



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

Case Reference : **LON/00BG/F77/2020/0002**

Property : **41 Portelet Road, E1 4EL**

Tenant : **Mr & Mrs Borg**

Landlord : **Peabody**

Date of Objection : **5th November 2019**

Type of Application : **Section 70 Rent Act 1977**

Tribunal : **Tribunal Judge Brandler
Mr Mark Taylor MRICS**

Date of Consideration : **15th April 2021**

Date of written reasons: **28th April 2021**

DECISION

The sum of £184.50 per week will be registered as the fair rent with effect from 15th April 2021.

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FULL REASONS

1. Background

- 1.1. In an application dated 12/09/2019 the landlord applied to the Rent Officer for a registration of the fair rent to £180.41 per week for the above property. The rent had previously been registered on 27/07/2016 by the Rent Officer at £157.00 per week but the Landlord charged only £129.53 per week. Mr and Mrs Borg have occupied the property since 22/02/1988. No tenancy agreement was available.
- 1.2. On 23/10/2019 the Rent Officer registered a fair rent of £182.00 per week with effect from the same day.
- 1.3. By a letter dated 05/11/2019 Mr Borg objected to the rent determined by the Rent Officer and the objection was referred to the Tribunal.

2. Inspection

- 2.1. No inspection took place as a result of the restrictions caused by the COVID-19 Pandemic. However, some evidence of the property was available from the rent register. The property is a terraced house circa 1965-1980. It is modernised with full central heating with a living room and kitchen on the ground floor, and two bedrooms and a bathroom/wc on the first floor. The house has off street parking and a private garden.

3. Evidence

- 3.1. Neither party requested a hearing. Therefore, this matter was considered on the papers.

3.2 Tenant's Representations:

These were made in a letter 5/11/2019 which objected to the increase in rent on the grounds of affordability. Representations in the reply form sent to the Tribunal Service confirmed that central heating had been installed some twenty years earlier, that the boiler had been replaced some two years ago, and that further to a leak from the bathroom roof, the bathroom ceiling had been repaired.

3.3 Landlord's Representations:

The Landlord made no representations.

4. The law

- 4.1. A summary of the law in respect of this case is attached to this decision.

5. Determination and Valuation

- 5.1 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. The Tribunal considered the market in and around the area where the property is situated from its own general knowledge, rather than any specific knowledge of market rent levels in the area. The Tribunal relied upon their expert knowledge and experience and concluded that an open market rent for a two-bedroom house in the vicinity would be in the region of £550.00 per week. This level of rent assumes a property in a refurbished condition.
- 5.2 We need to consider any deduction to reflect terms and conditions, tenant's own carpets, curtains and white goods, which we consider would have an adverse effect on the open market rent level. Taking these matters into account we consider that a reduction in the open market rent of £50.00 per week. This reduction fairly reflects the issues. This therefore reduces the open market rent to £500.00 per week.
- 5.3 Next we need to consider the issue of scarcity. We were not provided with any specific evidence on this issue. However, the issue of scarcity is considered on the basis of the number of properties available to let and also considering the demand for such properties and over a really large area. Therefore, using our general, rather than any specific knowledge and experience, we consider that in the wide geographical area being the area around Greater London, there is an imbalance between supply and demand and this impacts upon rental values. Accordingly, we make a deduction of approximately 20% for scarcity. The full valuation is shown below.

	£/week
Market Rent	550.00
Less £50.00 for <i>tenant's own carpets curtains and white goods, and terms and conditions</i>	<u>50.00</u> 500.00
Scarcity 20%	<u>100.00</u>
Fair rent	£400.00

6. Decision

- 6.1 The section 70 fair rent to be registered is the maximum fair rent as prescribed by the Rent Acts (Maximum Fair Rent) Order 1999. The rent that would otherwise have been registered was £400.00 per week. Details are provided on the back of the decision form.

Accordingly the sum of £184.50 per week will be registered as the fair rent with effect from 15th April 2021 being the date of the Tribunal's decision.

D. Brandler

Tribunal Judge Brandler

Date: 28th April 2021



First-tier Tribunal Property Chamber (Residential Property)

The Law Relating to the Assessment of Fair Rents

INTRODUCTION

1. This is a brief summary of the law applied by the Tribunal (formerly called a Rent Assessment Committee) when reaching its decision. It is an integral part of the decision.

2. The definition of **Fair Rent** is contained in the Rent Act 1977 i.e.:-

70(1) In determininga 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 dwellinghouse
- b) if any furniture is provided for use under the tenancy, the quantity, quality and condition of the furniture, and
- c) any premium, or sum in the nature of a premium.....

70(2) For the purposes of the determination it shall be assumed that the number of persons seeking to become tenants of similar dwellinghouses 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 dwellinghouses in the locality which are available for letting on such terms

70(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.....
- 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
- 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 in title 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**

3. *The Tribunal also has to take into account the Human Rights Act 1998. However, when interpreting the Rent Act 1977 (primary legislation) the Tribunal will have to follow the wording of the Act if it cannot be read or*

given effect in a way which is compatible with rights contained in the European Convention on Human Rights. Any party dissatisfied will then have to refer the matter to the High Court for the making of a Declaration of Incompatibility.

4. All other rights granted by the Convention such as the right to a fair and public hearing by an independent tribunal and the right to respect for a person's private and family life are to be observed by the Tribunal
5. There have been a number of cases decided over the years most of which have been either unreported or reported only in professional journals. However in 1997 a Court of Appeal decision was reported as *Curtis v London RAC (No. 2)* [1997]4 AER 842 where the Court reviewed the various authorities and provided guidance to Tribunals to assist them in reaching decisions.
6. The Court confirmed that a Tribunal must first find an open market rent for the property taking into account evidence before it from the parties and the Rent Officer. It will not consider other registered rents unless there are very exceptional circumstances which will be set out in the decision if appropriate.
7. A Tribunal can use such factors as comparable rents being paid for similar properties in the locality, capital values and return on expenditure as well as the experience and expertise of its members.
8. Having established an open market rent the Tribunal then has to consider the deductions and allowances referred to above
9. In all cases the Tribunal will try its best to give the parties details of its calculations. The *Curtis* case (above) made it clear that a Tribunal's decision must be supported by some workings out, but precise arithmetical calculations are not possible in all cases. There are many properties where the deductions and allowances are of such proportions that a Tribunal must simply take a view as to how much a rent would have to be reduced in order to obtain a tenant. This may not be the same as the sum total of the Statutory deductions/allowances.
10. If the Tribunal considers that the demand for similar properties in the locality is substantially greater than the supply then a deduction has to be made in accordance with Section 70(2) Rent Act 1977. This is the so-called "scarcity factor". The Tribunal is obliged to look at scarcity in terms of people wanting regulated tenancies. However the reality is that no new regulated tenancies are created nowadays and scarcity is therefore considered using the types of tenancy currently in use.
11. The word "locality" in Section 70(2) has a different meaning to that in Section 70(1). In the case of *Metropolitan Property Holdings Limited v Finegold* [1975] 1 WLR 349 it was decided that the "locality" for this purpose should be a really large area. A Tribunal must define the extent of that "locality" when reaching its decision.
12. In determining scarcity, Tribunals can look at local authority and housing association waiting lists but only to the extent that people on such lists are likely to be genuine seekers of the type of private rented accommodation in question if the rent were to exclude the scarcity element.
13. The Tribunal must apply the Rent Acts (Maximum Fair Rent) Order 1999 – known as the "capping" provision – unless there is an exemption.

ANNEX - RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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.