



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

Case Reference : **LON/00AY/F77/2021/0132**

Property : **28 Barnwell Road, London SW2 1PW**

Tenant : **Mrs Miriam Corburn**

Landlord : **London & Quadrant Group**

Date of Objection : **1st December 2020**

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

Tribunal : **Mr Mark Taylor MRICS (Chair)
Mr Richard Waterhouse FRICS**

Date of Consideration : **17th May 2021 and re-issue 24th May 2021**

Date of written reasons: **3rd June 2021**

DECISION

The sum of £198.50 per week will be registered as the fair rent with effect from 17th May 2021.

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FULL REASONS

1. Background

- 1.1. In an application dated 19th August 2020 the landlord applied to the Rent Officer for a registration of the fair rent to £186.45 per week for the above property. The previous rent of, £169.50 per week, was registered, by the Rent Officer, on 30th September 2016. Mrs Corburn has occupied the property since around 1981 and lives there with her daughter. No tenancy agreement was available.
- 1.2. On 2nd November 2020 the Rent Officer registered a fair rent of £197.00 per week with effect from the same day.
- 1.3. By e-mail dated 1st December 2020 her daughter, Ms Sharon Corburn, on her mother's behalf, objected to the rent determined by the Rent Officer and was referred to the Tribunal on 5th January 2021.

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 landlord in their application for an increased rent, state that the property is a 3 bed terraced property with 3 bedrooms, 1 kitchen /diner, 1 bathroom and separate WC there is also a private garden. The property is centrally heated.

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 on the tribunal response form. There were no photographs but Ms Corburn described the general disrepair to the property, including, loose and ill fitting single glazed windows, electrical problems in a number of rooms and a lack of shower fitting in the bathroom. It was confirmed that central heating was provided in the property but there was a problem with radiators not functioning properly in a number of rooms. Other evidence includes that the landlord fixed a problem with the roof that was allowing water ingress sometime in 2020.
- 3.3. In addition details of the rent registration of other properties, owned by the landlord, of numbers 6 and 46 Barnwell Road were submitted.

3.3 Landlord's Representations:

This comprised of the original application for rent registration form dated 19th August 2020.

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 3-bedroom property in the vicinity would be in the region of £554 per week. This level of rent assumes a property in a refurbished condition.

5.2 The Tribunal next considered any deductions that would reflect the terms and conditions, the tenant's own carpets, curtains and white goods, and the disrepair identified, unchallenged by the landlord, in the tenant's submission. These 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 £155.00 per week would reflect these issues. These deductions include £45 per week for the terms and conditions, white goods, carpets and curtains, and £110 per week for the issues of disrepair. This reduction fairly reflects the issues. This therefore reduces the open market rent to £399.00 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 20% for scarcity. The full valuation is shown below.

	£/week
Market Rent	554.00
Less £45.00 per week for <i>Tenant's own carpets curtains and white goods and terms and conditions</i>	
Less £110.00 per week for disrepair	<u>155.00</u>
	399.00
Less Scarcity 20%	<u>80.00</u>
Fair rent	£319.00

5.4 Determinations made under s.70 of the Rent Act 1977, such as those brought to our attention by the tenant are usually excluded from consideration. The analysis of these properties as comparable evidence is difficult by the nature of adjustments such as condition in these determinations. However, noting the advised uncapped rentals of No 6 £451.00 per week and No 46 £344.00 per week are in line with the determination of No 48. The rents registered are the result of the indexing calculations undertaken under the Maximum Fair Rent Order, and are not relevant in this determination.

6. Additional Matters

6.1 In responding to the request for full reasons two typographical err relating to the correct Christian name of the tenant and the advised registered rent that would have been registered, if not subject to limit, was also amended. This was dealt with under Rule 50 as slips and an amended decision was made on the 24th May 2021.

6.2 The Tenant in this request also made reference to a request that the determination was made with an inspection and hearing. The Tribunal issued Directions on 29th March 2021 and the tenant's reply, dated 26th April 2021, indicated that they were in agreement with the matter being determined on paper submissions. No other documents indicating this request are with the Tribunal.

7. Decision

- 7.1 The section 70 fair rent determined by the Tribunal is above the maximum fair rent permitted by the Rent Acts (Maximum Fair Rent) Order 1999 and accordingly that rent limit has effect. Details are provided on the back of the back of the decision form.

Accordingly the sum of £198.50 per week will be registered as the fair rent with effect from 17th May 2021 being the date of the Tribunal's substantive decision.

M.Taylor

Tribunal Member Mark Taylor (Chair)

Date: 3rd June 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.