



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

Case reference : **FR/LON/00AW/F77/2024/0615**

Property : **Flat 1, 25 Earls Terrace, Kensington
London W8 6LP**

Applicant : **Mr Robert Reynolds**

Representative : **N/a**

Respondent : **Northumberland & Durham Property
Trust Limited**

Representative : **Grainger Residential Property
Management Limited**

Date of application : **31 July 2024**

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

Tribunal members : **Mr I B Holdsworth MSc FRICS
RICS Registered Valuer 0079475
Mr Clifford Piarroux JP**

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

Date of decision : **13 December 2024**

DECISION

The sum of £4,550 per month will be registered as the fair rent with effect from 13 December 2024, being the date the Tribunal made the Decision.

Background

- 1 An application was made to the Rent Office by the Landlord for the registration of a fair rent on 25 April 2023. The registered rent was challenged by the Landlord to this application and the Rent Officer has requested the matter be referred to the Tribunal for determination.
- 2 Directions were issued to both parties following receipt of the objection.
- 3 The Tribunal informed the parties of their rights to request an oral hearing. The Tenant requested a hearing.
- 4 A face-to-face hearing was held on 13 December 2024 to discuss the application.
- 5 Prior to the hearing, the parties were invited to submit relevant information on market rents in the area for similar properties. They were also invited to offer any details of property dilapidation, repairs or improvements made to the property by either the Landlord or Tenant.
- 6 The parties were also invited to submit a full description of the property on a reply form provided to them by the Tribunal. The Landlord and tenant both provided a detailed response, which included information on the recent refurbishment works at the property.
- 7 Following the hearing an inspection of the property was carried out to assess and appraise many of the matters raised at the hearing and made in the written submissions.

Property Description

- 8 The property is a ground/basement flat. The accommodation comprises:

Basement floor: Living/Dining Room, Kitchen, 3 rooms, 1 shower room/wc, 1 bathroom/wc with an outside private garden

The property is situated in a terraced row of period listed properties approximately 150 m from Kensington High Street.

Hearing

- 9 A hearing was held on 13 December 2024 at which the tenant, Mr Reynolds made oral and written submissions about the property. Ms Alexander Gibbs, the partner of Mr Reynolds attended the hearing.

- 10 The landlord was represented by Mr Ben Taylor, a Director of Grainger Residential Management Limited. Mr Taylor referred to the written submissions made on behalf of the landlord and responded to several allegations raised by the tenant about the extent, purpose, and nature of the refurbishment works.
- 11 The Tribunal made repeated requests of Mr Reynolds to allow Mr Taylor to speak without interruption. He refused to adhere to these requests and the hearing was subsequently adjourned for a short period to allow Mr Reynolds to reflect upon his behaviour and particularly his failure to abide with the reasonable procedural requests of the Tribunal.
- 12 The Tenant's representations included details of works carried out since the last rent registration in July 2022 by contractors on behalf of the landlord. It was agreed in the oral submissions by both parties that these works were undertaken after consultation with the tenant and the scope and specification of the works was mutually agreed.
- 13 The total cost of the scheme was advised at around £170,000 and the works included:
 - stripping out existing kitchen, bathroom and shower-room, supplying new sanitary fittings to all areas
 - full electrical rewire
 - installation of new radiators and TRVs
 - overhaul of all existing windows
 - tank, replaster and redecorate all internal walls
 - new flooring throughout (including Junckers Beech wood flooring)
 - provision of new appliances to kitchen, to include fridge freezer, oven and hob, washer/dryer and dishwasher
 - all flooring renewed
 - redecoration and tiling throughout
 - New double glazed garden doors leading from the kitchen, High performance and strengthened centre gearbox for extra security which are tested to PAS24 and Secured by Design Approved
 - works to external garden brick wall
- 14 Mr Reynolds verified the works were necessary and essential repairs to a property that had fallen into disrepair. Mr Reynolds helpfully submitted a photographic record of the condition of the dwelling prior to the commencement of the refurbishment works. Mr Taylor said all works were agreed with the tenant and were intended to remedy defects and improve the dwelling.
- 15 Mr. Reynolds accepted he had agreed to and was consulted on the refurbishment work, but he claimed that much of the material and replacement items used for the repairs/refurbishment were of an inferior quality compared to that replaced.
- 16 Mr Reynolds and Mr Taylor confirmed no other property works had been undertaken since the refurbishments works.

- 17 Mr Reynolds told the Tribunal he was concerned that the property suffered from masonry and plasterwork cracking consistent, in his opinion, with ongoing structural movement. No evidence was adduced at or prior to the hearing to support the assertion the dwelling was structurally unsound. He also said prior to the works the property had suffered from damage caused by structural instability. No evidence to validate this statement was submitted to the Tribunal.
- 18 Both parties submitted to the Tribunal details of properties currently being marketed for rental in the locality which they claimed matched the subject dwelling in type and size. They asked that the Tribunal have regard for these currently offered rents for comparable properties in determination of the fair rent.

Inspection

- 19 At the Tribunal's inspection on 13 December 2024, Mr Reynolds and his partner were in attendance. Mr Taylor for the Landlord was also present.
- 20 The Tribunal noted the excellent location of the dwelling within walking distance of Kensington High Street with all amenities and services. The large private garden to the rear of the property was also deemed a material valuation factor.
- 21 Some hairline surface cracking to internal and external render was identified but this is consistent with a property of this age and type. In the opinion of the Tribunal there was no evident ongoing movement. All the accommodation was inspected, and the refurbishment works assessed and appraised. The inspection revealed the work was done to a good specification and contractor works standard, and this had produced a superior quality outcome overall. The Tribunal compared the present condition with the photographic evidence of the prior to works condition. There was no conclusive evidence of the use of inferior materials in the refurbishment work to that which had existed.

Reported and identified defects and obsolescence

- 22 No material defects likely to impact on rental value were identified during our inspection.

Condition

- 23 The condition of the property is material, and Tribunal has had regard to the condition of the flat prior to the refurbishment works and the current condition of the property as inspected.

Market rental evidence

- 24 The parties both provided details of comparable market rents of similar property in the locality. The parties both confirmed that this transaction evidence was taken from internet sites and that they had no rental information for recently let comparable properties.

- 25 Mr Reynolds told the Tribunal at the hearing that he had no written submission on rental evidence but only oral testimony. The Tribunal heard his submission and recorded pertinent information. Mr Taylor submitted written evidence on the advertised rents for similar properties.

The law

- 26 When determining a fair rent the Tribunal, in accordance with the Rent Act 1977, section 70, ('**the Act**'), it had regard to all the 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.
- 27 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.
- 28 The Market Rents charged for assured tenancy lettings often form appropriate comparable transactions from which a scarcity deduction is made.
- 29 These Market Rents are also adjusted where appropriate to reflect any relevant differences between those of the subject and comparable rental properties.
- 30 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.
- 31 **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 Order restricts any rental increase to 5% above the previously registered rent. The Order is not applied should the Tribunal assess that as a consequence of repairs or improvements carried out by the Landlord the rent that is determined in response to an application for a new rent registration exceeds by at least 15% the previous rent registered.

The Order states at section (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.”*

- 32 The 15% test is a matter of the Tribunal applying their professional judgement to give an opinion of the value to the tenant of the works to the property.

- 33 The Upper Tribunal in **Peabody Trust – v – Welstead** [2024] UKUT 41 (LC) addressed the reliance upon the experience and knowledge of a tribunal following an application to the Tribunal. Judge Martin Rodger KC, Deputy Chamber President said:

*'The FTT is a specialist tribunal whose members are appointed because of their experience and professional backgrounds in residential property matters. Whilst sitting on the FTT its members will acquire further relevant experience and familiarity with general levels of value or costs in a particular area. This is one of the key strengths of the Tribunal system and it particularly important in dealing with the numerous cases of modest value in which a decision has to be made on very limited information. **Rent assessments are typical of those types of cases.***

Although this decision was concerned with management charges it also specifically addressed the role of the Expert Tribunal when little or no evidence is provided by the parties. The Deputy Chamber President said:

'It was entitled to rely on its general experience of management charges; that is what it was appointed to do and, in the absence of assistance from the parties, there was no other source on which it could rely.'

In this matter comparable rental information from let dwellings was not proffered by either party and the Tribunal had to rely upon their general knowledge and expertise. They did not rely upon specific rental transactions. This approach accords with the Upper Tribunal guidance on the appropriate role of the Tribunal in such situations.

Valuation

- 34 In the first instance, the Tribunal determined what rent the Landlord could reasonably be expected to obtain for the property in the open market, if it were let today in the condition that is considered usual for such an open market letting. It did this by having regard to their general knowledge of market levels in this area of West London.
- 35 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 inspection. 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.
- 36 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 about scarcity, although the tenant said at the hearing that he considered it was very high for this type of property in this particular locality.

- 37 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. The 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 across that area.
- 38 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 combined knowledge and experience of 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 there was substantial scarcity in the London area and, therefore, made a further deduction of 20%.
- 39 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.
- 40 The Tribunal has relied upon their knowledge and experience of Market Rents in the locality to determine the appropriate Market Rent for this property to be used in the fair rent calculation. They have also had regard for the information provided by the parties about advertised rental properties currently available to rent situated in the locality.
- 41 The Tribunal has determined based upon their local knowledge and experience of West London properties that the Market Rent for the subject property in current condition is £6,500 per month.
- 42 The Tribunal has carried out two rental valuations to determine whether the repairs or improvements, referred to as “the change in condition” has led to a current rental increase greater than 15% since the last Registration in 2022.
- 43 Table 1 and 2 below provides details of both the fair rent calculation:

| | | | | | |
|-----------------------------------------------------------------------------------|--|--|------------------------------|------------------------|----------------------|
| Property: Flat 1, 25 Earls Terrace, Kensington, London, W8 6LP | | | | | |
| No works rent | | | | | |
| Fair rent calculation in accordance with s(70) Rent Act 1977 | | | | | |
| Market rent | | | £6,500.00 | per month | |
| Disregards | | | Deduction per month | as % of rent per month | |
| Carpets , curtains white, goods, soft furnishing | | | £325.00 | 5.00% | |
| Internal decoration liability | | | £162.50 | 2.50% | |
| Dilapidations and obsolescence | | | Deduction per month | as % of rent per month | |
| Defective electrical wiring | | | £325.00 | 5.00% | |
| Failed Central Heating | | | £325.00 | 5.00% | |
| Defective window frames | | | £325.00 | 5.00% | |
| Defective patio doors | | | £325.00 | 5.00% | |
| Damaged ceilings | | | £325.00 | 5.00% | |
| Dated kitchen and bathroom fittings | | | £325.00 | 5.00% | |
| Improvements undertaken by tenant | | | Deduction per month | as % of rent per month | |
| None advised | | | | | |
| | | | Total deductions | £2,437.50 | 37.50% |
| | | | Adjusted Rent balance | £4,062.50 | |
| Less Scarcity 20.00% | | | | £812.50 | |
| Adjusted Market Rent | | | £3,250.00 | per month | Uncapped rent |
| Capped rent in accordance with <i>Rent Acts (Maximum Fair Rent) Order 1999</i> | | | N/a | per month | Capped rent |

| | | | | | |
|-----------------------------------------------------------------------------------|--------|--|------------------------------|------------------------|----------------------|
| Property: Flat 1, 25 Earls Terrace, Kensington, London, W8 6LP | | | | | |
| Post works rent | | | | | |
| Fair rent calculation in accordance with s(70) Rent Act 1977 | | | | | |
| Market rent | | | £6,500.00 | per month | |
| Disregards | | | Deduction per month | as % of rent per month | |
| curtains, soft furnishing | | | £162.50 | 2.50% | |
| Internal decoration liability | | | £650.00 | 10.00% | |
| Dilapidations and obsolescence | | | Deduction per month | as % of rent per month | |
| | | | | | |
| Improvements undertaken by tenant | | | Deduction per month | as % of rent per month | |
| None advised | | | | | |
| | | | Total deductions | £812.50 | 12.50% |
| | | | Adjusted Rent balance | £5,687.50 | |
| Less Scarcity at: | 20.00% | | | £1,137.50 | |
| Adjusted Market Rent | | | £4,550.00 | per month | Uncapped rent |
| Capped rent in accordance with <i>Rent Acts (Maximum Fair Rent) Order 1999</i> | | | N/a | per month | Capped rent |

Decision

- 44 The percentage increase in the rent caused by the changed condition based upon the Tribunal knowledge and experience is around 28.5%. The rent prior to works is assessed as £3,250 compared to a post works rent of £4,550 per month. This difference in pre and post works rent will exceed the threshold of

15% set by article 7 of the Rent Acts (Maximum Fair Rent) Order and consequently the Order does not apply to this determination. The uncapped fair rent determined by the Tribunal for the purposes of Section 70 is £4,550 per month.

- 45 Accordingly, the sum to be registered as the fair rent with effect from 13 December 2024 is **£4,550 per month**, being the date of the Tribunal's decision.

Name: Ian Holdsworth **Date:** 20 December 2024
Valuer Chairman

Appendix A

The Rents Act (Maximum Fair Rent) Order 1999

2 (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:

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

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

You can only appeal this determination if the First-tier Tribunal decision was wrong on one or more points of law, and you must say why the First-tier Tribunal was wrong in law.

Any subsequent application for permission to appeal should be made on Form RP PTA.

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 (ie, 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).