



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

Case Reference : **LON/00BK/F77/2021/0131
P:PAPERREMOTE**

Property : **37 Dudley Court Upper Berkeley Street
London W1H 5QA**

Applicant : **Mr E E Hewitt**

Respondent : **Clydepride Limited**

Date of Application : **11 December 2020**

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

Tribunal : **Mrs E Flint DMS FRICS**

Date and venue of hearing : **2 September 2021
remote hearing on the papers**

DECISION

The registered rent with effect from 30 September 2021 is £14200 per year.

This has been a hearing on the papers which has been consented to by the parties. The form of remote hearing was P:PAPERREMOTE, a paper determination which is not provisional. A face to face hearing was not held because it was not practicable and all the issues could be determined on the papers. The documents that I was referred to are in an electronic bundle, the contents of which I have recorded.

Background

1. On 26 October 2020 the landlord applied to the rent officer for registration of a fair rent of £16200 per year for the above property.
2. The registered rent at the date of the application was £14090 per year inclusive of £2854.90 service charge which had been registered by the rent officer on 3 December 2018 with effect from 22 December 2018.
3. On 9 December 2020, the rent officer registered a fair rent of £15220 per year inclusive of £3716.37 service charge with effect from 22 December 2020.
4. On 11 December 2020 the tenant objected to the registered rent.
5. Owing to the Covid 19 restrictions the parties were asked if they would consent to the application being dealt with on the papers. Neither party objected. Written representations were received from the tenant, no representations were received from or on behalf of the landlord.

The Evidence

6. The tenant stated that the flat, had been affected by a flood from the flat above. The landlord had inspected the flat in May 2021 however no repairs had been carried out. Long standing matters remained outstanding.

The Accommodation

7. This purpose built block is situated in a sought after area convenient for the facilities of central London. The accommodation which is on the third floor comprises two rooms, kitchen and bathroom/wc, it has partial central heating. The services provided are cleaning and lighting of the common parts, lift, entryphone and concierge.

The Law

8. When determining a fair rent the tribunal, in accordance with section 70 of the Rent Act 1977, must have regard to all the circumstances including the age, location and state of repair of the property. It also must disregard the effect if any of any relevant tenant's improvements and the effect of any disrepair or any other defect attributable to the tenant or any predecessor in title under the regulated tenancy, on the rental value of the property.

9. 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:

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 to that of a regulated tenancy, and

That for the purposes of determining the market rent, assured tenancy market rents are usually appropriate comparables; adjusted as necessary to reflect any relevant differences between the comparables and the subject property.

Valuation

10. 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. As neither party provided any market evidence to support their opinions of value, the Tribunal relied on its own general knowledge of rental values in Marylebone and concluded that the likely market rent for the flat would be £550 per week, the annual equivalent is £28600.
11. However, it was first necessary to adjust the hypothetical rent of £28600 per year to allow for the differences between the terms and condition considered usual for such a letting and the condition of the actual property at the valuation date, ignoring any tenant's improvements, (disregarding the effect of any disrepair or other defect attributable to the tenant or any predecessor in title). The Tribunal noted that properties available on the open market were generally modern or modernised, in good repair, centrally heated and double glazed with white goods, floor and window coverings. The Tribunal considered that these differences and the terms and conditions of the tenancy required a deduction of £11000 per year.
12. This leaves an adjusted market rent for the subject property of £17600 per year. The Tribunal was of the opinion that there was substantial scarcity in central London for similar properties and therefore made a deduction of 20% from the market rent to reflect this element. The Tribunal's uncapped fair rent is £14200 per year.

Decision

13. The uncapped fair rent initially determined by the Tribunal, for the purposes of section 70, was accordingly £14200 per year.

13. This is below the maximum fair rent that can be registered by virtue of the Rent Acts (Maximum Fair Rent) Order 1999 (Details are provided on the back of the decision form).
14. **Accordingly the sum of £14200 per year will be registered as the fair rent with effect from 30 September 2021 being the date of the Tribunal's decision.**

Chairman: Evelyn Flint

Dated: 3 November 2021

ANNEX - RIGHTS OF APPEAL

- i. 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.
- ii. 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.
- iii. 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.
- iv. 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.