



Neutral Citation Number: [2024] UKUT 341 (LC)

Case No: LC-2024-423

IN THE UPPER TRIBUNAL (LANDS CHAMBER)

AN APPEAL AGAINST A DECISION OF THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)

FTT REF: LON/00AW/F77/2023/0375

1 November 2024

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007
AN APPEAL FROM THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)

LANDLORD AND TENANT – RENT DETERMINATION – fair rent – s.70 Rent Act 1977 – sufficiency of reasons for First-tier Tribunal’s decision on open market rent and comparable properties – appeal allowed

BETWEEN:

KENSINGTON AVENUE LIMITED

Appellant

-and-

MISS NADIA CURLIN

Respondent

Flat 8,
61 Queens Gate,
London,
SW7 5JP

Upper Tribunal Judge Elizabeth Cooke
Decision on written representations

Bingham and Elliot solicitors for the appellant

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The following cases are referred to in this decision:

The Trustees of the Israel Moss Children's Trust v Bandy [2015] UKUT 0276 (LC)

Introduction

1. This is an appeal by way of review against a decision of the First-tier Tribunal (“the FTT”) dated 4 March 2024 (with written reasons given on 16 April 2024) determining the fair rent of Flat 8, 61 Queen’s Gardens, London SW75 for the purposes of section 70 of the Rent Act 1977 (“the 1977 Act”). The appeal is brought by the landlord, Kensington Avenue Limited; the tenant, Miss Nadia Curlin, has chosen not to take part in the appeal. The appeal has been determined under the Tribunal’s written representations procedure; the appellant has been represented by Bingham and Elliot solicitors.

The background and the FTT’s decision

2. The property is a small one-bedroomed flat on the fourth floor of 61 Queen’s Gardens. The rent had previously been determined by the rent officer at £1,210 per calendar month from 24 April 2015, and was determined by the Valuation Officer to be £1,235 per calendar month from 19 June 2023. The landlord objected to that rent and the matter was referred to the FTT in December 2023.
3. The FTT assessed the fair rent without an oral hearing after inviting written representations from the parties and conducting a site visit. The FTT recorded in its decision:

“16. The landlord provided a schedule of one bedroom flats in Queens Gate that have been let recently giving floor area, brief details of accommodation, floor and date of letting and ranging between £3,445 per calendar month to £4,312 per calendar month.

17. They submitted that the fair (Registered) rent for the subject flat should be £2,492 per calendar month.”

4. The FTT went on to say:

“25. The Tribunal must firstly determine the market rent for a property of this size, in this location and in its current condition. It must also disregard the personal circumstances of either party. The Tribunal notes the comments made by both the landlord and the tenant in their submissions and takes these factors into consideration. Using its own general knowledge of the Greater London property market, in particular the property market in the immediate locality of the subject property, the Tribunal considers that the market rent for a property of this size, in this location, in average condition with usual white goods, carpets, curtains and decorated to a good condition would be £2,600.00 per calendar month.”

5. The FTT then made a deduction of 35% on account of the condition of the property, giving an adjusted rent of £1,690, and a deduction for scarcity of 20% so that its final determination was £1,352 per month. That is lower than the maximum fair rent of £1,847 under the Rent Act (Maximum Fair Rent) Order 1999, and therefore the figure of £1,352 took effect from the date of the FTT’s decision on 4 March 2024.

The appeal

6. The appellant was granted permission to appeal by this Tribunal on the following ground:

“There is apparent substance in the applicant’s complaint that, if the FTT had regard to the schedule of letting evidence supplied by the applicant, it failed to explain how its view of the open market value of the flat in an assumed good lettable condition was consistent with that evidence. Permission to appeal is granted on that ground alone.”

7. In *The Trustees of the Israel Moss Children’s Trust v Bandy* [2015] UKUT 0276 (LC) the Deputy President, Martin Rodger QC, said at [11] that when the FTT was requested by a party to give reasons for its decision when determining a fair rent:

“... the reasons need not be elaborate or lengthy but they must be intelligible and deal with the substantial points which have been raised. Having read the reasons the parties should be able to understand why the decision had been reached.”

8. The difficulty with the FTT’s decision in this case is that it is not possible to understand why the FTT took the view that the fair market rent was £2,600 per month when the landlord’s comparables indicated a higher figure; the parties, and in particular the landlord, need to know why those comparables were rejected.
9. In the absence of that explanation the FTT’s decision cannot stand and is set aside.

Conclusion

10. The appeal is allowed and the matter is remitted to the FTT for a redetermination. That means that the rent previously determined by the FTT is no longer payable as its decision has been set aside, but that when a new decision is made a new rent will become payable which may be more or less than the rent previously determined.

Upper Tribunal Judge Elizabeth Cooke

1 November 2024

Right of appeal

Any party has a right of appeal to the Court of Appeal on any point of law arising from this decision. The right of appeal may be exercised only with permission. An application for permission to appeal to the Court of Appeal must be sent or delivered to the Tribunal so that it is received within 1 month after the date on which this decision is sent to the parties (unless an application for costs is made within 14 days of the decision being sent to the parties, in which case an application for permission to appeal must be made within 1 month of the date on which the Tribunal’s decision on costs is sent to the parties). An application for permission to appeal must identify the decision of the Tribunal to which it relates, identify the alleged error or errors of law in the decision, and state the result the party making the application is seeking. If the Tribunal refuses permission to appeal a further application may then be made to the Court of Appeal for permission.