

IN THE LONDON RENT ASSESSMENT COMMITTEE

LON/00AG/F77/05/502

**PROPERTY: FLAT 61, WARREN COURT, EUSTON ROAD, LONDON, NW1
3AA**

BETWEEN:

MR M G A CARTELLA

Tenant

-and-

LYDFORD ESTATES LIMITED

Landlord

THE COMMITTEE'S REASONS

BACKGROUND

1. On 22 April 2005 the landlord, Lydford Estates Limited, applied to a rent officer for the registration of a fair rent of £2,530 per quarter for the subject property, which is held on a regulated tenancy.
2. The rent was previously registered on 24 June 2003 with effect from 15 July 2003 at £2,249 per quarter, which included the sum of £670.75 per quarter for the provision of services, following a determination by a Rent Officer.

3. On 20 June 2005, a rent officer registered a fair rent of £2,467 per week, which included the sum of £740.75 per quarter for the provision of services. The rent determined was exclusive of council tax and water rates.
4. By a letter dated 14 August 2005 the tenant objected to the rent determined by the rent officer and the matter was referred to a Rent Assessment Committee. It should be noted here that the amount of £740.75 per quarter for the provision of services was not challenged by the tenant and, therefore, not in issue.

INSPECTION

5. The Committee inspected the property on 25 November 2005. The building containing the subject premises is a purpose built six storey block to the south west corner of Euston Road and Tottenham Court Road with commercial premises, including Warren Street Underground Station, on the ground floor and residential flats above. The building is in good/fair condition with brick walls and a flat roof. Access is via an imposing Art Deco entrance lobby off Euston Road. There is a video entry phone and lift (to fifth floor). The common parts are in good order and appear well maintained. The subject flat is on the top floor and presents as a separate penthouse style apartment. The accommodation comprises two double bedrooms, a dual aspect living room with a kitchen and bathroom/wc leading from it. The effective floor area of the flat is approximately 78 sq metres. The flat has full central heating to all rooms. The flat has a secondary means of

egress via the kitchen to a rear staircase and there is a door from the living room giving access to the flat roof, which is surrounded by parapet walls and presents as an enlarged balcony area. Mr Cartella who accompanied the committee during the course of their inspection of the flat orally indicated that he did not use the balcony. The Committee considered that by virtue of the door to this area from the flat, there was no implied restriction to use by the tenant.

LAW

6. The Committee is required to determine the fair rent in this referral in accordance with the statutory provisions of section 70 of the Rent Act 1977 ('the Act'). This provides that:

(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) that age, character, locality and state of repair of the dwelling house, and

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

(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.

Any determination by a Rent Assessment Committee is subject to the statutory disregards set out in section 70 (3). Thereafter, the provisions of the Rent Acts (Maximum Fair Rent) Order 1999 have to be considered.

7. Judicial interpretation and guidance regarding the application of section 70 of the Rent Act 1977 has been given in the cases of *Spath Holme Ltd v Chairman of the Greater Manchester Committee* (1995) 28 HLR 107 and *Curtis v London Rent Assessment Committee* (1999) QB 92. In those cases the Court of Appeal emphasised

- (a) 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
- (b) 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 differences between those comparables and the subject property).

DETERMINATION

8. Neither party requested a hearing. The Committee determined this application on the basis of the documentary evidence before it and on the inspection of the property.

9. The Committee firstly considered the open market rent for the subject property. The tenant, Mr Cartella, had not made any specific representations to the Committee about what he considered the appropriate market rent and/or fair rent should be. His sole basis for referring this matter to the Committee was that he had not been served by the Rent service with a copy of the landlord's application for registration of a fair rent and had not received notification of the application. The tenant claimed that due process had not been observed by the Rent Officer when the initial determination of the fair rent was made. However, the Committee had before it a copy of a letter dated 10 July 2005 sent by the tenant to the Rent Officer in response to having received the Rent Register setting out the new fair rent determined. In that letter, the tenant contended generally that:
 - (a) the fair rent exceeded the maximum increase allowed by the regulations.
 - (b) no improvement to the premises had been carried out since the last registration.
 - (c) it was a matter of public knowledge that house prices in central London had been falling.

10. The Committee also had before it written representations from the landlord's managing agents, Gross Fine, dated 9 November 2005. Again, those written representations did not address the issue of what the appropriate market rent should be. Instead, the representations simply set out the location of the block of flats, the services provided to the tenants and the historic improvements carried out which included, *inter alia*, the installation of double glazing in 1988, re-carpeting of the stairways in 1993 and the entrance hall of the block of flats and the lift earlier in 2005. The landlord's managing agents went on to say that the adjustments of 30% made by the Rent Officer pursuant to section 70(1) of the Act should in fact be 25% but gave no reason why this should be so in this particular instance other than this was the figure being applied generally by other Committee's. The scarcity figure of 25% applied by the Rent Officer was agreed.
11. The Committee, therefore, had to rely on its own expert knowledge and experience in determining the market rent. The Committee determined that if the subject property were fully modernised and let on an assured shorthold tenancy, it would achieve an open market rent of £4,500 per quarter. However, upon inspection, the Committee did not find the subject property in such a condition. Relevant considerations included the absence of white goods, carpets, curtains and that the tenant had an

internal decorating obligation as a regulated tenant. The Committee also had regard to the *significant* improvements made by the tenant. These included the installation of modern kitchen fixtures and fitting, a bathroom suite and fitted cupboards in all of the bedrooms. The Committee was of the view that these improvements were within the meaning of s.70(3)(b) of the Act and ought to be disregarded by it when determining the market rent for the subject property. These matters when taken together would have materially affected the market rent that could be achieved for the subject property. The Committee was of the view that this warranted a reduction of 25% or £1,925 per quarter giving an adjusted market rent of £3,375 per quarter.

12. The Committee then considered the issue of scarcity. No representations had been made by the tenant on this matter. The landlord's managing agents had agreed the figure of 30% applied by the Rent Officer. However, this did not prevent the Committee from considering the issue of scarcity, as it is required to do so under s.70 of the Act. The Committee, relying on its own expert knowledge and experience, found that there was significant scarcity in the area of Greater London for accommodation of this nature and determined this to be 20%. Therefore, a further deduction of £675 per quarter was made from the fair rent leaving an adjusted fair rent of £2,700 per quarter.

13. The Committee then considered whether the fair rent to be registered was limited by the Rent Acts (Maximum Fair Rent) Order 1999 (“the Order”) as this application concerned an existing registration of a fair rent. By operation of the Order, the “capped” rent at the time of the hearing was £2,508 per quarter, which was below the fair rent determined by the Committee. Accordingly, the effect of the Order was to “cap” the fair rent at that figure. Therefore, the fair rent for the subject property was £2,508 per quarter, which included the sum of £740.75 for the provision of services by the landlord.

Dated the 20 day of February 2006

CHAIRMAN.....*I. Mohabir*.....

Mr I Mohabir LLB (Hons)