **£161.50 per week.**

Valuer Chairman: Mr Antony Parkinson MRICS
Dated: 22 November 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:

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

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 $\frac{(\text{x}-\text{y})}{\text{y}} + \text{P}$ 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).