



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

Case reference : **KA/LON/00AE/MNR/2019/0082**

Property : **Flat D, 59 High Rd, London
NW10 2SU**

Applicant : **Mr Robert Moran**

Representative : **Robert Wilson Solicitors, Maida
Vale London**

Respondents : **RDB Properties Ltd**

Representative : **Irwin Mitchell LLP Solicitors,
Holborn Viaduct London**

Type of application : **Sections 13 and 14, Housing Act
1988**

Tribunal members : **Mr Charles Norman FRICS
(Valuer Chairman)
Mr L Packer**

Date of Decision : **26 January 2020**

Date of Reasons : **26 January 2020**

REASONS

Background

1. On 26 June 2019 the tenant of the above property referred to the Tribunal a notice of increase of rent served by the landlord under section 13 of the Housing Act 1988 (“the Act”).
2. The landlord’s notice, which proposed a rent of £2,200 per month is dated 13 May 2019. The notice proposed a starting date for the new rent of 7 July 2019. The rent passing was £710.50 per month. That was the rent determined by the Rent Officer on 30 July 2018 under a regulated tenancy pursuant to the Rent Act 1977. Subsequently, the tenant passed away and the applicant succeeded to the tenancy by statutory succession.
3. The application gave rise to a jurisdictional question. This was considered as a preliminary issue by a separate division of the Tribunal which held, by a decision dated 20 September 2019, that the landlord’s notice was valid, that the present tenant held a statutory periodic tenancy and that the tenancy commenced on the 7th of the month.
4. Also, on 20 September 2019, the Tribunal issued directions setting the matter down for determination by written representations, unless either party requested a hearing, which neither did. The Tribunal gave notice of inspection on 22 November 2019 at sometime after 10 AM. The landlord was directed by 4 October 2019 to send written representations including details of any lettings of similar properties upon which it wished to rely and any other reasons it wished the Tribunal to consider. The tenant was directed by 11 October 2019 to send a written statement as to why he considered the proposed rent to be too high, including details of any lettings of similar properties upon which he wished to rely, a copy of the tenancy agreement, details of any improvements carried out at the tenant’s expense and any other reasons it wish the Tribunal to consider. The landlord was permitted to provide a brief response to the points raised by the tenant by 18 October 2019.

The Landlord’s Case

5. The landlord’s solicitor put forward two comparables downloaded from Zoopla on 13 December 2019. The first was described as a four bedroom flat to rent at Station Terrace, Kensal Rise London NW10 at an asking rent of £2,383 per calendar month. This property was stated as having four bedrooms and two bathrooms and a reception room. One of the bathrooms was ensuite. There was also a roof terrace. The second comparable was described as a four bed maisonette at Summit Court, 43-53 Shoot Up Hill, Kilburn NW2 at an asking rent of £2,297 per calendar month. This was described as having four bedrooms, two bathrooms, reception room, additional WC, balcony and was furnished. It was in an ex-local authority building. In respect to the tenants comparables (see below), the landlord submitted that one of the

comparables [Aylesbury Street Neasden] appeared to date from 2017 and the other [Ivy Road Cricklewood] although from 2019, was not further dated as to month or day.

The Tenant's case

6. On 11 October 2019 the tenant solicitors provided a submission. The covering letter stated that exhibits would follow with a hard copy of. No such exhibits were received by the Tribunal, save for photographs showing the interior of the property. The submission may be summarised as follows. The proposed rent of £2,200 per month is unreasonable, excessive and unrealistic. Market rents in the area for three-bedroom furnished properties are £1,850 per calendar month. Unfurnished properties would be cheaper than £1850 per calendar month. It was also said that a four-bedroom furnished property in the area attracted a rent of £2,000 pcm and it was therefore highly unreasonable for the landlord to expect to achieve a rent of £2,200 for a three bedroom unfurnished property. The tenant submitted that the property suffered from disrepair. There had been a recurring leak from the roof since May 2018 and a list of dates in relation to leaks in 2018 and 2019 was given. Leaks were said to arise from common parts of which the landlord had control. The landlord had made no effort to rectify any of the damage. The property was in an appalling state. The appellant had installed central heating in autumn 2014. The landlord carried out rewiring on 1 October 2019 but making good was not carried out and the tenant completed those works. The tenant submitted that the Tribunal should not take into account improvements made by the appellant following *Preston v Area Estates Ltd and London Rent Assessment Panel* [2014] EWHC 1206 (admin). The Tribunal was asked to determine the rent below at a level £710.50 per calendar month. The tenant supplied a copy of two comparables. Aylesbury Street Neasden was a 4 bedroomed house. The particulars were dated 2017 with an asking rent of £2000 pcm. Ivey Road Cricklewood was a 3 bedroom garden flat with 2 double and 1 single bedroom modern fitted kitchen with appliances and central heating. It appeared to be dated 2019/09. The asking rent was £1,850 pcm.

Inspection

7. On 22 November 2019 the Tribunal carried out an inspection in the presence of the tenant and his mother. The landlord did not attend and was not represented.
8. The property comprises a second floor converted flat above a shop in a suburban parade dating from around 1880. Access is provided via a doorway in the parade frontage and staircase. There is no lift. The property comprises a living room, one double bedroom, two single bedrooms, bathroom, kitchen/diner and hallway. There is gas central heating. The property is in poor condition. The bathroom is poorly fitted with installations at least 20 years old. The kitchen/diner has an

old fitted kitchen in poor condition. The living room was not in use having a PVC membrane hanging from the ceiling for the purpose of collecting leaks. However, the Tribunal did not note any such leaks during its inspection. One of the single bedrooms had significant damage caused by damp and plaster damage to a wall. The Tribunal considered that the irregular shape of the internal rooms and layout of the flat gave rise to an awkward internal arrangement. The property is situated in a very busy location about 500m from Willesden Green underground station.

The law

9. The law as to the Tribunal's approach is given at section 14 of the Act which insofar as relevant is as follows:

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

[...].

(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; [...]

(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;

Findings

10. The Tribunal did not find the landlords' comparables helpful as these related to 4 bedroomed properties with 2 bathrooms. The Tribunal also rejected the tenant's comparable which appeared to relate to 2017. The remaining comparable was that in Ivy Road Cricklewood. This was some distance from the subject property but the closest comparable in terms of accommodation. The Tribunal therefore accepted it, subject to adjustment. The Tribunal firstly adjusted it by £75 pcm to reflect the fact that this had 2 double bedrooms as against the subject property which only had one. This gave an adjusted rent of £1,775 pcm. However, this sum related to a modern market letting of the property in the condition considered usual for such a letting. The subject property was not in such a condition and the Tribunal was therefore required to make adjustments to reflect the actual condition of the property. It was also necessary for the Tribunal to reflect the more onerous terms and conditions relating to an assured tenancy as compared to an assured shorthold tenancy (as the usual basis of modern lettings) and the absence of landlords' white goods. The Tribunal considered it necessary to make the following adjustments to reflect the above factors:

Location above shops on second floor without lift	10%
Condition of bathroom	10%
Condition of kitchen	10%
Damp and disrepair to bedroom wall	10%
Awkward internal arrangement	5%
Terms and conditions & lack of white goods	5%
Total	50%

11. The Tribunal did not identify any relevant improvements to be disregarded having regard to section 14 of the Act (see above). This is because historic improvements undertaken by the tenant during a Rent Act tenancy fall to be rentalised once statutory succession has taken place and because the repair work to walls following rewiring is not an improvement but a repair.
12. For the above reasons the Tribunal determined that the market rent under the current assured tenancy was £1,775 per calendar month less 50% or £887.50 per calendar month. This is to take effect from 7 July 2019 being the date specified in the landlord's notice.

Mr Charles Norman FRICS

ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.
- If a party wishes to appeal against 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.