



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

**Case Reference** : LON/00BK/F77/2021/0083

**Property** : Lower GFM, 5 Clarendon Gardens,  
London W9 1AY

**Applicant/Landlord** : Dorrington Residential Ltd

**Representative** : Allsop Letting and Management

**Respondent/Tenant** : Jane Morgan

**Representative** : Mr A Morgan

**Type of Application** : Fair rent under Rent Act 1977

**Tribunal Members** : Judge Nicol  
Ms S L Phillips MRICS

**Date of Hearing  
and Decision** : 16<sup>th</sup> August 2021

**Date of Reasons** : 16<sup>th</sup> August 2021

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**REASONS FOR DECISION**

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**Decision**

The Tribunal determined that the fair rent for the subject property is £17,820 per year with effect from 16<sup>th</sup> August 2021.

**Reasons**

1. On 23<sup>rd</sup> September 2020 the Applicant landlord applied for a determination of the fair rent under section 70 of the Rent Act 1977 (see

the excerpts set out in the Appendix to this decision). The Applicant asserted that the annual rent should be £21,576 instead of the existing registered fair rent of £17,980.

2. On 19<sup>th</sup> November 2020 the Rent Officer registered a new fair rent of £17,900 per year. By letter dated 30<sup>th</sup> November 2020 the Applicant sought to appeal to this Tribunal.
3. A hearing was requested and was held by video conference on 16<sup>th</sup> August 2021. The Applicant did not attend but made representations by letter dated 16<sup>th</sup> March 2021 from Allsops Letting and Management. The Respondent attended, accompanied by Mr Andrew Morgan, a friend who spoke on her behalf.
4. The Applicant's written representations were confusing. The properties which they alleged were comparable did not seem comparable at all. Their representation that an annual market rent would be £113,424, with the fair rent coming out at £105,924, seemed to come from another case entirely. Their calculation of the maximum fair rent used the wrong figure for the previous registered rent. For these reasons, the Tribunal did not find the representations helpful.
5. The Tribunal could not inspect the subject property due to restrictions arising from the COVID pandemic. It is located on a residential road in a prestigious part of west central London, conveniently close to transport and other facilities. It is a maisonette on the basement and ground floors of a terraced converted house. The entrance door to the building is shared with two other properties.
6. The Respondent provided a room-by-room description of the property and some useful photos. Allsops alleged that the Applicant had received no complaints of disrepair but, even if that is correct, they have now through the Respondent's representations in this case. Having heard from the Respondent, the Tribunal accepts that her description is accurate. Relevant matters include:
  - (a) Any updates to the kitchen and bathroom since its letting in 1962 have been done by the Respondent.
  - (b) The Applicant did arrange for the property to be re-wired but failed to leave all the lights working, a particular problem in the basement where natural light is limited. The Respondent has had to add additional lighting in the kitchen. There is no two-way switch to the stair lighting so that the first journey up or down the stairs often has to be in the dark.
  - (c) The boiler is unusually located outside the property, making it inefficient.
  - (d) The windows are original, with no double-glazing and now being substantially ill-fitting. Some frames are also rotting.
  - (e) The main front entrance door does not have the kind of security which might be expected from comparable properties, such as a self-closing mechanism, a spyhole or adequate lighting.

7. In *Curtis -v- London RAC* [1997] 4 AllER 842 the court held that the calculation of a fair rent starts with the open market rental value which is then adjusted for statutory disregards under s.70(1) and (3) and scarcity, if any, under s.70(2). The first matter to look at is the market rental value of the subject property if let on an assured shorthold tenancy in the open market in a fully refurbished state.
8. To do this, the Tribunal must look at any available comparable properties currently let on such tenancies. Based on the Applicant's evidence and its own expert knowledge and experience, the Tribunal determined that the subject property, if let on an assured shorthold tenancy in the open market in a fully refurbished state, would command an annual rent of around £30,940.
9. This figure must then be adjusted to take account of the differences between the terms of tenancy and amenities of those properties let on such market rents and those of the subject property. A tenant in the open market would not be prepared to pay the same price for an unrefurbished property, such as the subject property, as for a refurbished one and these adjustments take into account the fact that the market rent would be lower for a property suffering from the disadvantages listed below. The Tribunal took account of:-
  - (a) The condition of the property, including the location of the boiler and the state of the windows;
  - (b) The lack of a modern bathroom or kitchen;
  - (c) Non-provision of white goods;
  - (d) Non-provision of floor coverings and curtains; and
  - (e) The difference in repairing and decoration obligations which are here on the Respondent.
10. The Tribunal's conclusion is that the market rent figure given in paragraph 8 above should be reduced by 28% to take account of the matters set out in paragraph 9 above, producing an annual figure of £22,276.80.
11. The next consideration is whether there should be any deduction for scarcity in accordance with s.70(2) of the Rent Act. The Tribunal acknowledges that, since the introduction of the Housing Act 1988, there have been more properties to rent, i.e. there has been an increase in supply. However, scarcity is not just a matter of looking at supply but demand as well. The pressures on the London housing stock are well-documented and have persisted throughout the post-war period. They show no signs of improvement as demand increases from various sources, including immigration into London from other parts of the UK and from abroad and the trend for more separate households. Also, changes in supply and demand since the introduction of the Housing Act 1988 and over the last few years have not been evenly spread over the whole of London or all parts of the market.

12. Further, the real rental market is regulated by price, i.e. by rents, so that supply and demand should always be reasonably close to equilibrium as a result. However, as Ouseley J. remarked in *Yeoman's Row Management Ltd -v- Chairman of the London Rent Assessment Cttee* (2002) (at paragraph 75 of the judgment), "Where 'scarcity' exists, the purpose of the phrase is to eliminate the effect of an aspect of the real world market and to require the assumption instead of a partly theoretical or idealised market." He based this comment on the fact that s.70(2) requires the Tribunal to consider those seeking to become tenants of similar dwelling-houses in the locality on the same terms *other than those relating to rent*. This means considering a hypothetical market which is not regulated by price in the same way as the real market. The assumption is not that rents are ignored as if all properties are free but that the level of rents is not a factor limiting demand. The Tribunal is then required to consider whether this hypothetical market is in equilibrium or not.
13. In considering this hypothetical market, the Tribunal feels that the "waiting lists" held by local authorities and registered social landlords such as housing associations are relevant. Judicial notice can be taken of the fact that these waiting lists are lengthy at local authorities throughout London with many waiting, for up to years at a time, more in hope than expectation. Those who apply for such social housing include many different groups, including those wanting to transfer from what they regard as unsatisfactory social housing, people with special needs due to old age, disability or illness, people on low incomes and public service workers such as teachers and police who find it hard to afford private sector rents. There can be no doubt that some of these people would not try to enter the private market even if rents were at more affordable levels. However, there can equally be no doubt that some of them would. Many apply for social housing simply because they cannot access elsewhere the kind of housing they want at a price they can afford. There are also people who do not appear on social housing or any other waiting lists because they put up with housing that they regard as unsatisfactory for the same reason – sometimes referred to as the "hidden homeless", these include, for example, young adults who wish to leave the family home but cannot. These factors indicate the existence of demand which is hidden in the real market due to the regulating effect of rental levels but would appear in the hypothetical market envisaged in s.70(2). In quantifying this demand, the Tribunal is aware it must be limited to those genuinely seeking to become market tenants of similar accommodation or whose accommodation needs would affect the level of rents. For these reasons, the Tribunal considers that this demand is substantial.
14. In considering scarcity, the Tribunal acknowledges the need to look, as Ouseley J. put it (at paragraph 67 of the *Yeoman's Row* judgment), at "an area large enough, not just to eliminate the rental impact of the immediate area's particular attraction and amenity, but large enough for a broad and general appraisal of whether there is a shortage of similar accommodation which is affecting rents payable by potential

tenants of the subject accommodation; the area to be examined is that over which reasonable alternatives are available to potential tenants of the subject property.” The Tribunal feels it can achieve a sufficiently accurate assessment by looking at north London. While some might regard this as a geographically small area, that is not the relevant test rather than the density of dwellings and the size of the rental market within the area.

15. There is no completely scientific or mathematical method for calculating scarcity. As Ouseley J. also said (at paragraph 75), “the theoretical nature of the exercise and the imprecision inherent in establishing both the existence of ‘scarcity’ and its effect on rent in a theoretical world, preclude there being a realistic expectation of detailed reasoning.” The Tribunal has used its own knowledge and experience of the factors listed above and concludes that the number of persons seeking to become tenants of dwelling-houses similar to the subject property in the locality referred to in the paragraph above on the terms (other than those relating to rent) of the regulated tenancy is substantially greater than the number of dwelling-houses which are available for letting on such terms. The Tribunal considers the imbalance between supply and demand on the basis defined above would be very substantial in the locality identified, placing the deduction in the higher level of the range of such deductions for the London area, and would put the figure at 20%, thereby reducing the annual market rent figure of £22,276.80 to a fair rent figure of £17,820.
16. The last matter to consider is the application of the Rent Acts (Maximum Fair Rent) Order 1999 which limits rises in fair rents by a strict mathematical calculation and, according to Art.2(6), “applies where an application for the registration of a new rent in respect of a dwelling-house is made after this Order comes into force and, on the date of that application, there is an existing registered rent under [the Rent Act 1977] in respect of that dwelling-house.” In accordance with the mathematical calculation set down under the Order, the details of which are attached to the Notice of Decision, the maximum fair rent which may be registered is limited to £20,037.50 per year. The fair rent as determined by the Tribunal is lower than this maximum and, therefore, is the figure which applies.

**Name:** Judge Nicol

**Date:** 16<sup>th</sup> August 2021

## **APPENDIX**

### **Rent Act 1977**

#### **S70 Determination of fair rent.**

- (1) In determining, for the purposes of this 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 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 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.
- (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;
  - ...
  - (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.