

## Notice of the Tribunal Decision and Register of Rents under Assured Periodic Tenancies (Section 14 Determination)

Housing Act 1988 Section 14

### Address of Premises

13 Milton Road, London, W3 6QA

### The Tribunal members were

Richard Waterhouse MA LLM FRICS

### Landlord

A. Moussaioff

### Address

76a Westbourne Grove, London, W2 5SH

### Tenant

Mr Tracy Elner

1. The rent is: £ 1300 Per month (excluding water rates and council tax but including any amounts in paras 3)

2. The date the decision takes effect is: 7<sup>th</sup> September 2021

\*3. The amount included for services is/is negligible/not applicable nil Per

\*4. Service charges are variable and are not included

5. Date assured tenancy commenced October 1991

6. Length of the term or rental period Monthly

7. Allocation of liability for repairs Tenants' internal decoration  
remainder landlord

### 8. Furniture provided by landlord or superior landlord

All original furniture has been replaced by tenant prior to landlord's ownership of the property.

### 9. Description of premises

Terraced house , 2 bedroom, 1 living room, a kitchen and a bathroom .

Chairman

**Richard  
Waterhouse MA  
LLM FRICS**

Date of Decision

**12<sup>th</sup> November  
2021**



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

**Case reference** : **LON/OOAJ/MNR/2021/0149**

**Property** : **13 Milton Road, W3 6QA**

**Applicant** : **Mr Tracy Elner**

**Representative** : **In Person**

**Respondent** : **Mr Moussaioff**

**Representative** : **In person**

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

**Tribunal  
member(s)** : **Mr Richard Waterhouse MA LLM  
FRICS**

**Date and venue of  
hearing** : **12<sup>th</sup> November 2021 Remote hearing on  
the papers**

**Date of Decision** : **12<sup>th</sup> November 2021**

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**DECISION**

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## **Decision of the tribunal**

The tribunal determines the rent at £1300 per month. The rent to have effect from the date in the landlords notice of 3<sup>rd</sup> August 2021.

## **Background**

1. The tribunal received an application under section 13 of the Housing Act 1988 on 25<sup>th</sup> August 2021. This included the landlord's notice proposing a new rent to commence on 3<sup>rd</sup> August 2021.
2. Neither party requested an oral hearing and written representations were received from the applicant.
3. The property comprises a two-storey house, double glazed and centrally heated ,2 bedrooms, 1 living room, bathroom with WC. There is a small garden. The property was let with carpets with the tenant supplying the curtains and white goods.
4. The applicant relies on the application form that the rent proposed is above market rent and accompanying or subsequent submissions.
5. The respondent has made no submissions.

## **The Law**

6. The tribunal first had to determine that the Tribunal had jurisdiction to hear the Application to determine a rent under S14 of the Housing Act 1988. In short, the tribunal must determine that the Landlord's notice under Section 13(2) satisfied the requirements of that section and was validly served.
7. The Act provides in section 13 (2) as amended by the Regulatory Reform (Assured Periodic Tenancies) (Rent Increases) Order 2003 that the date in paragraph 4 of the Landlord's notice (the date the new rent becomes payable) must comply with three requirements.
8. The first requirement is that a minimum period of notice must be given before the proposed new rent can take effect.
9. The second requirement is that the starting date must not be less than 52 weeks after the date on which the rent was last increased using this procedure although there are exceptions to this.

10. The third requirement is that the proposed new rent must start at the beginning of a period of the tenancy.
11. In the present case, the tenancy started October 1991. No tenancy agreement was supplied, and no contentions were made challenging the validity of the Rent Increase Notice.
12. Section 14 of the Housing Act 1988 requires the tribunal 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.
13. Only if a landlord's notice complies with each of the requirements referred to above does a tribunal have jurisdiction to determine a rent under section 14 of the Act.

#### **14. Tenant's submissions**

15. The Application form dated 25<sup>th</sup> August 2021 noted that the furniture within the property was originally supplied by the landlord, predecessor in title to current landlord. The current furniture and white goods are supplied by the tenant.
16. In an undated letter by the Tenant in response to the Tribunal letter of 7<sup>th</sup> September, it was noted that the Notice of Increase included an error stating the first rent increase after the 11<sup>th</sup> February 2003 was 27<sup>th</sup> January 2009.
17. Further submissions were received by letter dated 30<sup>th</sup> October 2021 which included photographs of the property. These showed areas of mould around UPVC windows/door, trim missing at carpet level, rust in shower and cracking in a ceiling.
18. In letter dated 12<sup>th</sup> October, the Tenant makes submissions on rental level. Noting the neighbouring property, no 11 which it was submitted was in better condition but had a passing rent of £ 1450 per month that had been in place since 2015.
19. Additionally, information from the letter of 12<sup>th</sup> October noted various disrepair issues and the cites an opinion by Mr Hammonds a senior sales manager of Aston Rowe that the market had declined 4 to 6% as of 2021.

#### **20. Landlord submissions**

21. No submissions were received from the landlord

#### **14. The Decision**

15. The tribunal determined that these three requirements for a valid application were met.
16. In coming to its determination under section 14, the tribunal relied on its own general knowledge of rental levels in the area and evidence supplied by the appellant.
17. The condition of the property is less than would be needed to command a market rent of properties in good order.
18. The next door comparable of number 11 has weight although the specific detail of the property is not known, and the rent has been in place since 2015.
19. Given the size and nature of the accommodation, the tribunal determines the rent at £1300 per month effective from date in the landlords notice of increase.

**Name:** Tribunal Judge Waterhouse

**Date:** 12<sup>th</sup> November 2021

## **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.

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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]<sup>3</sup> shall determine the rent at which, subject to subsections (2) and [\(4\)](#) below, the [appropriate tribunal]<sup>3</sup> 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]<sup>2</sup> 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.