



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

**Case Reference** : **LON/00BD/MNR/2019/0099**

**Property** : **25, Inglewood Road, London, NW6  
1QT**

**Tenant** : **Mr D Waldman**

**Landlord** : **Mountview Estates PLC**

**Date of Referral** : **29 July 2019**

**Type of Application** : **Section 13, Housing Act 1988**

**Tribunal** : **Mrs H Bowers MRICS  
Mrs J Hawkins BSc MSc**

**Date of Determination** : **27 September 2019**

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**DECISION**

**The following sum of £2,200 per month was determined as the rent for the subject house with effect from 10 August 2019.**

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## **DECISION**

### **The Background**

1. By an application dated 27 July 2019 and received on 29 July 2019, Mr D Waldman, the tenant of 25, Inglewood Road, London, NW6 1QT (the subject property) referred to the Tribunal a notice of increase of rent served by the landlord under section 13 of the Housing Act 1988 (the 1988 Act).
2. Mountview Estates PLC, the landlord of the subject property served a notice, which proposed an increase in the rent from £2,430.00 per month to £2,680.00 per month. The notice was dated 4 June 2019 and proposed a starting date for the new rent of 10 August 2019.

### **Inspection**

3. The Tribunal inspected the property on 27 September 2019 after the hearing in the company of the tenant. The landlord had previously indicated in writing that it would not be represented at the inspection.
4. The subject property is located on a tree-lined road but it is a fairly busy location. It is a short walk to shops on West End Lane and close to transport links at West Hampstead.
5. It is an inner terrace house with accommodation on the basement, ground, first and second floors with bay window on the ground and first floor to the front elevation. The house is constructed in brick with a slate roof with timber framed casements. The house appears to have suffered from heave at some stage. The roof to the front elevation shows signs of needing either replacement or maintenance works. The roof to the rear extension has recently been replaced with a new slate roof and associated rain water goods.
6. The accommodation comprises two large reception rooms on the ground floor, both with bay windows. The rear reception room has French doors leading to a rear patio. There is a kitchen that is well presented and includes an old wood burner. There is a sliding double-glazed door leading to the rear garden. From the kitchen is a door leading to the cellar area. Although this area has bare concrete and un-plastered walls and some evidence of damp, there are significant storage areas. One area is being used as a utility room and another area previously used as a dark room is now used for storage.

7. On the first floor is a large bathroom with bath, a walk in shower, wash hand basin, WC and bidet and a large storage cupboard. There is a slight slope to the floor. There is an additional separate WC. There are two large double bedrooms and stairs leading to the second floor. On the second floor there are two large double bedrooms and a box room.
8. The house has gas fired central heating. Overall the accommodation is spacious and the principle rooms benefit from high ceilings.

### **The Law**

9. In accordance with the terms of section 14 of the 1988 Act, the Tribunal proceeded to determine the rent at which it considered that the subject property might reasonably be expected to be let on the open market by a willing landlord under an assured tenancy.
10. In so doing the Tribunal, as required by section 14(2), ignored the effect on the rental value of the property of any relevant tenant's improvements as defined in sections 14(2) and (3) and any reduction in the value caused by a failure by the tenant to comply with any terms of the tenancy. Section 14 is reproduced at the end of these reasons.

### **The Tenancy**

11. The Tribunal were provided with a copy of the tenancy agreement dated April 1967 between Ernest Footring and Doris Waldman. The term was for a period of seven years. Under clause 2(2) of the lease the tenant covenants "*At the cost and charge of the Lessee from time to time and at all times during the term to put and keep the premises both inside and outside including the fixtures and fittings and additions thereto and the water and sanitary apparatus sewers and drains and pipes gutters chimney stacks and roofs pathways passageways and fences and boundary walls easements and appurtenances thereof and all new buildings which may at any time during the term be erected on the land hereby demised in good and substantial repair condition and decoration and also that the liability of the Lessee in this respect shall not be affected or qualified by reason of the present age or state of dilapidation of the existing building comprising the premises or any part thereof and to deliver up the premises to the Lessor together with all additions and improvements made thereto in the meantime and all fixtures of any kind in or upon the premises and which may during the term be affixed or fastened to or upon the same (Except tenants and trade fixtures) in such good and substantial repair condition*

*and decoration in accordance with the covenants in the Lessee's part herein contained with vacant possession at the expiration or sooner determination of the term."*

12. At the hearing Mr Waldman confirmed that he had taken a succession of his mother's tenancy in approximately 2004.

### **Hearing and Evidence**

13. A hearing was held on 27 September 2019 starting at 9:30 am at 10, Alfred Place, London, WC1E 7LR. In attendance was Mr D Waldman and his wife Mrs Waldman. The landlord had indicated on their reply form that it did not intend to send a representative to the hearing.

### **Tenant's Case**

14. At the hearing Mr Waldman explained that he had carried out a complete refurbishment of the property in 1986 at a cost of £100,000 and continued to maintain the property. Since his succession in 2004 he had carried out the redecoration both internally and externally; had replaced the rear roof and was contemplating the replacement of the main roof; he had installed a new kitchen; supplied the carpets, curtains and white goods; had replaced the gas central heating boiler; had provided new garden fencing and had built small walls either side of the front path.
15. Mr Waldman was frustrated with the building work occurring at 23 Inglewood Road and his entitlement under a Party Wall Agreement. The work at the neighbouring property had taken approximately seven years and was on-going and some of the work had been done without the benefit of planning permission. The work had resulted to some damp in the basement/cellar of the subject property, but Mr Waldman acknowledged that this was not very bad. In his written representations he explained that he has had to carry out repairs to the party wall in his kitchen, repair his bathroom floor, deal with the chimney, resolve problems with the front path and address dampness in his cellar.
16. The comparables provided by Mr Waldman are summarised as follows:
  - a. Willifield Way, Hampstead Garden Suburb, NW11 – asking rent £595.00 per week and this equates to approximately £2,578.00 per month. The lettings details show an inner terrace house with a plain façade that has the appearance of ex-local authority housing stock. It is described as having three double bedrooms

and a single bedroom. Two of the bedrooms have en-suite facilities and there is a family bathroom. The house has a decked rear garden. The letting details for this property include a floor plan that shows that it is a house on three floors with an open plan living room leading into a kitchen area on the ground floor, the first floor has three bedrooms and a bathroom, but one of the bedrooms provides stair access to the second floor with a bedroom with storage and an en-suite bathroom. Mr Waldman said this was a more desirable location but acknowledged that it was further from transport facilities than his own home

- b. Broomsleigh Street, NW6 - asking rent £3,000 per month. Mr Waldman stated that this was a few minutes' walk from his house and is in a quiet location near to a school. He noted that this was similar and although neat was not refurbished to a high standard. This property has no off-street parking.
- c. Midholm, Hampstead Garden Suburb, NW11 – asking rent £680 per week and this equates to approximately £2,950.00 per month. The lettings details show an attractive semi-detached 'cottage' type house with off street parking for two cars. The house is described as having three double bedrooms and a single/study. There is a family bathroom and an en-suite plus a downstairs cloak room. Mr Waldman states that although this is further out it is in a more desirable location.
- d. Berridge Mews, Hillfield Road, West Hampstead – asking rent £795 per week and this equates to £3,445.00 per month. This property is approximately five minutes' walk from the subject house. The letting details show a modern town house with a garage on the ground floor and is located in a gated development.

17. Responding to the landlord's evidence, Mr Waldman commented that Solent Road was a very desirable road and approximately 300 yards from his home and that it could be presented to a very high standard.

18. Responding to the Tribunal's questioning about hardship, Mr Waldman explained that the issues relating to works at the adjacent property and the indifference of his landlord had caused him hardship. His health had suffered and he had suffered financial hardship as he had expended money in instructing a lawyer and surveyor and may have to engage a structural engineer.

### **Landlord's Case**

19. Although the landlord was not represented at the hearing, it had sent in submissions with thereply form. Those submissions included the letting particulars of a single comparable. This is summarised below:
- a. Solent Road, London, NW6 – asking rent £3,800.00 per month. The photograph on the letting particulars show a substantial inner terrace house on two floors but with a roof light, indicating that perhaps the attic space has been developed to provide accommodation. There is a garden to the front. The details state that this house has four double bedrooms, two reception rooms, a family bathroom and an en-suite shower room. It is noted that there is a separate kitchen and that it is a large kitchen/diner. It is further noted that there is a private, west facing rear garden.
20. The letter that accompanied the comparable stated that the average rent of properties of a similar size as the subject property was £3,800.00 per month. From this sum an allowance has been made to reflect the tenant's own decoration, the tenant's provision of white goods and scarcity and therefore it has adopted a rent of £2,680.00 per month.

### **The Decision**

21. The Tribunal is required to determine the rent for the house in accordance with the statutory provisions of the Housing Act 1988 and considering the terms of the tenancy. In the first instance the Tribunal determined what rent the landlord could reasonably be expected to obtain for the property in the open market if it were let today in the condition considered usual for such an open market letting.
22. As to the rental value the Tribunal considers that the evidence produced by both the parties was useful guidance. However, the subject property is a large property with four large bedrooms and a further box room. The reception rooms are spacious and there is a significant cellar area. It is significantly larger than the comparables provided by Mr Waldman and is very similar to the Solent Road property, but maybe even larger. Taking all of the evidence into account and the Tribunal using its knowledge and experience, it is of the opinion that the open market rental value of this property would be in the range of £3,800 per month. However, at this level of rent would represent a house that is let in a re-furnished condition with a modern bathroom and presented with suitable floor

coverings, curtains/window coverings and a range of modern kitchen appliances. In the subject house the bathroom fittings are dated and no flooring or window coverings or modern white goods supplied by the landlord. In addition, the level of rent indicated by the parties would be the rent for houses let on Assured Shorthold Tenancies (ASTs) with the usual repairing obligation place on the landlord. In this case the terms of the tenancy on which Mr Waldman occupies the house means that he has a more onerous repairing obligation. In the opinion of the Tribunal any prospective tenant would make a significant adjustment to their rental bid to reflect this far more onerous repairing obligation than for most ASTs. Although Mr Waldman has a full repairing obligation, it is also clear that he has carried out improvements to the property that go beyond his repairing obligations by installing a good quality kitchen. This is another factor that the tribunal is required to consider when adjusting the open market rental value to ignore the consequence on value of any improvement.

23. Taking those factors into account, the Tribunal believes a prospective tenant would reduce their rental bid by £1,600.00 per month. Therefore, the rent would reduce to £2,200.00 per month. This is not an exact mathematical calculation but is based on the Tribunal's general knowledge and experience of what it considers a prospective tenant would offer for the house. The Tribunal's valuation is set out below:

	£/month
Market Rent	3,800.00
<i>Less</i>	
Lack of carpets, curtains & white goods	)
Basic bathroom	)
Onerous repairing obligation	)
Tenant's Improvements	)
	<u>1,600.00</u>
	2,200.00

24. Accordingly, the Tribunal determines a market rent of £2,200.00 per month for this property to reflect its current condition. This rent will take effect from the date set out in the Notice of Increase, namely 10 August 2019.

**Chairman:** *Helen Bowers*

**Date:** *7 October 2019*

## **APPEAL PROVISIONS**

If either party is dissatisfied with this decision they may apply for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be made within 28 days of this decision (regulation 52 (2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rule 2013. Any appeal in respect of the Housing Act 1988 should be on a point of law.

### **ANNEXE**

#### **Housing Act 1988**

##### **14.— Determination of rent by tribunal.**

(1) Where, under subsection (4)(a) of section 13 above, a tenant refers to the appropriate tribunal a notice under subsection (2) of that section, the appropriate tribunal shall determine the rent at which, subject to subsections (2) and (4) below, the appropriate tribunal consider that the dwelling-house concerned might reasonably be expected to be let in the open market by a willing landlord under an assured tenancy—

- (a) which is a periodic tenancy having the same periods as those of the tenancy to which the notice relates;
- (b) which begins at the beginning of the new period specified in the notice;
- (c) the terms of which (other than relating to the amount of the rent) are the same as those of the tenancy to which the notice relates; and
- (d) in respect of which the same notices, if any, have been given under any of Grounds 1 to 5 of Schedule 2 to this Act, as have been given (or have effect as if given) in relation to the tenancy to which the notice relates.

(2) In making a determination under this section, there shall be disregarded—

- (a) any effect on the rent attributable to the granting of a tenancy to a sitting tenant;
- (b) any increase in the value of the dwelling-house attributable to a relevant improvement carried out by a person who at the time it was carried out was the tenant, if the improvement—
  - (i) was carried out otherwise than in pursuance of an obligation to his immediate landlord, or
  - (ii) was carried out pursuant to an obligation to his immediate landlord being an obligation which did not relate to the specific improvement concerned but arose by reference to consent given to the carrying out of that improvement; and
- (c) any reduction in the value of the dwelling-house attributable to a failure by the tenant to comply with any terms of the tenancy.

(3) For the purposes of subsection (2)(b) above, in relation to a notice which is referred by a tenant as mentioned in subsection (1) above, an improvement is a relevant improvement if either it was carried out during the tenancy to which the notice relates or the following conditions are satisfied, namely—

- (a) that it was carried out not more than twenty-one years before the date of service of the notice; and
- (b) that, at all times during the period beginning when the improvement was carried out and ending on the date of service of the notice, the dwelling-house has been let under an assured tenancy; and
- (c) that, on the coming to an end of an assured tenancy at any time during that period, the tenant (or, in the case of joint tenants, at least one of them) did not quit.



(3A) In making a determination under this section 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, the [appropriate tribunal] 5 shall have regard to the amount of council tax which, as at the date on which the notice under section 13(2) above was served, was set by the billing authority—

(a) for the financial year in which that notice was served, 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 “*rent*” does not include any service charge, within the meaning of section 18 of the Landlord and Tenant Act 1985 , but, subject to that, includes any sums payable by the tenant to the landlord on account of the use of furniture [, in respect of council tax] 6 or for any of the matters referred to in subsection (1)(a) of that section, whether or not those sums are separate from the sums payable for the occupation of the dwelling-house concerned or are payable under separate agreements.

(5) Where any rates in respect of the dwelling-house concerned are borne by the landlord or a superior landlord, the [appropriate tribunal] 7 shall make their determination under this section as if the rates were not so borne.

(6) In any case where—

(a) the appropriate tribunal have before them at the same time the reference of a notice under section 6(2) above relating to a tenancy (in this subsection referred to as “the section 6 reference”) and the reference of a notice under section 13(2) above relating to the same tenancy (in this subsection referred to as “the section 13 reference”), and

(b) the date specified in the notice under section 6(2) above is not later than the first day of the new period specified in the notice under section 13(2) above, and

(c) the appropriate tribunal propose to hear the two references together, the appropriate tribunal shall make a determination in relation to the section 6 reference before making their determination in relation to the section 13 reference and, accordingly, in such a case the reference in subsection (1)(c) above to the terms of the tenancy to which the notice relates shall be construed as a reference to those terms as varied by virtue of the determination made in relation to the section 6 reference.

(7) Where a notice under section 13(2) above has been referred to the appropriate tribunal, then, unless the landlord and the tenant otherwise agree, the rent determined by the appropriate tribunal (subject, in a case where subsection (5) above applies, to the addition of the appropriate amount in respect of rates) shall be the rent under the tenancy with effect from the beginning of the new period specified in the notice or, if it appears to the appropriate tribunal that that would cause undue hardship to the tenant, with effect from such later date (not being later than the date the rent is determined) as the committee may direct.

(8) Nothing in this section requires the appropriate tribunal to continue with their determination of a rent for a dwelling-house if the landlord and tenant give notice in writing that they no longer require such a determination or if the tenancy has come to an end.

(9) This section shall apply in relation to an assured shorthold tenancy as if in subsection (1) the reference to an assured tenancy were a reference to an assured shorthold tenancy.