

Notice of the Tribunal Decision and Register of Rents under Assured Periodic Tenancies (Section 22 Determination)

Housing Act 1988 Section 22

Address of Premises

Flat 6 Cumberland Court, Great Cumberland Place, London, W1H 7DP

The Tribunal members were

MR A Harris LL.M FRICS FCI Arb

Landlord

Golden Eagle International

Address

10 Portman Street, London, W1H 6DZ

Tenant

Ms Sayeda Abdelrazik & Ms Ariane Mahon

1. The rent is: £

1841.66

Per

month

(excluding water rates and council tax but including any amounts in paras 3)

2. The date the decision takes effect is:

27 February 2021

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

Per

*4. Service charges are variable and are not included

5. Date assured tenancy commenced

27 February 2021

6. Length of the term or rental period

Monthly

7. Allocation of liability for repairs

As per agreement

8. Furniture provided by landlord or superior landlord

none

9. Description of premises

2nd floor 2 bedroom purpose built flat

Chairman

A Harris

Date of Decision

11 November
2021



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

Case reference : **LON/00BK/MNR/2021/0146**

HMCTS code (paper, video, audio) : **V:CVPREMOTE**

Property : **Flat 6 Cumberland Court, Great Cumberland Place, London, W1H 7DP**

Applicant : **Ms Sayeda Abdelrazik & Ms Ariane Mahon**

Representative : **In Person**

Respondent : **Golden Eagle International**

Representative : **Mr P Siha - In House**

Type of application : **Market Rent under s22 of the Housing Act 1988**

Tribunal member(s) : **Mr A Harris LLM FRICS FCI Arb**

Date and venue of hearing : **11 November 2021 at 10 Alfred Place, London WC1E 7LR**

Date of decision : **11 November 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was CVPREMOTE with all participants joining from elsewhere. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that the Tribunal were referred to are in a bundle, the contents of which have been noted. The order made is described below.

Decisions of the tribunal

- (1) The tribunal determines that the market rent is £1841.66 (one thousand eight hundred and forty one pounds 66p) per calendar 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 22 of the Housing Act 1988 following the grant of an assured shorthold tenancy for 24 months beginning on 27 February 2021 at a commencing rent of £1841.66 per month (£425.00 per week). The application to the tribunal was dated 23 August 2021 and is in and is within the six-month period allowed in section 22.

The property

2. The subject property is a 2nd floor flat with accommodation consisting of 3 rooms kitchen and bathroom/WC. The flat has central heating and double glazing.

3. The Tenant's evidence

4. The tenant's evidence included a description of how they came to take the tenancy and of the viewings undertaken which were in the evening or at weekends. Although it was obvious that there was a building site next door, it was not apparent the degree of noise which would come from the site and through the party wall. There were not able to see outside the fire escape door which would have shown the proximity of the building work to the flat.
5. In response to questions from the landlord, the tenants agreed that they were aware there was a building site next door.
6. The tenant stated they had complained to Westminster Council about the building noise but by the time Council officers attended the noise had usually abated. Complaints were made to the letting agent's office with a request for a rent reduction but no response was received.

7. The tribunal pointed out that issues of noise disturbance and compensation for such matters are not within the jurisdiction of the tribunal.
8. In answer to a question from the tribunal the tenants thought the rent should be reduced by £200 per month.

The landlord's evidence

9. The landlord has supplied details of various flats in the area at rents from £625 per week to £695 per week. Internal photographs of the flat show it to be modernised and in good condition. A schedule of lettings within Cumberland Court in or around February 2021 showed a range of rents from £530 per week to £625 per week. These worth to bedroom one bathroom flats similar to the subject property. Two further flat in Gloucester Place were let at rents of £554 per week and £575 per week again for two bedroom flats.
10. The building works in the adjoining building are not in the control of the landlord and are being carried out by the Portman Estate. The building works would have been readily apparent on viewing the property and if there were areas of the property the tenants were not able to see on the viewings, they should have requested a further visit.
11. Any complaints within the office were not escalated through the agents complaints procedure and did not reach Mr Siha, the managing director.

The Law

12. The Housing Act 1988, section 22 allows a tenant, in the first 6 months of a tenancy, to apply to the tribunal for a determination of the rent which in the tribunal's opinion the landlord might reasonably be expected to obtain under the assured shorthold tenancy.
13. In so doing the tribunal may not make a determination unless
 - (a) they consider that there is a sufficient number of similar dwelling houses in the locality let on assured tenancies (whether shorthold or not) and
 - (b) that the rent payable under the AST in question is significantly higher than the rent which the landlord might reasonably be expected to obtain under the tenancy having regard to the level of rents payable under the tenancies referred to in paragraph (a)

Valuation

14. The landlord has supplied rental evidence but no rental evidence has been put forward by the tenant.

15. The tribunal considers that the number of comparables supplied by the landlord demonstrates that there is a sufficient supply of dwellings let on assured tenancies in the locality.
16. The tribunal further considers that the rental evidence does not show that the rent under the current tenancy is significantly higher than the rent which the landlord might reasonably be expected to obtain under the tenancy in the market. The tribunal is not able to make a determination of the rent.
17. The tribunal therefore confirms the rent under the tenancy at £1,841.66 per calendar month.

Name: A P Harris LLM FRICS FCI Arb Valuer Chair **Date:** 11 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).

Housing Act 1988

22 Reference of excessive rents to appropriate tribunal.

(1) Subject to section 23 and subsection (2) below, the tenant under an assured shorthold tenancy may make an application in the prescribed form to the appropriate tribunal for a determination of the rent which, in the appropriate tribunal's opinion, the landlord might reasonably be expected to obtain under the assured shorthold tenancy.

(2) No application may be made under this section if—

(a) the rent payable under the tenancy is a rent previously determined under this section;

(aa) the tenancy is one to which section 19A above applies and more than six months have elapsed since the beginning of the tenancy or, in the case of a replacement tenancy, since the beginning of the original tenancy; or

(b) the tenancy is an assured shorthold tenancy falling within subsection (4) of section 20 above (and, accordingly, is one in respect of which notice need not have been served as mentioned in subsection (2) of that section).

(3) Where an application is made to the appropriate tribunal under subsection (1) above with respect to the rent under an assured shorthold tenancy, **the appropriate tribunal shall not make such a determination as is referred to in that subsection unless they consider—**

(a) that there is a sufficient number of similar dwelling-houses in the locality let on assured tenancies (whether shorthold or not); and

(b) that the rent payable under the assured shorthold tenancy in question is significantly higher than the rent which the landlord might reasonably be expected to be able to obtain under the tenancy, having regard to the level of rents payable under the tenancies referred to in paragraph (a) above.

(4) Where, on an application under this section, the appropriate tribunal make a determination of a rent for an assured shorthold tenancy—

(a)the determination shall have effect from such date as the appropriate tribunal may direct, not being earlier than the date of the application;

(b)if, at any time on or after the determination takes effect, the rent which, apart from this paragraph, would be payable under the tenancy exceeds the rent so determined, the excess shall be irrecoverable from the tenant; and

(c)no notice may be served under section 13(2) above with respect to a tenancy of the dwelling-house in question until after the first anniversary of the date on which the determination takes effect.

(5)Subsections (4), (5) and (8) of section 14 above apply in relation to a determination of rent under this section as they apply in relation to a determination under that section and, accordingly, where subsection (5) of that section applies, any reference in subsection (4)(b) above to rent is a reference to rent exclusive of the amount attributable to rates.

(5A)Where—

(a)an assured tenancy ceases to be an assured shorthold tenancy by virtue of falling within paragraph 2 of Schedule 2A to this Act, and

(b)at the time when it so ceases to be an assured shorthold tenancy there is pending before the appropriate tribunal an application in relation to it under this section,

the fact that it so ceases to be an assured shorthold tenancy shall, in relation to that application, be disregarded for the purposes of this section.

(6)In subsection (2)(aa) above, the references to the original tenancy and to a replacement tenancy shall be construed in accordance with subsections (6) and (7) respectively of section 21 above.