

Notice of the Tribunal Decision

Rent Act 1977 Schedule 11

Address of PremisesFlat 133 Miles Buildings, Penfold Place,
London, NW1 6RH**The Tribunal members were**Judge Robert Latham
Mr S Johnson MRICS**Landlord**

Keelerex Investments Ltd

Tenant

Mr M Khalil

1. The fair rent is

£500

Per

month

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

2. The effective date is

9 September 2021

3. The amount for services is

-

Per

negligible/not applicable

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

-

Per

negligible/not applicable

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

6. The capping provisions of the Rent Acts (Maximum Fair Rent) Order 1999 apply do not apply because it is a 1st registration.

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

N/A

8. For information only:

The fair rent to be registered is not limited by the Rent Acts (Maximum Fair Rent) Order 1999.

Chairman

Robert Latham

Date of decision

19 September 2021



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

Case Reference : LON/00BF/F77/2021/0050

HMCTS code : V: CVPREMOTE

Property : Flat 133 Miles Buildings, Penfold Place,
London, NW1 6RH

Landlord : Keelerex Investments Ltd

Tenant : Mr M Khalil

Type of Application : Assessment of Fair Rent

Tribunal Members : Judge Robert Latham
Mr S Johnson MRICS

**Date and venue of
Determination** : 10 Alfred Place, London WC1E 7LR
9 September 2021

**Date of Reasoned
Decision** : 9 September 2021

EXTENDED REASONS

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has not been objected by the parties. The form of remote hearing was V: SKYPEREMOTEOURT. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The tribunal has had regard to the documents to which reference is made in this decision.

The Application

1. On 2 June 2020, the landlord applied to the Rent Officer for the registration of a fair rent of £816 per month for Flat 133 Miles Buildings, Penfold Place, London, NW1 6RH (“the Flat”) pursuant to Part IV of the Rent Act 1977 (“the

Act”). The existing rent was £510 per month. The tenancy had been granted on 15 October 1987.

2. On 14 October 2020, the Rent Officer held a consultation by telephone. Ms Kelly Tottle represented the landlord. Mr Khalil also attended. The Tribunal has been provided with the Notes from the consultation.
3. On 15 October 2020, the Rent Officer registered a rent of £730 per month. She first assessed the market rent to be £1,625 pm. She then made adjustments of £815 (50%), having regard to a number of factors: tenants repair/decoration liability; no furniture; no white goods; and no floor coverings/curtains. She finally made a deduction of £80 (9%) for scarcity.
4. As this was a first registration, the Rent Acts (Maximum Fair Rent) Order 1999 (SI 1999 No.6) had no application.
5. On 11 November 2020, the tenant requested the Rent Officer to refer the matter to the First-tier Tribunal (Property Chamber) (the “Tribunal”).
6. On 17 June 2021, the Tribunal issued Directions. Ms Tottle, on behalf of the landlord, completed a questionnaire describing the lay out of the Flat. She did not challenge the findings made by the Rent Officer. Mr Khalil made fuller representations.
7. Today, the Tribunal held a hearing. Mr Khalid attended and gave evidence. The landlord did not attend. The Tribunal is not currently inspecting properties due to Covid-19.

The Background

8. Miles Buildings was constructed by the Improved Industrial Dwellings Company in 1885. This was an attempt to improve the housing conditions in the squalor of Victorian Marylebone. But whilst over the subsequent century, Marylebone has become one of the most desirable localities in London, little seems to have changed at Miles Buildings. Some reports describe it as some of the worst housing in Westminster.
9. On 15 October 1987, the tenancy was granted to Mr Khalil. The Flat consists of a bedroom, living room, kitchen and bathroom. Mr Khalil described how at the commencement of the tenancy, there was only the most basic kitchen with no hot water. Over the subsequent years, he has installed a functioning kitchen, providing a new sink and taps, a worktop and cupboards, cooker, fridge, washing machine and an immersion heater to provide hot water. He has also installed a new bath, wash hand basin, toilet and extract fan in the bathroom. He has provided the carpets, curtains and furniture.
10. The tenant pays council tax. The landlord does not provide any services. There are no doors to the kitchen, living room and bathroom. There is no central heating. Although this is a tenancy to which section 11 of the Landlord and Tenant Act 1985, the tenant has paid for the annual gas inspections.

11. Mr Khalil complained of disrepair. Leaks from the flat above have damaged and cracked the bedroom ceiling and decorations. For a number of years, the main manhole for the building has flooded. Sewage has entered his flat. There are rats. Furniture and building debris have been dumped outside his flat. These were raised at the consultation in October 2020. The problems continue. Mr Khalil denied the suggestion that he had refused to afford his landlord access to his flat.

The Law

12. When determining a fair rent in accordance with section 70 of the Act, the Tribunal:
 - (1) has regard to all the circumstances (other than personal circumstances) including the age, location and state of repair of the property;
 - (2) disregards the effect on the rental value of the property of (a) any relevant tenant improvements and (b) any disrepair or other defect attributable to the tenant or any predecessor in title under the regulated tenancy;
 - (3) assumes (as required by s.70(2)) that, whatever might be the case, the demand for similar rented properties in the locality does not significantly exceed the supply of such properties for rent. In other words that the effect of any such 'scarcity' on rental values is not reflected in the fair rent of the subject property.
13. 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 section 70 means that:
 - (a) ordinarily a fair rent is the market rent for the subject property discounted for 'scarcity' and
 - (b) 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).
14. Thus, once the market rent for the property has been determined by the exercise in (2) above that rent must be adjusted, where necessary, for any scarcity.
15. The Rent Act (Maximum Fair Rent) Order 1999 does not apply as this is the first registration. There is no evidence that a fair rent has been registered in respect of the current tenancy of the whole house.
16. In reaching our determination, the Tribunal has taken into account the documents provided by the Rent Officer, the representations provided by the parties and the evidence given by Mr Khalil.

Our Assessment of the Fair Rent

(i) The Market Rent

17. The Tribunal first determines the fair rent in accordance with section 70 of the Act. Our starting point is to determine the rent which the landlord could reasonably expect to obtain for the premises in the open market if it were let today in the condition that is considered usual for such an open market letting in this locality.
18. The Rent Officer assessed a market rent of £1,625 per month. This was based on a schedule of rent obtained for one bedroom flats in NW1 and ranged from £239 to £650 per week.
19. We consider this to be too high and assess the market rent at £1,400 per month. We have had regard to a number of comparables relating to flats at Miles Buildings:
 - (i) In April 2021, a two bedroom flat was let for £1,375 pm (see [rentberry.com](https://www.rentberry.com)).
 - (ii) In August 2021, a two bedroom flat with central heating was let for £1,500 pm (see [openrent.co.uk](https://www.openrent.co.uk)).
 - (iii) In August 2021, a two bedroom flat was advertised unfurnished, but with central heating and parking, for £1,650 pm.
 - (iv) A flat, described as having one bedroom, is currently being advertised for £1,650 (see [housesforsaletolet.co.uk](https://www.housesforsaletolet.co.uk)). This has been refurbished and the photos seem to suggest a second bedroom. Indeed, it seems to be the same flat as in (iii) above.
20. A one bedroom flat in Bell Street, NW1 is advertised for £1,560 per month (see [blackkatz.com](https://www.blackkatz.com)). This has been refurbished to a high standard and is a much more desirable location. This seems to be the top end of the market. We are therefore satisfied that one bedroom flat at Miles Buildings let to a modern standard (with central heating) would attract a rent of £1,400 pm.

(ii) The Adjusted Rent

21. Secondly, this property is not let under the terms or in the condition considered usual for a modern letting at a market rent in this location. Substantial adjustments must be made for this. The landlord has not made any representations on the deductions that should be made.
22. We have decided to make a deduction of 55% in respect of the following and determine an adjusted rent of £630 pm having regard to:
 - (i) Tenant's Improvements;
 - (ii) No Central Heating;

- (iii) Terms and Conditions;
 - (iv) No modern kitchen/white goods;
 - (v) No modern bathroom;
 - (vi) No carpets or curtains;
 - (vii) Disrepair and condition.
23. We considered these factors separately and then considered whether the overall reduction is justified. We are satisfied that it is.

(iii) Scarcity

24. Finally, we must consider the issue of scarcity. The Rent Officer made a reduction of 9% in respect of this.
25. In *Yeoman's Row Management Ltd v London Rent Assessment Committee* [2002] All ER (D) 148 (Apr), Ousley J held that scarcity must be considered over a wider area than a particular locality. Greater London is now considered to be an appropriate area to use as a yardstick for measuring scarcity.
26. Applying our own general knowledge, and having regard to the collective knowledge of our expert members on Tribunals in London, we conclude that 20% is the appropriate reduction to make for scarcity in Greater London.
27. We therefore reduce the adjusted rent by £126 per month (20%). This results in a figure of £504 pm. We therefore assess a fair rent of £500 per month.

Decision

28. The Tribunal determines a fair rent of £500 per month. Our calculation is annexed to our decision.
29. We note that this fair rent is significantly lower than that assessed by the Rent Officer. However, we are satisfied that (i) better evidence of comparables is available to us; (ii) a slightly larger deduction should be made for the condition of the Flat; and (iii) 20% is the appropriate deduction for scarcity. The Rent Officer has provided no rational explanation for departing from the figure of 20% which is generally applied by tribunals in London.

Judge Robert Latham
9 September 2019

Rights of Appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix: Calculation of Fair Rent

1. Market rent in good condition with modern amenities	£1,400 pm
2. Less adjustments for the following (55%):	£770 pm
(i) Tenant's Improvements;	
(ii) No Central Heating;	
(iii) Terms and Conditions;	
(iv) No modern kitchen/white goods;	
(v) No modern bathroom;	
(vi) No carpets or curtains;	
(vii) Disrepair and condition.	
Adjusted Rent:	£630 pm
3. Less scarcity in locality (Greater London) (20%):	£126 pm
	£504 pm
Fair Rent:	<u>£500 pm</u>