



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

Case reference : **KA/LON/00BC/MNR/2019/0089**

Property : **7 Barnes Court, Durham Avenue,
Woodford Green, IG8 7NY**

Applicant : **Mr Tomasz Serafin**

Representative : **None**

Respondent : **Adobe Estate Agency**

Representative : **None**

Type of application : **Market Rent under s13 & 14 of the
Housing Act 1988**

Tribunal member(s) : **Tribunal Judge Brandler
Mrs Alison Flynn MA MRICS**

**Date and venue of
hearing** : **27th September 2019 at 10 Alfred
Place, London WC1E 7LR**

Date of decision : **27th September 2019**

**Date of reasons for
decision** : **29th September 2019**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the market rent is £1156.00 per month.
- (2) The tribunal makes the determinations as set out under the various headings in this decision.

The application

1. The applicant seeks a determination pursuant to section 13 & 14 of the Housing Act 1988 following the service of a notice by the landlord proposing a rent increase to £1300.00 per month from the rent previously payable of £1150.00 per month.

Background

2. On 11th July 2019 the landlord served a notice of rent increase proposing a new rent of £1300.00 per month in place of the existing rent of £1150.00 per month. The starting date for the new rent would be 6th September 2019.
3. On 26th July 2019 the tenant, Mr Serafin, made an application to this tribunal challenging the increase. The application indicated that Mr Serafin had been the tenant since 6th December 2017 and set out the repairing obligations.
4. In a letter dated 3rd September 2019 Mr Serafin challenged the rent increase telling us that he had lived at the property with his family since the start of the tenancy. He reports that he had viewed the property on two occasions before taking a tenancy. He says that the property had been unoccupied for three months prior to his tenancy commencing and there had been very little interest in the property. The location of the property is a 20 minute walk from the tube, 15 minute walk from the bus stop, supermarkets are 20 minute walk, schools are a 14 minute walk. The property does not have a balcony and is an old building with hidden defects such as no sound proofing of the floor and walls and they suffer noise from the neighbours.
5. Mr Serafin advises that a month after moving into the property he found out that the landlord did not have permission from the freeholders to let out the property. He took the flat specifically because it had laminate flooring because his son has an allergy and carpets make this worse. It seems that the terms of the lease may not allow laminate flooring and the landlord wants to change the flooring.
6. Mr Serafin includes some comparable details with his letter.
7. By a letter dated 17th August 2019 the landlord's agents wrote to the Tribunal and provided some comparables.

The Hearing

8. Mr Serafin attended the hearing alone. The landlord did not attend.

9. Mr Serafin told the Tribunal that the Landlord had previously brought possession proceedings by way of a s.21 Notice. This action was dismissed by the Court because the landlord had not provided a gas safety certificate at the beginning of the tenancy. Since then Mr Serafin has received a section 8 notice brought on nuisance and overcrowding. He tells us that he has asked the landlord for evidence of the noise nuisance alleged, but to date the landlord has not provided this. Mr Serafin accepts that when he moved in he had two children, and they are now expecting their 4th child. The children are aged 9,6, and 1 year 4months.
10. Mr Serafin would like to stay at the property. He tells us there are no rent arrears and he is working hard to pay the rent. He works all the over time offered. His wife has had to give up work because she is about to give birth and so the family's income is reduced.
11. He has just managed to get his older children into a local school. Previously they had a very long journey to school.
12. Problems in the flat are that the fridge works intermittently and he has told the landlord about this.
13. Mr Serafin had negotiated a £50 per month reduction in the rent before taking the tenancy to £1150.00 per month.
14. Mr Serafin had taken the day off work so that he could present his case to the Tribunal.

Inspection

15. The tribunal inspected the property on the same day in the afternoon. The property was in a fair condition for type and age. Mr Serafin was present at the hearing, together with his wife, 3 children and another family member. The landlord did not attend.
16. The flat is on the second floor of a purpose built block of flats with no lift. It is in a quiet residential location. The flat contains 1 living room, 2 double bedrooms, 1 bathroom and kitchen. The bathroom is very small. It contains a bath, shower within the bath with shower screen, handbasin and WC. The kitchen is also small. Although there is a very small table against the wall, there is insufficient space to consider this as a dining area.
17. The property is located in a quiet residential road some distance from shops or transport.
18. The tribunal noted that the tenant keeps the property in very good decorative order. The flat was also kept extremely tidy. In spite of having a large family, the flat was kept in really good order, with no clutter and spotlessly clean.
19. The general external repair and decoration was good, other than the canopy of the front entrance looking slightly worn.
20. There are no services provided by the landlord.

Evidence

21. The tribunal received written representations from both the tenant and the landlord which were taken into account.

22. The tenant having requested a hearing, made oral representations at that hearing.

The Law

23. We must first determine that the landlord's notice under section 13(2) satisfied the requirements of that section and was validly served.
24. The Housing Act 1988, section 14 requires us 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.
25. In so doing we are required by section 14(1), to ignore the effect on the rental value of the property of any relevant tenant's improvements as defined in section 14(2) of that Act.

Valuation

26. In coming to its decision, the tribunal had regard to the representations made by the tenant and the landlord. We are not entitled to have regard to the financial position of the landlord or of the tenant. The matters we are required to take into account are set out in section 14 of the Act which we have summarised above.
27. Drawing on the member's own knowledge and experience of market rent levels in the area of Redbridge we concluded that an appropriate open market rent for the subject property in good repair and with the amenities required by the market would let at a rent of around £1250.00 per calendar month.
28. However, we considered this must be reduced to reflect the fact that the subject property is not in the condition considered appropriate for a modern letting at a full market rent. The tenant's own curtains, the canopy at the front entrance, and the tenancy obligations would all affect the full market rent. In our finding a deduction around 7.5% is necessary to reflect the difference between the subject property and an open market property. This has the effect of reducing the assessed open market rent for a modernised property from £1250.00 to £1156.25 per month for the subject property. We therefore determine the rent to be rounded down to £1156.00 per month with effect from 27th September 2019.

Effective date

29. Under s14 (7) of the Housing Act 1988 the effective date of the decision would normally be the date shown on the application unless there is hardship to the tenant.
30. The tribunal received evidence of hardship in Mr Serafin's written and oral submissions, that Mrs Serafin is about to give birth and cannot work at the moment thus reducing the family's income. The Tribunal accepted the submission of hardship, and therefore determine that the new rent is to take effect from the date of the Tribunal hearing,

D. Brandler

Name: Tribunal Judge Brandler

Date: 29th 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).

THE LEGISLATION

Housing Act 1988

s.13.— Increases of rent under assured periodic tenancies.

(1) This section applies to—

(a) a statutory periodic tenancy other than one which, by virtue of [paragraph 11](#) or [paragraph 12 in Part I of Schedule 1](#) to this Act, cannot for the time being be an assured tenancy; and

(b) any other periodic tenancy which is an assured tenancy, other than one in relation to which there is a provision, for the time being binding on the tenant, under which the rent for a particular period of the tenancy will or may be greater than the rent for an earlier period.

(2) For the purpose of securing an increase in the rent under a tenancy to which this section applies, the landlord may serve on the tenant a notice in the prescribed form proposing a new rent to take effect at the beginning of a new period of the tenancy specified in the notice, being a period beginning not earlier than—

(a) the minimum period after the date of the service of the notice; and

(b) except in the case of a statutory periodic [tenancy—]

[

(i) in the case of an assured agricultural occupancy, the first anniversary of the date on which the first period of the tenancy began;

(ii) in any other case, on the date that falls 52 weeks after the date on which the first period of the tenancy began; and

]

(c) if the rent under the tenancy has previously been increased by virtue of a notice under this subsection or a determination under [section 14](#)[below—]

[

(i) in the case of an assured agricultural occupancy, the first anniversary of the date on which the increased rent took effect;

(ii) in any other case, the appropriate date.

]

(3) The minimum period referred to in subsection (2) above is—

(a) in the case of a yearly tenancy, six months;

(b) in the case of a tenancy where the period is less than a month, one month; and

(c) in any other case, a period equal to the period of the tenancy.

[

(3A) The appropriate date referred to in subsection (2)(c)(ii) above is—

(a) in a case to which subsection (3B) below applies, the date that falls 53 weeks after the date on which the increased rent took effect;

(b) in any other case, the date that falls 52 weeks after the date on which the increased rent took effect.

(3B) This subsection applies where—

(a) the rent under the tenancy has been increased by virtue of a notice under this section or a determination under [section 14](#) below on at least one occasion after the coming into force of the [Regulatory Reform \(Assured Periodic Tenancies\) \(Rent Increases\) Order 2003](#); and

(b) the fifty-third week after the date on which the last such increase took effect begins more than six days before the anniversary of the date on which the first such increase took effect.

]

(4) Where a notice is served under subsection (2) above, a new rent specified in the notice shall take effect as mentioned in the notice unless, before the beginning of the new period specified in the notice,—

(a) the tenant by an application in the prescribed form refers the notice to [the appropriate tribunal] ; or

(b) the landlord and the tenant agree on a variation of the rent which is different from that proposed in the notice or agree that the rent should not be varied.

(5) Nothing in this section (or in section 14 below) affects the right of the landlord and the tenant under an assured tenancy to vary by agreement any term of the tenancy (including a term relating to rent).

s.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]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.

[

(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] 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] 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] 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]⁹ 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,

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.