



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

Case reference : **LON/00AE/MNR/2019/0146**

Property : **8 Victoria Mews, Kilburn, London
NW6 6SY**

Applicant : **Mr Jeremy Drewett**

Representative : **In Person**

Respondent : **Grainger Plc**

Representative : **N/A**

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

Tribunal member(s) : **Tribunal Judge Brandler
Mr Shaw FRICS**

**Date and venue of
hearing** : **28th February 2020 at 10 Alfred
Place, London WC1E 7LR**

Date of decision : **28th February 2020**

**Date of reasons for the
decision** : **1st March 2020**

DECISION

Decision of the tribunal

- (1) The tribunal determines that the market rent is £880.00 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 dated 3rd October 2019 by the landlord proposing a rent increase to £908.33 per month from 1st December 2019, rising from the rent previously payable of £858.33 per month.
2. On 11th November 2019 the Tribunal received an application under section 13 of the Housing Act 1988. The landlord's notice of rent increase was included with the application.
3. On 6th December 2019 the Tribunal issued directions.
4. The applicant requested an oral hearing. The Respondent did not return the reply form sent by the Tribunal.
5. The applicant made written submission and included comparables. The Respondent made no submissions.

Background

6. The applicant has been a tenant at 8 Victoria Mews, Kilburn, London NW6 6SY ("the property") for many years. His parents originally moved into the property in 1973 and were protected under the Rent Act 1977. His mother moved away, and the applicant lived at the property until his father's death. The Applicant then succeeded to the tenancy which became assured. The rent was increased thereafter from £283.33 to £780 per month from 1st January 2016 assessed at a Tribunal hearing. The rent was then increased in September 2018 to £858.33. The tenant did not appeal that increase.
7. The property is a flat on the first floor and the tenancy includes sole use of two rooms, one kitchen and a WC/shower room.
8. Whilst the applicant's father was alive and was the tenant, he carried out improvement works to the property converting it from a storage unit to living accommodation. This included putting in a kitchen,

central heating, a shower and WC and rebuilding the walls and decoration.

9. By a letter dated 3rd November 21019 the applicant made submissions opposing the rent increase. These include:-
 - (a) That the property was in a poor state when his parents became tenants and works were carried out to make it habitable whilst his father was the tenant.
 - (b) The front door and windows needed urgent attention and he sanded them down, renewed putty, applied undercoats and painted them. The roof gully contained some leaves and there was a historic leak which he resolved.

Hearing

10. Mr Drewett, the applicant, appeared in person. He was accompanied by his mother Mrs Drewett and a friend, Mrs Holt.

Evidence

11. Mr Drewett explained the history of the tenancy and the works that had previously been carried out during his father's tenancy, and the works carried out since 1.1.2016. These include sanding and painting the front door, some works to the windows and removing some leaves from the roof and installation of some lead to resolve a leak. The landlords have been to the property to make safe some wiring under the boiler and on the electricity fuse board.
12. Photographs showing the internal and external condition of the property were discussed. In particular the works described above.
13. The landlords had previously tried to put up the rent with an invalid notice in October 2019 but they had withdrawn that notice.
14. Comparables were provided by the tenant, but were either not comparable in size, or in relation to the property located at 8a Victoria Mews, the downstairs flat, the comparable was dated 2016.

Inspection

15. The Tribunal inspected the property on the same day in the company of Mrs Drewett.

16. The Tribunal at inspection found the property to be in good condition for type and age. It is a very compact property, decoratively well maintained and very neat and tidy. It appears to have been originally converted from a coach or stable block many years ago. The properties along Victoria Mews appear to have all been converted in the same manner. The mews itself is a quiet narrow road with limited parking. Some external maintenance, mainly to the roof, is required.
17. The property is accessed from its own front door up some narrow tread stairs to the first floor. A small landing leads into the compact living room which is decoratively in good order.
18. From the landing there is access to a very small room containing a WC and shower. There is no handbasin.
19. At the top of the stairs is a door to the kitchen containing all the original cupboards installed by the applicant's father. The white goods belong to the tenant. The boiler having also been installed by the applicant's father during his tenancy.
20. The bedroom is compact and decoratively well maintained.

The Law

21. We must first determine that the landlord's notice under section 13(2) satisfied the requirements of that section and was validly served.
22. 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.
23. 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

24. In coming to its decision, the tribunal had regard to the representations made by the tenant. 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.
25. The tribunal taking all of this into account considered that property would be worth £1100.00 per month in the open market in fully modernised condition. However, taking into account the terms and

conditions, the tenant's own carpets, curtains, white goods and repairs carried out to the property himself during his own tenancy since 1.1.2016, a deduction of 20% was applied and the reduced market rent to be determined for this property is £880.00 per month.

Effective date

- 26. 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.
- 27. No application was made in relation to hardship. The effective date is therefore the date shown on the application, that is 1st December 2019.

Effective date

- 28. 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.
- 29. As the rent remains the same as previously charged, any argument of hardship would not be relevant. In any event the tribunal received no evidence of hardship. The effective date of the decision is 4th June 2019.

D. Brandler

Name: Tribunal Judge Brandler

Date: 1st March 2020

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.

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(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.

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(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.

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(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.

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(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]² 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.