



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

Case Reference : LON/00BJ/F77/2021/0085

Property : 36 Balfern Street, London, SW11
3EN

Applicant : Mrs F Haqq (tenant)

Representative : N/A

Respondent : London & Quadrant Group
(Landlord)

Representative : N/A

Type of Application : Section 70 Rent Act 1977 –
determination of a new fair rent

Tribunal Members : Tribunal Judge Mohabir
Mrs S Phillips MRICS

Date of Decision : 5 May 2021

REASONS FOR DECISION

Background

- 1 By an application dated 19 August 2020, the landlord applied to the Rent Officer for registration of a fair rent £200.75 per week for the Property. The rent stated by the landlord, to have been payable at the time of the application was £102.92 per week, although the rent registered was £182.50 per week on 19 March 2013.
- 2 On 18 November 2020, the Rent Officer registered a fair rent of £225.50 per week effective from the same date. By a letter dated 5 December 2020 the tenant objected to the rent determined by the Rent Officer and the matter was referred to the Tribunal for a fresh determination of the rent.

- 3 Directions dated 10 March 2021 for the progression of the case were issued. Neither party filed any written submissions in relation to the rental figure contended for.
- 4 There was no hearing or inspection of the property due to the current COVID-19 pandemic.

Law

- 5 When determining a fair rent the Committee, in accordance with the Rent Act 1977, section 70, 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.
- 6 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
 - (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).

Decision

- 7 The problem for the Tribunal was that its valuation of the market rent for the property, as the starting point, had to be made without the benefit of written submissions or having internally inspected the property to assess its condition. It was, therefore, obliged to assume that the property was in a fair condition and not in disrepair. In the absence of any evidence filed by the parties about market rents, the Tribunal had to apply its own knowledge and experience where appropriate.
- 8 Based on the Tribunal's own general knowledge of market rent levels in the London, SW11 postcode, it concluded that the subject property if modernized and in good order would let on normal Assured Shorthold Tenancy (AST) terms, for £650 per week. This then, is the appropriate starting point from which to determine the rent of the property as it falls to be valued.
- 9 A normal open market letting would include carpets, curtains and "white goods" and would not include a tenant's repairing obligation, but they are absent here. To reflect this and the following, we make allowances.

- 10 When adjustments were made for no floor coverings and curtain being provided (deduction of 15%), no white goods being provided (deduction of 15%) and the tenant's repairing liabilities within the tenancy agreement (deduction of 5.5%). An additional 5% was then deducted for the property requiring modernisation in the event of re-letting. This resulted in the market rent being reduced by £251 (when rounded). The scarcity of property within the area resulted in a further adjustment of 20% bringing the fair rent to £319.20 per week.
- 11 The Tribunal also has to consider the element of scarcity and whether demand exceeded supply. The Tribunal found that there was a substantial scarcity in the locality of Greater London and therefore makes a further deduction of 20% from the adjusted market rent to reflect this element. The uncapped fair rent to be registered would therefore be £319.20 per week.
- 12 However the Tribunal is also required to calculate the Maximum Fair Rent Cap. This is determined by a formula under statutory regulation, which whilst allowing for an element of inflation may serve to prevent excessive increases. The cap as the date of the Tribunal's determination is £227.00 per week.
- 13 As this cap is below than the uncapped rent, the fair rent determined by the Tribunal for the purposes of section 70, is £227.00 per week. This new rent will take effect from and including the date of determination, being 5 May 2021.

Name: Tribunal Judge
Mohabir

Date: 17 August 2021

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).