



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

Case reference : **LON/00AM/F77/2020/0034**

HMCTS code (paper, video, audio) : **V: SKYPEREMOTE**

Property : **First-floor Flat, 134D Kingsland Road, Islington, London E2 8DY**

Applicant : **Mr T Parsons**

Representative : **In person**

Respondent : **FFF Estates Limited**

Representative : **D Williams, Managing Agent**

Date of application : **31 October 2019**

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

Tribunal members : **Mr I B Holdsworth MSc FRICS
MCI Arb**

Venue : **Remote hearing**

Date of decision : **18 May 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: SKYPEREMOTE. A face-to-face hearing was not held because it was not practical and all issues could be determined through the video hearing.

The documents the tribunal referred to were submitted by both parties.

Background

1. The landlord applied to the Rent Office for the registration of a fair rent on 31 October 2019.
2. The fair rent was set at £635 per month on 17 January 2020. This rent was subject to the capping provisions of the Rent Act Maximum Fair Rent Order 1999.
3. The tenant subsequently challenged the revised registered rent and the rent officer has requested the matter be referred to the tribunal for determination.
4. Directions were issued following receipt of the objection. The Directions stated the application was suitable for determination on the basis of rent submissions with a video hearing.
5. The tribunal had previously informed the parties of their rights to request an oral hearing. The tribunal having already advised that due to the difficulties posed by Covid-19, a face-to-face hearing would not be possible.
6. Accordingly, the tribunal has determined the fair rent on the basis of written submissions with the video hearing, attended by the tenant.
7. 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 and repairs or improvements made to the property by the landlord or tenant.
8. Written submissions were received from both parties.

The premises

9. Covid-19 restrictions prevented any inspection of this property.
10. The parties were invited to provide a full description of the property on a reply form provided to them by the tribunal. The applicant provided a detailed description of the property.
11. It is a first-floor studio flat with an adjacent bathroom with toilet, wash hand basin and electric shower. The studio flat has all mains services.
12. The property has secondary-glazing to the front windows provided by the applicant. There is no off-street parking, garden or other facilities.

13. The tribunal has relied upon this description in their determination of the rent.

Reported defects and obsolescence

14. Neither the applicant nor respondent reported any specific defects to the property in their written submissions.
15. The applicant confirmed to the tribunal at the hearing that the property has no central heating. The kitchen and sanitary fittings are dated and the dwelling suffers from dilapidation due to lack of regular maintenance.
16. The condition of the property is a material consideration when carrying out a fair rent determination. The tribunal has also had regard for dilapidation and obsolescence at the property.

The law

17. 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.
18. 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.
19. The Market Rents charged for assured tenancy lettings often form appropriate comparable transactions from which a scarcity deduction is made.
20. These Market Rents are also adjusted where appropriate to reflect any relevant differences between those of the subject and comparable rental properties.
21. 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.
22. **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. The article 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.

Valuation

23. 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 East London.
24. 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.
25. 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.
26. 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. East 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 East London.
27. 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 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 there was substantial scarcity in the locality of East London and, therefore, made a further deduction of 20%.
28. 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.
29. The tribunal has had regard for the comparable transaction rental evidence presented by the representatives of both the landlord and tenant. They have relied upon their knowledge and experience of the Market Rents in the locality to determine the appropriate Market Rent for this property to be used in the fair rent calculation.

30. Table 1 below provides details of the fair rent calculation:

Property:	First floor flat, 134D Kingsland Road, London, E2 8DY				
Fair rent calculation in accordance with s(70) Rent Act 1977					
Market rent			£1,300.00	per month	
Disregards				per month	as % of period
Carpets , curtains white, goods, soft furnishing ,			£65.00		5.00%
Dilapidations				per month	as % of period
Extensive dilapidation			£130.00		10.00%
Dated kitchen and bathroom fittings			£97.50		7.50%
Lack of central heating			£97.50		7.50%
			Total deductions	£390.00	25.00%
			Adjusted Rent balance	£910.00	30.00%
Less Scarcity	20.00%			£182.00	
Adjusted Market Rent			£728.00	per month	Uncapped rent
Capped rent in accordance with			£ 648.50	per month	Capped rent
<i>Rent Acts (Maximum Fair Rent) Order 1999</i>					

Decision

31. The uncapped fair rent initially determined by the Committee for the purpose of section 70 was accordingly £728.00 per month. By virtue of The Rent Acts (Maximum Fair Rent) Order 1999, the Maximum Fair Rent that can be registered at this property is £648.50.
32. It is the opinion of the tribunal that there are no grounds for the Rent Acts Order to be relaxed from this dwelling. The statutory formula applied to the previously registered rent to be calculated at the capped rent is at Annex A. Details of the Maximum Fair Rent calculation were provided in the original Notice of Decision.
33. **Accordingly, the sum that will be registered as a fair rent with effect from 18 May 2021 is £648.50 per month.**

Name: Ian Holdsworth **Date:** 21st July 2021
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:

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

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 $\frac{(x-y)}{y} + P$ is less than zero the maximum fair rent shall be the y existing registered rent.