

### Notice of the Tribunal Decision

Rent Act 1977 Schedule 11

**Address of Premises**

Basement Front, 87 Warwick Road,  
London, SW5 9EZ

**The Tribunal members were**

Judge Dutton  
Mrs S Phillips MRICS

**Landlord**

Cydpride Ltd

**Tenant**

Mr P Virgo

1. The fair rent is

£259.00

Per

week

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

2. The effective date is

12 August 2021

3. The amount for services is

not applicable

Per

not applicable

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

not applicable

Per

not applicable

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

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

[Empty box for details 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 below the maximum fair rent of £ 285.50 per week (see overleaf).

Chairman

Andrew Dutton

Date of decision

12 August 2021

## MAXIMUM FAIR RENT CALCULATION

LATEST RPI FIGURE X

PREVIOUS RPI FIGURE Y

X  Minus Y  = (A)

(A)  Divided by Y  = (B)

**First application for re-registration since 1 February 1999 NO**

If yes (B) plus 1.075 = (C)

If no (B) plus 1.05 = (C)

Last registered rent\*  Multiplied by (C) =

\*(exclusive of any variable service charge)

Rounded up to nearest 50p =

Variable service charge **NO**

If YES add amount for services

**MAXIMUM FAIR RENT =**  **Per**

### 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.

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

**Case Reference** : **LON/00AW/F77/2021/0048**

**Property** : **Basement Front, 87 Warwick Road, London  
SW5 9EZ**

**Tenant** : **Mr P Virgo**

**Landlord** : **Cydpride Limited**

**Date of Objection** : **31 October 2020**

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

**Tribunal** : **Tribunal Judge Dutton  
Mrs S Phillips MRICS**

**Date of Consideration** : **12 August 2021**

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**DECISION**

**The sum of £259.00 per week will be registered as the fair rent with effect from 12 August 2021.**

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## **FULL REASONS**

### **1. Background**

In an application dated 22 July 2020 the landlord applied to the Rent Officer for a re-registration of the fair rent to £350 per week for the above property (erroneously shown as £350 per month).

The rent was previously registered on 19 October 2018 at £255.00 per week, effective from that date.

On 14 October 2020 the Rent Officer registered a fair rent of £260.00 per week with effect from 19 October 2020.

By a letter dated 31 October 2020 Mr Virgo objected to the rent determined by the Rent Officer and the objection was referred to the Tribunal.

On 12 August 2021 we had planned to hold a video hearing with Mr Virgo, the landlord indicating it would not attend. In fact, Mr David Freifeld did telephone in to the tribunal but indicated he had no wish to participate save that he corrected the application where erroneous figures were included for the rent sought and the rent passing, the latter being shown as £174 per week. Prior to the hearing we had the opportunity of considering such responses as the parties had made and to review the documentation provided to us by the Rent Officer.

### **2. Inspection**

The tribunal was not able to inspect the Property due to Covid-19 restrictions. Mr Virgo in the Reply to the tribunal spoke of flooding which appears to have rendered a bedroom uninhabitable and mould.

### **3. Evidence**

There was little in the way of written submissions, save for the Reply documents sent out by the tribunal.

### **4. The law**

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

## 5. Determination and Valuation

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 the Kensington and Chelsea area of London and its surrounds, from its own general knowledge, rather than any specific knowledge of market rent levels in the area. The Tribunal concluded that an open market rent for two-bedroom front basement flat such as the subject property, in the vicinity would be in the region of £405 per week. This level of rent assumes a property in a refurbished condition and modernised condition.

We need to consider any deduction to reflect the condition, level of amenities and tenants repairing obligations, which in this case are limited. The property has full central heating. The carpets and curtains, together with white goods belong to the tenant. Taking these matters into account we consider that a reduction in the open market rent of 20%, or £81 fairly reflects these issues. This therefore reduces the adjusted open market rent to £324.00 per week.

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 based on the number of properties available to let and 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 of Greater London there is an imbalance between supply and demand and this impacts upon rental values. Accordingly, we make a deduction of 20% for scarcity. The full valuation is shown below.

	£/week
Market Rent	405.00
Less	
(Apparent disrepair, Carpets, Curtains and White Goods And tenant's obligations) £81	324.00
Scarcity @ circa 20%	<u>65.00</u>
Fair rent	£259.00

## 6. Decision

The maximum fair rent was £285.50 per week. (See reverse of Notice) The rent determined by the tribunal fell below that figure. The rent of £259.00 per week is to be registered as the fair rent for this property.

**Accordingly, the sum of £259.00 per week will be registered as the fair rent with effect from 12 August 2021 being the date of the Tribunal's decision.**

**Judge Dutton**

**Date: 12 August 2021**

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**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 determining .....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 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 dwelling houses 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 dwelling houses 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 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 to 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 (ie 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.