



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

Case reference : **LON/00AW/F77/2024/0234**

Property : **55 Oakley Gardens, London, SW3 5QQ**

Applicant : **Mr A B Thompson**

Respondent : **Cadogan Estates Ltd**

Type of application : **To register a new fair rent**

Tribunal members : **Judge N Hawkes
Mrs A Flynn MA MRICS**

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

Date of decision : **18 November 2024**

Date of written reasons : **18 November 2024**

DECISION

The Tribunal's determination

Background

1. On 11 March 2024, the landlord applied to the rent officer for the re-registration of a fair rent of £50,960 per annum (£12,740 per quarter) for the above property.
2. The rent payable at the time of the application was said to be £25,568 per annum (this would be £6,317 per quarter).
3. However, it appears that the rent was previously registered on 2 March 2022 with effect from 2 March 2022, in the sum of £6,392.00 per quarter following a determination by the rent officer.
4. On 11th April 2024, the rent officer registered a fair rent of £7,020.00 per quarter for the property with effect from 11 April 2024.
5. By letter dated 8 May 2024, the landlord objected to the rent determined by the rent officer and the matter was referred to the First-tier Tribunal.
6. Neither party requested an oral hearing, but the Tribunal has considered the parties' written representations.

The law

7. When determining a fair rent the Tribunal, in accordance with the Rent Act 1977, section 70, must have regard to all the circumstances (other than personal circumstances) including the age, location and state of repair of the property. It must disregard 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.
8. Section 70(2) of the Rent Act 1977 states that "for the purposes of the determination it shall be assumed that the number of persons seeking to become tenants of similar dwelling-houses in the locality on the terms (other than those relating to rent) of the regulated tenancy is not substantially greater than the number of such dwelling-houses in the locality which are available for letting on such terms."
9. In Spath Holme Ltd v Chairman of the Greater Manchester etc. Committee (1995) 28 HLR 107 and Curtis v London Rent Assessment Committee [1999] QB 92 the Court of Appeal emphasised:
 - (a) that ordinarily a fair rent is the market rent for the property discounted for 'scarcity' (i.e. 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 - other than as to rent - to that of the regulated tenancy) and

(b) that for the purposes of determining the market rent, assured tenancy (market) rents are usually appropriate comparables. (These rents may have to be adjusted where necessary to reflect any relevant differences between those comparables and the subject property).

10. When a fair rent is already registered and an application for a new fair rent to be determined by the Rent Officer is made on or after 1 February 1999, there is a limit on the amount that can be registered as the fair rent. This limit is sometimes referred to as the “capped rent”. If the fair rent that the Tribunal would otherwise have determined is above the capped rent only the lower, capped figure can be registered as the fair rent.
11. The capped rent is calculated in accordance with a formula set out in the Rent Acts (Maximum Fair Rent) Order 1999. It is arrived at by increasing the amount of the existing registered rent by the percentage change in the retail price index since the date of that earlier registration and then adding a further 7.5% or 5%. The 7.5% addition will apply in respect of the first application for re-registration of a fair rent since 1 February 1999 and the 5% addition will apply in the case of all subsequent applications.
12. In all cases where the capping rule applies, the Tribunal will first decide what the fair rent would be irrespective of the statutory limit. It will then calculate the capped rent. If the figure reached by the Tribunal is above or the same as the capped rent, the capped rent will be registered as the fair rent. If it is below the capped rent, the lower figure will be registered, and the cap will not apply.

Valuation

13. The tenant has provided the Tribunal with detailed information about the property, all of which has been taken into account in carrying out this valuation.
14. The tenant’s evidence includes measurements, photographs, and evidence that that the property has been surveyed and measured and found to be smaller than any of the other houses in Oakley Gardens. In particular, the “ablution” block to the rear is only 1.3m deep, whereas other houses have at least 3m. We also note that the rear of the property looks onto Grove Flats.
15. The Tribunal inspected the Property on the afternoon of 18 November 2024, in the presence of the tenant. The property is a mid-terrace period house with a basement, ground floor and two other floors.

The living accommodation currently comprises 4 bedrooms, a bathroom, a shower room, WC, laundry room, sitting room and study. There was also a small outdoor garden off which there was a small boiler house.

16. In reaching its determination, Tribunal first determined the rent that the landlord could reasonably be expected to obtain for the property in the open market in the condition considered usual for a modern letting. It did this by having regard to Tribunal's own general knowledge of market rent levels in the area of Kensington and Chelsea.
17. It did not do so by reference to specific comparable properties but rather the Tribunal had regard to its general knowledge obtained through regularly carrying out valuations in different areas of London, including Kensington and Chelsea. On this basis, the Tribunal finds that the likely market rent would be £22,750 quarter.
18. The rent registered for another Rent Act 1977 tenancy is not a suitable comparable for this purpose because it may not reflect the current market rent.
19. The tenant states that, when he entered into occupation of the property, in 1985, the house was almost derelict with water leaks, fungi, and a single outside WC.
20. The improvement work carried out by the tenant has included the installation of a bathroom, a kitchen, central heating and domestic hot water, the elimination of dry rot, timber treatment, installing a new basement floor, electrical wiring work, the rebuilding of the top floor of the "ablution" block, painting, carrying out roof repairs, installing decking to the back yard and installing paving to front of the property.
21. The tenant has also periodically carried out cyclical internal and external redecoration and has, over the years, made many changes and improvements to the property, including installing a new kitchen and new flooring.
22. Insofar as these features could be observed, they were confirmed by the Tribunal's inspection. The Tribunal finds that a deduction of 50% should be made to reflect the tenant's very substantial improvements.
23. Further, on the basis of the information available to the Tribunal, the Tribunal agrees with the tenant's submission that the subject property is not currently in the condition considered usual for a modern letting at a market rent in Kensington and Chelsea. Therefore, it was necessary to adjust that hypothetical rent to allow for the differences between the condition considered usual for such a letting and the condition of the subject property. In addition, there are differences between the usual terms of a market letting and the terms of a Rent Act 1977 tenancy, under which that the tenant is responsible for the

provision of carpets, curtains and white goods. The Tribunal finds that a deduction of 10% should be made to reflect these matters.

24. Applying these deductions of 60% to the hypothetical market rent, the adjusted market rent for the property is reduced to £9,100 per quarter.
25. The Tribunal is aware of judicial guidance relating to section 70(2) of the Rent Act 1977 including the decision of the High Court in Yeomans Row Management Ltd v London Rent Assessment Tribunal [2002] EWHC 835 (Admin) which required it to consider scarcity over a wide area rather than limit it to a particular locality.
26. Greater 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 Greater London. The Tribunal considers that, taking Greater London as the appropriate area and applying its knowledge and experience as an expert Tribunal, it is proper to apply a scarcity element in the region of 20% which must be deducted from the adjusted rent of £9,100 per quarter.
27. Applying these deductions to the hypothetical market rent, the uncapped fair rent (rounded to the nearest pound) is £7,280 per quarter.

6. Decision

28. The capping provisions of the Rent Acts (Maximum Fair Rent) Order 1999 do not apply in the present case because the uncapped rent of £7,280 is below the capped rent of £7,998.

Accordingly, the sum of £7,280 will be registered as the fair rent with effect from 18 November 2024 being the date of the Tribunal's decision.

Name:	Judge N Hawkes	Date of full reasons for the decision:	18 November 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).