

Notice of the Tribunal Decision

Rent Act 1977 Schedule 11

Address of Premises

Flat C, 36 Egerton Gardens, London, SW3 2DB

The Tribunal members were

Mr Richard Waterhouse BSc MA LLM FRICS

Landlord

Mogul International Management Consultants Ltd.

Tenant

Michael Murphy

1. The fair rent is

£1377.00

Per

month

(excluding water rates and council tax but including any amounts in paras 3&4)

2. The effective date is

28th September 2021

3. The amount for services is

n/a

Per

month

negligible/not applicable

4. The amount for fuel charges (excluding heating and lighting of common parts) not counting for rent allowance is

n/a

Per

month

negligible/not applicable

5. The rent is/is not to be registered as variable.

6. The capping provisions of the Rent Acts (Maximum Fair Rent) Order 1999 apply (please see calculation overleaf) ~~do not apply because 1st registration/15% exemption.~~

7. Details (other than rent) where different from Rent Register entry

8. For information only:

The fair rent to be registered is not limited by the Rent Acts (Maximum Fair Rent) Order 1999, because it is the same as/below the maximum fair rent of £ 1401.50 per annum prescribed by the Order.

Chairman

Richard Waterhouse
MA LLM FRICS

Date of decision

28th September 2021

MAXIMUM FAIR RENT CALCULATION

LATEST RPI FIGURE	X	307.40			
PREVIOUS RPI FIGURE	Y	265.50			
X	307.40	Minus Y	265.50	= (A)	41.90
(A)	41.90	Divided by Y	265.50	= (B)	0.157815

First application for re-registration since 1 February 1999 ~~YES~~/NO

If yes (B) plus 1.075 = (C)

If no (B) plus 1.05 = (C) 1.207815

Last registered rent* £1160 per month **Multiplied by (C) =** £1401.06 per month

***(exclusive of any variable service charge)**

Rounded up to nearest 50p = £1401.50 per month

Variable service charge **~~YES~~ / NO**

If YES add amount for services

MAXIMUM FAIR RENT = **£1401.50** **Per** **month**

Explanatory Note

1. The calculation of the maximum fair rent, in accordance with the formula contained in the Order, is set out above.
2. In summary, the formula provides for the maximum fair rent to be calculated by:
 - (a) increasing the previous registered rent by the percentage change in the retail price index (the RPI) since the date of that earlier registration and
 - (b) adding a further 7.5% (if the present application was the first since 1 February 1999) or 5% (if it is a second or subsequent application since that date).

A 7.5% increase is represented, in the calculation set out above, by the addition of 1.075 to (B) and an increase of 5% is represented by the addition of 1.05 to (B).

The result is rounded up to the nearest 50 pence.
3. For the purposes of the calculation the latest RPI figure (x) is that published in the calendar month immediately before the month in which the Tribunal's fair rent determination was made.
4. The process differs where the tenancy agreement contains a variable service charge and the rent is to be registered as variable under section 71(4) of the Rent Act 1977. In such a case the variable service charge is removed before applying the formula. When the amount determined by the application of the formula is ascertained the service charge is then added to that sum in order to produce the maximum fair rent.



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

Case Reference : **LON/OOAW/F77/2021/0246**

Property : **36 C Egerton Gardens , London, SW3 2DB**

Tenant : **Michael Murphy**

Landlord : **Mogul International Management Consultants Ltd**

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

Tribunal : **Mr R Waterhouse FRICS**

HMCTS Code (paper, video, audio) : **P-Paper**

Date of Decision : **28th September 2021**

Date of Statement of Reasons : **28th September 2021**

Statement of Reasons

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Background

By Application received 14th May 2021 the Landlord of the property applied to the Rent Officer for re registration of a fair rent of £3500.00 per month, the rent having been previously registered on the 24th January 2017 at £1160 per month , noting £69.71 per month being attributed to services.

On the 9th July 2021 , the Rent Officer registered a fair rent of £1210 per month with effect from the same date noting £200.48 per month being attributed to services.

In a letter dated 28th July 2021 the Landlord objected to the rent determined by the Rent Officer and the matter was referred to the First –tier Tribunal (Property Chamber) (Residential Property).

Directions were issued by the Tribunal on the 10th August 2021. In those Directions, the parties were informed that in accordance with Public Health England’s advice to avoid unnecessary travel and social interaction for the time being, the Tribunal would not hold an oral hearing, unless so requested by either or both the parties, or would it inspect the property. Neither party has requested a hearing.

Thereafter, the Directions made provision for the filing with the Tribunal of the parties’ respective written submissions and, in particular, for the completion of a reply form giving details of the Property and including any further comments the parties wished the Tribunal to take into account in making its determination. The Landlord to submit representation to the Tribunal copied to the Tenant by 25th August 2021. Similarly the Tenant to submit representations to the Tribunal by 8th September 2021 with copy to Landlord. Finally the Landlord to submit any reply to the Tribunal in relation to the Tenants submissions, by 15th September 2021.

The Tenancy

The tenancy was dated 14th November 1988 , between the then landlord Mr Charles J Campbell and M G Murphy. For 6 months from the 21st November 1988 at £ 750.00 per month. At paragraph 5 in the tenancy the Landlord agrees “To pay and keep the Tenant indemnified against all rates taxes and water rate assessment impositions , and outgoings payable in respect of the property during the tenancy but not any charges for the supply of gas or electric current or the use of telephones if any , to or on the property during the tenancy ...”

At the expiration of the contractual term the tenancy become a statutory (protected) periodic tenancy. The tenancy (not being for a fixed tenancy of 7 years or more) is subject to section 11 of the Landlord and Tenant Act 1985 which sets out the landlords statutory repairing obligations; the tenant is responsible for internal decorations.

The Property

The inventory for the property within the tenancy notes the property comprising, one bedroom, one living room, a kitchen and a bathroom. It notes further that, the property is carpeted and curtained, let with a cooker and a fridge.

The Condition of the Property

Notes of a meeting between the rent officer, the landlord and the tenant for hearing dated 5th June 2014, submitted by the Landlord with their Application for Registration of the rent , indicate that the Tenant has rewired the property. The property has no central heating. The notes indicate the Tenant has replaced or updated the units in the kitchen and bathrooms. There is evidence of rot in the sash windows and signs of damp in the living room.

Services and repairs

Attached to the Application for registration of the rent is an invoice from Thames Water for £412.75 dated 4th May 2021.

The Landlord has also submitted evidence of the service charge from the freeholder of the building for the leasehold interest of 36 C Egerton Gardens. This in the form of an e mail

dated 6th May 2021 from Savills to the Landlord. The service charge for the property 36 C Egerton Gardens is £4059.12 plus a balancing charge of £282.56 making £4341.68 for the year 24th June 2019 to 23rd June 2020.

Additionally, the Landlord has submitted evidence of “carrying out essential repairs” to 36 C Egerton Gardens. These are outlined in a letter from Savills to the Landlord dated 16th July 2020. The works comprised;

Removal of fungal decay, damp remedial works, removal of asbestos - £ 60,749.65

Replacement of timber sash windows - £7800.00

Chasing for electrical works for tanking contractor - £ 4182.00

Temporary rehousing of Regulated Tenant - £8,000.00

Relevant Law

Provisions in respect of the jurisdiction of the Tribunal and the determination of a fair rent are found in Schedule 11, Part 1, paragraph 9(1) to the Rent Act 1977, as amended by paragraph 34 of the Transfer of Tribunal Functions Order 2013, and section 70 of the Rent Act 1977.

Rent Act 1977

Schedule 11, Part 1, paragraph 9 (as amended)

“Outcome of determination of fair rent by appropriate tribunal

9.-(1) The appropriate tribunal shall-

(a) if it appears to them that the rent registered or confirmed by the rent officer is a fair rent, confirm that rent;

(b) if it does not appear to them that that rent is a fair rent, determine a fair rent for the dwelling house.”

Section 70: Determination of fair rent (as amended)

“(1) In determining, for the purposes of the Part of this Act, what rent is or would be a fair rent under a regulated tenancy of a dwelling house, regard shall be had to all the circumstances (other than personal circumstances) and in particular to-

(a) the age, character, locality and state of repair of the dwelling-house, ...

(b) if any furniture is provided for the use under the tenancy, the quantity, quality and condition of the furniture [, and

(c) any premium, or sum in the nature of a premium, which has been or may be lawfully required or received on the grant, renewal, continuance or assignment of the tenancy.]

(2) For the purposes of the determination it shall be assumed that the number of persons seeking to become tenants of similar dwelling-houses in 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.

(3) There shall be disregarded-

(a) any disrepair or other defect attributable to a failure by the tenant under the regulated tenancy or any predecessor in title of his to comply with any terms thereof;

(b) any improvement carried out, otherwise than in pursuance of the terms of the tenancy, by the tenant under the regulated tenancy or any predecessor in title of his;

(c), (d) ...[repealed]

(e) if any furniture is provided for use under the regulated tenancy, any improvement to the furniture by the tenant under the regulated tenancy or any predecessor of his or, as the case may be, any deterioration in the condition of the furniture due to any ill-treatment by the tenant, any person residing or lodging with him, or any sub-tenant of his.”

Consequently, when determining a fair rent the Tribunal, in accordance with the Rent Act 1977, section 70, has regard to all the circumstances including the age, location and state of repair of the Property. It also disregards the effect of (a) any relevant Tenant's improvements and (b) the effect of any disrepair or defect attributed to the Tenant of any predecessor in title under the regulated tenancy, on the rental value of the Property. 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 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. (The rents may have to be adjusted where necessary to reflect any differences between the comparables and the subject property).

In considering scarcity under section 70 (2), the Tribunal recognises that:

- (a) there are considerable variations in the level of a scarcity in different parts of the country and that there is no general guidance or "rule of thumb" to indicate what adjustments should be made; the Tribunal, therefore, considers the case on its merits;
- (b) terms relating to rents are to be excluded. A lack of demand at a particular rent is not necessarily evidence of scarcity; it may be evidence that the prospective tenants are not prepared to pay that particular rent.

Fair rents are subject to a capping procedure under the Rent Acts (Maximum Fair Rent) Order 1999 which limits increases by a formula based on the proportional increase in the Retail Price Index since last registration.

The only exception to this restriction on a fair rent is provided under paragraph 7 of the Order where a landlord carries out repairs or improvements which increase the rent by 15% or more of the previous registered rent.

Submissions

Landlord

The Landlord submits the property fair rent should be determined at £3500pcm, on the basis of its locality and nature. Specifically with a disregard to its condition which the Landlord asserts is caused by the Tenants refusal of access to carry out repairs.

The Condition of the Property

Notes of a meeting between the Rent Officer, the landlord and the tenant for hearing dated 5th June 2014, submitted by the Landlord with their Application for Registration of the rent, indicate that the Tenant has rewired the property. The property has no central heating. The notes indicate the Tenant has replaced or updated the units in the kitchen and bathrooms. There is evidence of rot in the sash windows and signs of damp in the living room.

Services and repairs

Attached to the Application for registration of the rent is an invoice from Thames Water for £412.75 dated 4th May 2021.

The Landlord has also submitted evidence of the service charge from the freeholder of the building for the leasehold interest of 36 C Egerton Gardens. This in the form of an e mail dated 6th May 2021 from Savills to the Landlord. The service charge for the property 36 C

Egerton Gardens is £4059.12 plus a balancing charge of £282.56 making £4341.68 for the year 24th June 2019 to 23rd June 2020.

The annual charge of £4059.12 is detailed in e mail 23rd July from the Rent Officer to the Landlord detailing how the registered rent of £1210 dated 9th July 2020.

The annual charge of £4059.12 comprises ;

Item	£
Pest control	122.45
Water Risk assessment	862.80
Electricity	4400.00
Fire Protection Equipment	2862.49
CCTV and Access Systems	733.99
TV Arial	350.00
Special Cleaning	338.96
Lift Maintenance	1338.88
Porterage (Less 15% landlord liability)	29697.67
Sub total	41840.24
Mgt and profit 15%	6276.04
Grand total	48,116.28
Flat share at 5%	2405.81 per year = £200.48 per month

Additionally the Landlord has submitted evidence of “carrying out essential repairs” to 36 C Egerton Gardens. These are outlined in a letter from Savills to the Landlord dated 16th July 2020. The works comprised;

Removal of fungal decay, damp remedial works, removal of asbestos - £ 60,749.65

Replacement of timber sash windows - £7800.00

Chasing for electrical works for tanking contractor - £ 4182.00

Temporary rehousing of Regulated Tenant - £8,000.00

Rental Level

The Landlord seeks a rental level of £3500 pcm within the Application of Registration.

Tenant

Condition of property

Notes of a meeting dated 2nd July 2021 between the rent officer , the landlord and the tenant record disputed issues regarding access to the property. The Landlord contended that access had been denied over the period of ownership, the Tenant expressed the view that issues of access had been resolved in 2016.

Inspection dated 1st July 2021 carried out by the rent officers noted

“Converted north facing basement flat consisting of:

Living room – spacious, with sash windows suffering from damp and signs of dry rot beneath windows as per previous inspection. The evidence of dry rot seems to be spreading in the living room. Windows are draughty and rattle. Bare flooring. Room lacks natural sunlight

Kitchenette – off living room and is quite small, the tenant has updated and replaced most of the cupboards, worktops and stainless-steel sink. Flooring also replaced by tenant, all appliances within the kitchen have been replaced by the tenant. The kitchen

has suffered leaks but there have been no further leaks for a while – this has caused the wall to swell a little at the point of leak.

Bath/toilet – no natural light updated and replaced by tenant 5 years ago also via grant from the local authority home improvement grant. Tenant replaced all fixtures and tiling. The shower was installed via grant. The vent in the bathroom has not been working for over a year and there now seems to be signs of mould and damp.

Cupboard off hallway – holds hot water cylinder, which has been replaced by the landlord.

Bedroom - Lacks natural light (tenant has blocked both windows due to security as there have been break ins. Bedroom fits a reasonable double bed. Windows are quite poor.

There is no central heating and the flat is quite cold. Heating is via portable electric heaters.

Common parts in basement are in good decorative condition/refurbished and maintained to a good standard. Tenant did show some bulging of painting suggesting signs of damp.

Externally – the works from previous inspection seems to be complete and seems to be in good repair.

The drainage pipe outside the living room window is not directly fixed to the draining underground and is open – unlike the others outside the building and tenant thinks could be why there is damp in that area? This issue remains unresolved, (please see consultation notes).

These inspection notes have been updated to reflect the changes to the condition of the flat from the last inspection by the Rent Officer in 2016.”

The Tenant submits as evidence, through correspondence dated 1st July 2021 with the Rent Officer , the findings of a High Court Case. The case details are not provided to the Tribunal but the Tenant asserts , the Court found that the works of disrepair in 2016 were of limited nature. The Tenant asserts that refusal by the Landlord to rectify have caused them to considerably magnify.

Rental level

The Tenant has made several submissions relating to rental levels for property in the area in terms of general trends over the past couple of years.

Reasons for Decision

Condition of the property

Reference is made to section 70, the Tribunal in making the determination must have regard to the age, character, locality and state of repair of the dwelling-house, In doing so the Tribunal needs to take into consideration any disrepair or other defect attributable to a failure by the tenant under the regulated tenancy or any predecessor in title of his to comply with any terms thereof. Additionally, any improvements carried out by the tenant should be disregarded. Failure of the Landlord to repair is taken into account within the condition of the property.

The nature of the property

The Tribunal has considered all the representations made in this respect and in particular found the inspection of the 1st of July 2021 by the rent officer to be of considerable use. The Tribunal finds, under section 70 (1) the property comprising, one bedroom, lower ground floor, north facing, one living room, a kitchen, bathroom and that the property is carpeted and curtained, let with a cooker and a fridge.

Disrepair and Landlords Improvements

The Tribunal finds for section 70 (3)(a) that the Tenant there is disrepair that could have been avoided had the Tenant provided access to the Landlord.

The letter 16th July 2020 from Savills to the Landlord identifies works needed which comprise “carrying out essential repairs”.

The parties’ representations identify that relations have deteriorated to a point where the Tenant does not want to meet with the Landlord.

Rectification of disrepair and installation of improvements are two different matters.

The Landlords reply form to the tribunal dated 27th August, the Landlord notes at the section titled Improvements, “Improvements have been organised for the Tenant such as central heating, double glazing, new kitchen, new bathroom, new boiler, new double bed, and replacement furniture. The Tenant refuses access to the property to allow the works to be carried out, or any of the furnishing updated”

Refusal to allow improvements in itself does not constitute refusal for access to carry out repairs. Refusal to allow access for improvements, does not have any impact on the ascertainment of the rent under section 70. The property needs to be considered as let, ignoring any tenants improvements, but considering its state of repair and nature.

Evidence of refusal by the Tenant to allow the Landlord to carry out repairs, and that disrepair negatively impacting on the level of rent reasonably ascertained under section 70 would be material to the question of rental level.

The Tribunal finds that, the tenant has persistently refused the landlord access to the property to carry out repairs. This has led to a deterioration of the quality of the occupation. The Landlord does have right to enter in order to affect repairs, but the Tenant was in breach of their tenancy, at 3 (i) “to permit the landlord or superior landlord, or their respective agents, with or without workmen, and others at all reasonable times, during the tenancy to enter the property, for the purposes of repairing or painting the outside of, or carrying out or completing any structural or other necessary or property repairs, to the building or examining the state and condition of the property “

The Tribunal therefore has disregarded any impact on rental value of the disrepair caused by the inability for the Landlord to access to carry out the required repairs.

Tenants Improvements

Section 70 (3)(b), requires that tenants improvements should be disregarded.

The Tenant in correspondence with the Rent Officer on 1st July 2021 noted;

“The new bathroom, kitchen, rewiring and other works done in 2009 were grant-aided because I was in slum conditions. All improvements are by me and I have replaced furniture/white good with better as they have deteriorated so that all furniture, fixtures and fittings are by me, bar the immersion tank and bathroom ventilator (both freeholder) with very few minor exceptions.”

The Tribunal also notes The Rent Officers note of 2nd July which states;

“Over the years the tenant has replaced most of the furniture and the only furniture remaining is a sofa, a stool and a mirror. The tenant has installed shelving and cupboards in the kitchen. Most of the improvements were carried out between 2008 -2009, where part was paid by the tenant and part by the Royal Borough of Kensington & Chelsea Home Improvement Grant.”

The Tribunal making the best of the evidence surrounding tenants improvements finds that improvements to the extent stated above have occurred.

Services

Extensive submissions were made of costs of services. These fell into three categories. The first, is services specifically noted within the tenancy namely payment of water rates. The Tribunal finds that the inclusion of the payment of water rates should be taken into account when considering the rental bid, being an item not implicant within the bundle of contemporary market rental comparables.

The second are general services which leaseholders or their occupants benefit from for example pest control. The Tribunal finds, that these services are implicant within the rental bid evidenced by the comparables and so no specific adjustment is required.

Third the proposed costs of the repair work evidenced by the Savills letter dated 16th July 2021. The Tribunal notes the condition of the flat and the costs to repair but the material consideration is the application of section 70, in particular here section 70 (3) (a). Namely the disregard of disrepair caused or exacerbated by the refusal of the Tenant to provide access.

Rental level

The Landlords Bundle of written submissions dated 27th August 2021, the landlord provides a schedule of achieved rental comparables. These range in rental value from, £1343 pcm to £2383 pcm let on an exclusive of utilities bills basis.

The Tenant in their submission, a note of meeting with Rent Officer and Landlord on the 2nd July, notes a rental comparable of £1000pcm previously let at £1800pcm prior to COVID restrictions.

Considering the nature of the property and the services received a tenant would it the date of determination be expected to pay £2250pcm for a property let on modern terms.

However, the property is not in the condition considered usual for a modern letting at a market rent. Therefore, it is necessary to adjust the above hypothetical rent of £2250 pcm, a deduction of 15% is made. The adjusted rent is £1912 pcm.

In addition, the Tribunal determined that there should be a further deduction of 10% to reflect the fact the tenancy's terms and conditions differ from those of modern tenancies from which the evidence is derived.

The rent after this adjustment is £1721 pcm.

Thereafter the Tribunal considered the question of scarcity in section 70 (2) of the Rent Act 1977. A figure of 20% was adopted. The rent after this final adjustment was £1377 pcm.

The MFR Order 1999 provides for a limit on the increase of a Fair Rent, the calculation is attached and produces £1401.50 pcm.

So adopted £1377.00 pcm from date of decision 28th September 2021.

Rent Acts (Maximum Fair Rent) Order 1999

The rent to be registered is limited by the Rent Acts (Maximum Fair Rent Order) 1999. The rent calculated in accordance with the Order is £ 1401.50 pcm. This figure is more than the figure calculated by reference to the market rent with adjustments providing £1377.00pcm.

Accordingly, the sum of £1377.00 pcm will be registered as the fair rent with effect from 28th September 2021, being the date of the Tribunal's decision.

Valuer Chair: Richard Waterhouse FRICS

Decision Date: 28th September 2021

Appeal to the Upper Tribunal

A person wishing to appeal this decision to the Upper Tribunal (Property Chamber) on a point of law must seek permission to do so by making a written application to the First-tier Tribunal at the Regional Office which has been dealing with the case which application must:

a. be received by the said office within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

b. identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

If the application is not received within the 28 –day time limit, it must include a request for an extension of time and the reason for it not complying with the 28- day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.