



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

Case reference : **KA/LON/00BK/MNR/2019/0090**

Property : **Basement Flat, 97 Warwick Avenue, London W9 2PP.**

Applicant : **Ms. A. Dobrzinska and Mr. B. Al. Masri**

Representative : **In person.**

Respondent : **Titan Property Group Limited.**

Representative : **Mr. R. Baum.**

Type of application : **Decision under S.14 Housing Act 1988.**

Tribunal member(s) : **Ms. A. Hamilton-Farey LLB, FRICS,
Ms. J. Dalal**

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

Date of decision : **11 October 2019.**

DECISION

Decision:

The Tribunal determines the market rent for the subject property at £1,800.00 per calendar month, with effect from 10 August 2019.

Background:

1. By an application dated 15 July 2019 the tenants, Ms. Dobrzinska and Mr. Al Masri, sought a determination of the market rent for the subject property (Basement Flat, 97 Warwick Avenue, London W9 2PP) having notice of increase in rent from the landlord, under S.13 of the Housing Act 1988 dated 6 July 2019.
2. The landlord had served a notice proposing an increase in rent from £1,640.00 per calendar month to £2,200.00 per calendar month with effect from 10 August 2019.
3. On 20 August 2019 the tribunal issued directions that required the parties to present their statement of case, together with details of comparable properties/rents in their area on which they wished to rely. The tribunal also asked the parties whether they wished the matter to be dealt with at an oral hearing.
4. The tenants requested an oral hearing, which was then listed for 11 October 2019. The tenants appeared in person. Mr. R. Baum attended on behalf of the landlord.
5. Both parties provided evidence of comparable properties on which they wished to rely. On the part of the landlord the most compelling was that of Flat 2, in the same building, where the rent of £1,750.00 had been agreed, but this was not an 'arms-length' transaction; and for Flat 3 where an open market letting had been agreed at £2,200.00 per calendar month.
6. The tenants provided evidence of various comparable properties in the vicinity with rents ranging from £1,517.00 to £2,200.00 per calendar month.

The hearing and evidence:

7. At the hearing the tenants said that the rent proposed by the landlord was too high, and that the property was 'not in great condition'; that no improvements had been carried out since the start of their tenancy in 201 to the bathroom, hall and in the under-stairs cupboard. They said that they had offered a 10% increase in the rent to the landlord, but this had been rejected.
8. When asked about the comparables relied on by the landlord (Flats 2 and 3), the tenants said that these were superior, did not have any

dampness, and that the properties were in a better condition having been refurbished.

9. The tribunal had been provided with a list of works that had been required by the local authority, and although the landlord's contractors had confirmed to the landlord that these works had been completed, the tenants said that this was not the case. They said that the works were not carried out to a good standard, and further works were required to bring the property up to a good standard, including sealing the cooker to the worktop properly.
10. The tenants also confirmed that the property had not been fully furnished by the landlord and that this should be taken into consideration.
11. Mr. Baum on behalf of the landlord informed us that the property was in an exclusive area, which pushed prices up. It was close to the tube and all other amenities, and that compared with the other flats in the building it represented good value, especially as it had the use of a private garden, which was not included in the other properties. That he had not been informed the works had not been satisfactorily completed and would arrange for any outstanding works to be completed. He confirmed that he was under the impression that the damp proofing to the under stairs area had been completed, but in any event, this area was separate from the living accommodation of the flat.

Inspection:

12. The tribunal inspected the property on 11 October 2019 in the company of the landlord and tenants.
13. The flat is located on the basement floor, of an impressive stucco and painted fronted terrace house, in a popular and convenient location, being close to the tube and other amenities.
14. The flat is accessed from street level via a metal staircase to a basement area, which contains wooden enclosed bin stores and the front door to the flat. Immediately on entry, there is a door to the right-hand side enclosing the under-stairs area. The flat has wooden floors throughout that are in a good condition. The living room to the front contains a small kitchen area with a range of wall and floor units. The 'kick-board' to one unit was lying on the floor at the time of our inspection, and the hob had not been properly sealed to the worktop. We were shown the sofa that belonged to the landlord.
15. The bathroom contains a three-piece white porcelain suite, with fully tiled area to the shower. We noticed a small amount of what appeared to be condensation mould to the cornice above the door. Generally, the room was in a good condition.
16. Two bedrooms are located to the middle/rear of the flat. The first room in the middle was in good condition and contained a double bed, the

frame of which had been supplied by the landlord, as had a wardrobe. The rear bedroom was again in good condition and contained a bedframe and wardrobe supplied by the landlord. Access to the garden was via this rear bedroom. There were some signs of minor damp penetration to the right-hand side of the door frame, and it appeared that there was some water penetration under the garden door.

17. The garden itself was of a good, useful size, surrounded by walls which were in turn in a good condition. The rear elevation of the property was in good condition.
18. The area under the stairs showed signs of dampness, probably caused by water penetration from the steps above. Although the landlord says that this area has been treated, it was too early to say, and the tribunal must consider the condition of the flat on the day of our inspection and not whether repairs had been successful.

The Law:

19. In accordance with the terms of Section 14 of the Housing Act 1988, the tribunal proceeded to determine the rent at which it considered the subject property might reasonably be expected to be let on the open market by a willing landlord under an assured tenancy.
20. 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 14(3) and any reduction in the value caused by a failure of the tenant to comply with any terms of the tenancy. Section 14 is reproduced at the end of these reasons.

The Tenancy:

21. The tribunal was provided with a copy of a tenancy agreement showing that the tenancy started on 10 January 2018 at an initial rent of £1,640.00.

Evidence:

22. The tenant made written representations and provided copies of Rightmove details of similar flats in the area. We were not persuaded by these and explained at the hearing that comparables in the same building are usually more persuasive.
23. The landlord provided the details of the two other flats in the building. Although the rent for Flat 2 had not been agreed as an arms-length transaction, we find the rent for Flat 3 to be too high, for a property that had not been recently upgraded, and which had dampness to the rear bedroom and under stairs. We do not consider the black mould in the bathroom to be caused by damp, but rather by condensation from a lack of ventilation by the tenant. We find on balance that a starting rent for the flat in good condition, upgraded and with the dampness remedied to be £2,200.00 per calendar month.

24. Having concluded that to be the correct rent for the flat, we must make an allowance for the dampness and the minor repairs noted. In addition, we must take into account the fact that Flat 3 had been recently refurbished whereas the subject property had not. We consider that a tenant would reduce their rental bid to reflect these differences and that their bid would be in the region of £1,800.00 per calendar month.

The Decision:

25. The tribunal determines the market rent for the subject property in its current condition is £1,800.00 per calendar month, effective from 10 August 2019.

Hardship:

26. There was no evidence of hardship claimed by the tenant, and the tribunal therefore determines the new rent shall take effect on the date recorded in the Notice of Increase.

Name: Aileen Hamilton-Farey **Date:** 19 October 2019

Housing Act 1988 c. 50

s. 14 Determination of rent by tribunal.

14.— Determination of rent by [tribunal]¹.

(1) Where, under subsection (4)(a) of section 13 above, a tenant refers to [the appropriate tribunal]² a notice under subsection (2) of that section, the [appropriate tribunal]³ shall determine the rent at which, subject to subsections (2) and (4) below, the [appropriate tribunal]³ 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.

(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]⁸ 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]⁹ propose to hear the two references together,

the [appropriate tribunal]⁹ 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]¹⁰, then, unless the landlord and the tenant otherwise agree, the rent determined by [the appropriate tribunal]¹¹ (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]¹² 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]¹³ 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.

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).