



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

**Case reference** : **LON/00AN/F77/2021/0261**

**HMCTS code (paper, video, audio)** : **P: PAPERREMOTE**

**Property** : **4a Barclay Road, London, SW6 1EH**

**Applicant** : **Ms Lissa Napolitano**

**Representative** : **In person**

**Respondent** : **Mr Edward Green & Mrs Ann Green**

**Representative** : **Mr Richard Green (son)**

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

**Tribunal member** : **Mr Charles Norman FRICS  
Valuer Chairman**

**Venue** : **10 Alfred Place, London WC1E 7LR**

**Date of decision** : **17 November 2021**

**Date of Reasons** : **26 January 2022**

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**REASONS**

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## **Covid-19 pandemic: description of Determination**

This has been a remote determination on the papers which has been consented to by the parties. The form of remote determination was P:PAPERREMOTE. A face-to-face hearing was not held because it was not practicable, and no-one requested the same. The documents to which the Tribunal were referred comprised approximately 60 pages, the contents of which the Tribunal has noted.

### **Background**

1. On 22 June 2021, the tenant applied to the Rent Officer for registration of a fair rent of £683.24 per month for the above property, being the same as the passing rent.
2. On 27 July 2021, the Rent Officer carried out a telephone consultation which the tenant's representative attended, together with the landlord.
3. On 27 July 2021, the Rent Officer registered a fair rent of £850.00 per calendar month with effect from the same date.
4. By letter dated 26 August 2021, the landlord objected to the rent determined by the Rent Officer and the matter was referred to the Tribunal.
5. On 21 September 2021, the Tribunal issued directions setting the matter down for determination by written submissions unless either party requested a remote video hearing, which neither did. The landlord was directed to complete a Reply form and supply documents upon which it wished to rely by 5 October 2021 and the tenant likewise by 19 October 2021. The landlord was allowed to serve a Reply by 26 October 2021. Both parties made written submissions.
6. The Tribunal made its determination on 17 November 2021 and the landlord subsequently requested Reasons.

### **The Property**

7. The Tribunal viewed images of the property supplied from Google Street View and considered all documents supplied by the parties. It noted that this is the basement flat in converted large semi-detached Victorian house on basement ground first and second floors. The accommodation comprises bedroom, living room, bathroom, and separate WC. There is a rear garden. The property is situated Fulham near Fulham Broadway Underground Station.

## **Evidence**

### The Landlord's Case

8. The landlord's case may be summarised as follows. The Rent Officer's starting point of £1450 per month was wrong. Two other flats in the property fully refurbished were let at an average of £1,650 per month [on ASTs] in March 2021 which was the correct starting point. The Rent Officer's deduction for modernisation of £500 per month was far too high and should be £134 per month. If the landlord had responsibility for carpets, curtains and decoration as per the ASTs, this would add a further £50 per month. A deduction of scarcity of £100 per month by the Rent Officer was unjustified and should be nil. Therefore, the registered rent should be £1,465 per month.
9. The landlord submitted that the subject flat was partially modernised. Electrics, security, damp proofing common areas and externals had been done at a cost of £36,000 over the last 18 months. The shower was replaced prior to October 2016.
10. To complete the modernisation of flat 4a , the landlord had obtained a builder's estimate of £21,000 to include the following: complete new kitchen with electrics, flooring and white goods, complete new electric central heating system, new bathroom with flooring, and new toilet with flooring. The landlord amortised this cost over the expect life of components to arrive at a monthly equivalent of £134.47. There was a corresponding schedule in relation to carpets curtains and interior decoration.

### The Tenant's Case

11. The recent refurbishment of the house has adversely affected flat 4a. Natural light had been lost to kitchen and bathroom and the previous 5 steps leading to the flat have been replaced by 23 steps. The amount for services is too high as the garden is low maintenance. The passing rent is correct. The tenant also referred to photographs. The tenant cited other rent registrations in the vicinity but no market comparables.
12. The tenant also referred to personal circumstances. The Tribunal has not taken these into account in considering the fair rent, by virtue of section 70(1) of the Rent Act 1977. This is set out in the Appendix below.

## **The Law**

13. When determining a fair rent the Tribunal, in accordance with the Rent Act 1977, section 70, had regard to all the circumstances (other than personal circumstances) including the age, location and state of repair of the property.
14. In *Spath Holme Ltd v Chairman of the Greater Manchester etc. Tribunal* (1995) 28 HLR 107 and *Curtis v London Rent Assessment Tribunal* [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 - other than as to rent - to that of the regulated tenancy) and that for the purposes of determining the market rent, assured tenancy (market) rents are usually appropriate comparables. (These rents may have to be adjusted where necessary to reflect any relevant differences between those comparables and the subject property).

## Valuation

15. The Tribunal noted that flat 4a was larger than 4b and 4c but considered that its position on the lower ground floor was inferior but that it also had garden access. Having regard to these factors, the Tribunal agreed with the landlord that the starting point for Flat 4a was £1,650 per month had the flat been fully modernised and in a condition usual for an AST.
16. However, the Tribunal did not accept the landlord's submission that amortisation of the estimated costs of providing modernisation was a legitimate method of assessing rent. This is because cost does not necessarily equal value. Rather, this demonstrated to the Tribunal that substantial works were required to bring the flat up to a modern standard. Therefore, the Tribunal considered that the following downward adjustments were required from the starting point:
  - Not fully double glazed: 5%
  - No modern kitchen 10%
  - Bathroom requires improvement 5%
  - Lack of white goods, curtains/carpets, and more onerous redecorating obligation compared with an AST: 5%
  - Additional access steps/reduction in natural light: 5%
  - No central heating: 10%
17. This aggregated to 40% or £660 per month leaving an adjusted market rent of £990 per month.
18. The Tribunal found that there was substantial scarcity in the locality of Greater London and therefore made a deduction of 20% (£198 per month) from the adjusted market rent to reflect this element. The Tribunal took Judicial Notice of long housing association and local authority waiting lists in Greater London.
19. It follows that the Tribunal found that the fair rent was £792 per month.
20. The amount was not limited by the Rent Acts (Maximum Fair Rent) Order 1999, as this was a first rent registration.
21. Accordingly, the sum of £792 per month was determined as the fair rent with effect from 17 November 2021 being the date of the Tribunal's decision.
22. The Tribunal accepted the landlord's submission in relation to the cost of providing services. The purpose of this attribution of rent to services is to comply with section 72A of the Rent Act 1977 which relates to housing benefit. It has no bearing on the amount of fair rent itself, which is inclusive of services.

Mr Charles Norman FRICS  
26 January 2022

### ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.
- If a party wishes to appeal against 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.
- 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.
- 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.
- 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.

### Appendix

#### Rent Act 1977

Section 70 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, . . . F1

(b) if any furniture is provided for use under the tenancy, the quantity, quality and condition of the furniture [F2, and]

[F2(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;

(c)(d)..... F3

(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.

F4[(3A) In any case where under Part I of the Local Government Finance Act 1992 the landlord or a superior landlord is liable to pay council tax in respect of a hereditament (“the relevant hereditament”) of which the dwelling-house forms part, regard shall also be had to the amount of council tax which, as at the date on which the application to the rent officer was made, was set by the billing authority—

(a) for the financial year in which that application was made, and

(b) for the category of dwellings within which the relevant hereditament fell on that date,

but any discount or other reduction affecting the amount of council tax payable shall be disregarded.

(3B) In subsection (3A) above—

(a) “hereditament” means a dwelling within the meaning of Part I of the Local Government Finance Act 1992,

(b) “billing authority” has the same meaning as in that Part of that Act, and

(c) “category of dwellings” has the same meaning as in section 30(1) and (2) of that Act.]

(4) In this section “improvement” includes the replacement of any fixture or fitting.

[F5(4A) In this section “premium” has the same meaning as in Part IX of this Act, and “sum in the nature of a premium” means—

(a)any such loan as is mentioned in section 119 or 120 of this Act,

(b)any such excess over the reasonable price of furniture as is mentioned in section 123 of this Act, and

(c)any such advance payment of rent as is mentioned in section 126 of this Act.]

(5).....

(emphasis added)