



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

Case Reference : **LON/00AW/MNR/2018/0069**

Property : **408A, Kings Road, London, SW10 0LJ**

Tenant : **Mr T Isenschmid**

Landlord : **Witton Properties Limited**

Date of Referral : **4 April 2018**

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

Tribunal : **Mrs H Bowers MRICS**

Date of Determination : **30 June 2020**

DECISION IN RESPECT OF AN APPLICATION TO SET ASIDE

The Tribunal will not set aside its decision and provides its reasons below.

© CROWN COPYRIGHT 2020

DECISION

Background:

1. By an application dated 4 April 2018, Mr Thomas Isenschmid, the tenant of 408A, Kings Road, Chelsea, London, SW10 0LJ (the subject property) referred to the First-tier Tribunal (the Tribunal) a notice of increase of rent served by the landlord under section 13 of the Housing Act 1988 (the 1988 Act). The Tribunal determined the rent on 26 October 2018. However, following an appeal to the Upper Tribunal, the case was remitted to the First-tier Tribunal for a re-determination. A hearing was held on 5 March 2020 and a decision dated 30 March 2020 was issued on 5 May 2020 due to the practical problems arising from the Covid-19 pandemic.
2. Mr Isenschmid has corresponded with the Tribunal about the decision and on 15 June 2020 he made an application for the decision to be set aside under Rule 51 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the Rules.) An extract of Rule 51 is attached to this decision.
3. Mr Isenschmid's position is that he seeks the decision to be set aside on the basis of Rule 51 (2)(c). He explained that he had to leave the hearing as he had to collect his children from school and he was not in attendance when his wife made a crucial mistake about the rent. He explained that his wife was fatigued and misunderstood the question regarding what would be considered to be a fair rental sum.
4. The Tribunal would comment that during the course of the hearing the Tribunal understood the pressures on Mr Isenschmid and his family commitments and with the agreement of Mr and Mrs Isenschmid structured the hearing to allow his participation as much as possible and with Mrs Isenschmid to present the evidence and make submissions in relation to the rental value. Although Mr Isenschmid did leave the hearing, he was still represented by his wife and a friend Mr Martindale. It should be noted that Mr Martindale provided some input into the hearing.
5. The Tribunal took particular care to understand the position of each party. The Tribunal was aware that the parties' views on rental value could be crucial. When both parties indicated a similar rental range for the flat in its current condition, the Tribunal took the opportunity to repeat back to the parties that there was little difference between them. As recorded in paragraph 40 of the decision Mrs Isenschmid clearly stated her view of the value of the property in repair and the value in its current condition. When reaching its decision, the Tribunal not only took the view that the parties were within the same valuation range of the flat in its current condition, but also considered the whole range of evidence presented by the parties as noted in paragraph 42.

6. The Tribunal received submissions on behalf of Witton Properties Limited on the issue of whether the decision or part of it should be set aside. It is stated that the various communications that Mr Isenschmid had with the Tribunal about the issue of the alleged mistake should have amounted to an application to set aside and that had been dealt with by the Tribunal and therefore there should be no second opportunity to seek to set aside the decision. That the first enquiry about setting the decision aside was within the timeframe permitted by the Tribunal's Rules, but that had been dealt with by the Tribunal, but this second application for set aside is out of time and there has been no application for an extension to the time limits. As to the conditions in Rule 51(2) (c), this would be relevant when a party had not attended the hearing at all and had not been represented. In this case Mr Isenschmid did attend. There had been a discussion between himself and his wife as to who should remain at the hearing and when Mr Isenschmid did leave, he was still represented by his wife and Mr Martindale. Finally, Rule 51 would only apply if it was in the interests of justice to set aside the decision. The landlord's representative's recollection of the issue as to the rental value was that the Tribunal's question as to rent was clearly expressed and that Mrs Isenschmid knew exactly what she was being asked and that she had made no mistake. In any event the comments of Mrs Isenschmid and of the landlord's representative was only part of the factors considered by the Tribunal made its decision. The Tribunal had inspected the property, considered the comparables from both parties and made its determination as an expert Tribunal.

Decision:

7. The Tribunal considers that the email from Mr Isenschmid of 15 June 2020 was an application for the decision to be set aside. The earlier correspondence amounted to queries as to how the tenant could proceed. The application for a set aside should have been made within 28 days of the Tribunal's reasons and it was not. The Tribunal does have a discretion to lengthen any time limit under Rule 6 of the Rules and it does so in this case, even though there was no formal request for any extension of time.
8. Under Rule 51 the Tribunal has a discretion as to whether or not it sets aside a decision or part of a decision if it considers that it is in the interests of justice to do so and one of the conditions in Rule 51(2) is satisfied.
9. The only condition that Mr Isenschmid relies upon is under Rule 51(2)(c). However, Mr Isenschmid was present for most of the hearing and when he left he was represented by his wife and Mr Martindale. Therefore condition 51(2)(c) is not satisfied. The Tribunal will also comment that it does not consider that it would be in the interests of justice for the decision to be set

aside. As has been explained in paragraph 5, the Tribunal fully explored with Mrs Isenschmid her comments in relation to the rental value, we do not think she misunderstood what was being asked of her. Her comments and those of the landlord's representative were only part of the evidence the Tribunal considered in reaching its decision. Therefore, the Tribunal does not consider that it would be in the interests of justice to set aside its decision and will not do so.

Chairman:

Helen Bowers

Date: 30 June 2020

Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

Rule 51 - Setting aside a decision which disposes of proceedings

(1) The Tribunal may set aside a decision which disposes of proceedings, or part of such a decision, and re-make the decision or the relevant part of it, if—

(a) the Tribunal considers that it is in the interests of justice to do so; and

(b) one or more of the conditions in paragraph (2) are satisfied.

(2) The conditions are—

(a) a document relating to the proceedings was not sent to, or was not received at an appropriate time by, a party or a party's representative;

(b) a document relating to the proceedings was not sent to or was not received by the Tribunal at an appropriate time;

(c) a party, or a party's representative, was not present at a hearing related to the proceedings;
or

(d) there has been some other procedural irregularity in the proceedings.

(3) A party applying for a decision, or part of a decision, to be set aside under paragraph (1) must make a written application to the Tribunal so that it is received—

(a) within 28 days after the date on which the Tribunal sent notice of the decision to the party;
or

(b) if later, within 28 days after the date on which the Tribunal sent notice of the reasons for the decision to the party.