



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

**Case Reference** : **JM/LON/00AU/F77/2021/0241**

**HMCTS code** : **P: PAPERREMOTE**

**Property** : **Flat 1, 11 Francis Terrace, London, N19  
5PY**

**Landlord** : **Loromah Estates Ltd**

**Representative** : **In House**

**Tenant** : **Mr Phillip Richards**

**Representative** : **In Person**

**Type of Application** : **Determination of a fair rent under  
section 70 of the Rent Act 1977**

**Tribunal Members** : **Mr Anthony Harris LLM FRICS FCIArb**

**Date of Decision** : **17 January 2022**

**Date of Reasons** : **17 January 2022**

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**REASONS**

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## **Covid-19 pandemic: description of hearing**

This has been a remote hearing on the papers. The form of remote hearing was P:PAPERREMOTE. The Directions dated 30 July 2021 and revised Directions dated 23 November 2021 set out that the tribunal was not able to hold face to face hearings or carry out internal inspections. The decision made is described at the end of these reasons.

### **Background**

1. On 20 January 2021, the Landlord applied for registration of a fair rent of £1110.00 per month.
2. The Rent Officer registered a rent of £1050.00 per month. The rent was registered on 28 June 2021 and is effective from 1 August 2021. The rent was the s70 rent which was below the capped rent.
3. Accommodation is a self-contained converted flat on the lower ground floor with central heating consisting of 1 room, living room/kitchen, bathroom/WC.
4. The previous registered rent was £1040.00 per month and was registered on 1 August 2019 and effective from the same date. The rent registration was after a full refurbishment by the landlord and rent capping did not apply.
5. The landlord objected to the registered rent by letter dated 20 July 2021 and the matter was referred to the tribunal.
6. On 30 April 2021, the tribunal issued Directions for proceeding by written representations. On 29 September 2021 the tribunal determined the matter and issued reasons for the decision.
7. The tenant contacted the tribunal to say he was in hospital and provided a medical certificate on 1 October. In the circumstances the tribunal set aside its original decision on 23 November 2021 and issued new directions.

### **Evidence**

#### The Landlord's Case

8. The landlord has submitted no fresh evidence and relies on the previous submissions.
9. The Landlord has submitted evidence drawn from the other flats in the building which were refurbished at the same time as the subject flat. The evidence included the respective floorplans. The largest flat in the

property at 52 sq m is the subject flat which has the benefit of a rear extension enlarging the kitchen area and also does not have the passage and staircase which leads to the upper flats. It also has a rear patio area.

10. The ground floor flat, flat 2 is smaller than the subject flat at 37 sq m, but larger than the other two flats as it has a rear extension containing the bathroom and a bay window at the front.
11. Flats 3 and 4 on the first and second floors are of similar size and have neither an extension or bay window and are both 31 sq m.
12. The flats have all been refurbished to a similar standard including replastering, double glazing, acoustic insulation, LED spotlights, underfloor gas central heating and media connection facilities. There is an intruder alarm.
13. Flats 2, 3 and 4 are let on assured shorthold tenancies with flat 2 let at £1352 per month, flats 3 and 4 at £1350 per month.
14. The subject flat is approximately £310 per month lower than the other three flats and the rent per square metre is 49% lower than the average rent of the other three flats.
15. The tribunal is referred to the *Spath Holme Ltd* case and the Landlord considers it is appropriate for flats 2 to 4 which are within the same building, of similar size, have identical fixtures fittings and maintenance obligations on the landlord to be the starting point for a market valuation of flat 1.
16. The Landlord says the rents achieved for the three flats are not exceptional for the area and are below average for the borough. They provide good quality rental accommodation at an affordable price for the area.
17. In relation to scarcity, it is argued that when flats 2, 3 and 4 were let the supply of rented housing outstripped demand in the locality. Open market rental values in London were depressed and the tribunal is referred to the Rightmove Rental Trends Tracker and Homelets Rental Index reports which it is shared said show rents in London decreased by 6.5% between quarter one 2016 and quarter one 2021. Available rental stock in London increased by 19% as it is said AirBnB hosts sought to convert empty holiday lets to AST's.
18. Referring back to the *Spath Holme Ltd* case the court held that ordinarily a fair rent is the market rent for the property discounted for scarcity. A fair rent is a market rent **save** for the assumption of no scarcity and allowing for the statutory disregards. If there is no scarcity and no disregards then the rent should be the same whether the tenancy is a regulated tenancy or an assured tenancy.

19. The Landlord argues flat 1 is modernised to a high standard where the tenant has no maintenance liability and similar flats in the same building in identical condition provide ideal comparables to determine Market rent. The market rent determined by the closest comparable should be at least £1350 per month.
20. When the comparable flats were let, the rental market in London was experiencing a glut of available properties and demand for one-bedroom flats was being particularly hit due to the pandemic. Given these facts any deduction from market rent for scarcity would be inappropriate.
21. An RPI based calculation is proposed getting to a rent of £1129 per month.

#### The Tenant's case

22. The original case evidence submitted by the Tenant consisted of the reply form confirming the condition of the property and that the landlord had carried out improvements. The Tenant did not submit any rental evidence.
23. In a further submission the tenant provided a copy of the inventory and a further reply form confirming the landlord had made improvements.
24. The tenant disputed the comments of the landlord relating to decoration as the landlord decorated after the refurbishment and objected to a deduction for the tenants decorating liability. The tenancy terms are that the tenant is responsible for decoration and he wants that to continue rather than the landlord be responsible for decoration going forward. No rental evidence was provided.

#### **Inspection**

25. In accordance with the directions the tribunal did not inspect the property. The tribunal took into account photographs on Street View which show limited detail and the plans submitted in evidence.

#### **The Law**

26. When determining a fair rent, the tribunal, in accordance with section 70 of the Rent Act 1977, has regard to all the circumstances (other than personal circumstances) including the age, location and state of repair of the property.
27. 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 emphasized 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 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.

28. The rent has been previously registered, and the Rent Acts (Maximum Fair Rent) Order 1999 therefore applies unless there are significant improvements made by the Landlord since the last registration which increase the rent which would be registered by more than 15%. There are no such improvements in this case

### **Discussion and Valuation**

29. The tribunal has reviewed the evidence and made a fresh assessment of the rent to be determined.
30. The tribunal accepts the evidence as to the condition of the subject property and the letting terms for the comparable flats. Minor variations in the inventory are de minimis. However, the tribunal does not accept the landlords arguments relating to scarcity and market movement. The previous registration was in August 2019 before the pandemic hit. The evidence is of rental falls in the intervening period. The comparable evidence relied on is of lettings at a particular date but gives no evidence of rental trend as presumably there were prior tenancies following the refurbishment.
31. Section 70 of the Rent Act does not refer to scarcity as such but 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.*
32. In this case, while there is evidence of supply, there is no evidence of demand. It is argued that the level of demand is reflected in the rents being obtained and that therefore there is no scarcity. The tribunal considers that the relevant market is the whole of London, and not just a small section of Islington.
33. There is also a difference between assured tenancies and assured shorthold tenancies in terms of security of tenure and this is recognised in the *Spath Holme* decision.

34. In addition to the evidence provided by the parties the tribunal has relied on its knowledge and experience.
35. The tribunal firstly has to consider the rent in accordance with section 70 of the Rent Act as a market rent less scarcity. The tribunal has considered the evidence of lettings supplied and has also applied its knowledge and experience and considers that the rent for the subject property, in this location, and in the condition and with the amenities which the market would expect, would be £1450 per month . The tribunal has adjusted for the different terms of the tenancy as compared with a standard assured shorthold tenancy and makes a deduction of 5% for these factors.
36. The Tribunal found that there was substantial scarcity of letting property in the locality of Greater London and using its knowledge and experience made a deduction of 20% from the adjusted market rent. The calculation of the s70 rent is set out below.

Market rent		£	1,450.00
less tenancy terms	5%	-£	<u>72.50</u>
adjusted rent		£	1,377.50
less scarcity off adj rent	20%	-£	<u>275.50</u>
Fair rent		£	1,100.00

### **Capped rent**

37. In accordance with the Rent Acts (Maximum Fair Rent) Order 1999 the maximum rent is the previous registered rent increased in accordance with the Order which provides for the previous rent to be increased by the percentage increase in the retail prices index plus 5% if the application is a second or later application since 1 February 1999.
38. The retail prices index figure to be used is the figure published in the month before the decision. The decision was made in January, and the figure published in December was 314.3 and which is the upper figure to be used. The index at the date of the last registration was 291.7. Applying the formula produces a maximum fair rent of £1173.00 per month which is above the s70 rent of £1100 per month.
39. The rent to be registered is the lower of the two figures and is the s70 rent of £1100.00 per month.
40. The effective date is the date of the decision which is 17 January 2022.

**Anthony Harris LLM FRICS FCIArb  
Valuer Chair**



## **ANNEX - RIGHTS OF APPEAL**

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.
- If a party wishes to appeal against 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.