



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

Case reference : **JM/LON/00AZ/MNR/2022/0098**

Property : **Ground Floor Flat, 189 Devonshire
Road London SE23 3NJ**

Applicant : **Carol Facciano**

Representative : **In Person**

Respondent : **Clydepride Ltd TA Stock Page Stock**

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** : **Mr Alan Ring
15th August 2022 Hearing on the papers
in Alfred Place.**

Date of Decision : **15th August 2022**

DECISION

Decision of the tribunal

The tribunal determines the rent at £210.00 per week. The rent to have effect from the date in the landlords notice of 13th April 2022 which is the 20th June 2022.

Background

1. The tribunal received an application under section 13 of the Housing Act 1988 on 16th June 2022. The tenant supplied the tribunal with a copy of the section 13 notice subsequently on the 16th June 2022. This included the landlord's notice dated 13th April 2022, proposing a new rent to commence on 20th June 2022 of £ 250 per week replacing one of £210 per week. The Notice of Rent Increase stated that charges inclusive in the rent were £2624.28 for council tax and water charges of £296.34.
2. Neither party requested an oral hearing, an inspection was requested by the tenant, and was carried out on the 15th August 2022 at 10:00am. The inspection was carried out by the tribunal in the presence of Ms C Facciano. The tribunal inspected the exterior of the property, the interior of the tenancy including the rear garden and communal areas. The papers comprised the application from the tenant and a completed Reply form undated.
3. According to the application the property comprises a ground floor flat with one bedroom, a study, lounge, one kitchen, a bathroom, wc, a cellar, private rear garden, and shared front garden. The landlord is responsible for internal and external repairs. The application form also noted the heating had been an improvement by the tenant. The bathroom and WC are shared with other tenants in the building.
4. The tenancy commenced in 1995, the application form notes there is no written tenancy.

The Property

5. The inspection found Devonshire Road to be a very pleasant residential road on a slope. It is clear that many of the properties in the road have over the years been improved and upgraded. The subject premises form part of a link detached Victorian House which remains largely in the specification as built, with the original slate roof, and exposed brickwork, not painted or rendered. The windows predominantly remain the original wood single glazed, although there are some sections of the subject premises where a limited quantity of UPVC window has been inserted. There is evidence of some cracking in the brickwork around the porch at ground floor level.
6. The property is used by two separate households and the subject premises are not self-contained. Both households access the property through the same front door which gives access to a large shared

hallway, extending to a room area containing a boiler, doors to the cellar and the side access to the building, and the stairway to the upper parts of the building. The tenant of the subject premises has exclusive use of ground floor front room, a back room with access to the rear garden, a kitchen, also with access to the garden, and a bedroom on a half landing. She also has exclusive use of the rear garden, which contains a summer house and the cellar, which was found on inspection to be generally dry with direct access to the garden. The cellar also contained the utility meters for the occupants of the premises on the upper floors. In addition to the shared accommodation above, Ms C Facciano has also shared use the bathroom and separate WC located off the half landing leading to her bedroom.

7. The boiler situated in the ground floor hall, provided hot water for the central heating in the tenant's accommodation, plus hot water to the bathroom and basin of the WC room.
8. Turning to the condition of each room. The front room had a chimney place housing the tenants gas fire. There was evidence of significant cracking to the front of the room. The rear room had a radiator and a gas fire double glazed windows in the bay giving access to the garden, there was central heating. The kitchen which had been fitted by the tenant had single glazed windows and door to the garden, there was central heating. The kitchen had evidence of a leak in the ceiling. Immediately above the kitchen was the shared bathroom. The bedroom on the upper landing had central heating and a gas fire, the windows were single glazed original. The garden was of good size containing paths which were subsiding, vegetable beds and a fruit tree,
9. The communal areas; the ground floor hall had a wooden over floor installed by the tenant. The ceiling had evidence of a long-standing leak. Above the area of the leak was the bathroom. The WC was basic but functioning. The bathroom had an original cast iron enamel bath. The ceiling to the bathroom, had flaky paint, there was mechanical extraction from the bathroom.

Applicant submissions.

10. On the 28th July 2022 an e mail was received from the tenant stating that the reference to water charges on the section 13 notice was incorrect as this never had formed part of the rental agreement. Additionally, the undated Reply form, stated "Please note the council tax stated is for 189 Devonshire Road which consists of both lower and upper flats. Therefore, the figure stated is not primary for the lower flat." The Reply form also notes that, the tenant is responsible for central heating, white goods and curtains / carpets; both the kitchen and heating have been provided by the tenant; the house has subsidence. No rental evidence was provided.

Respondent's submission

11. A Reply form was also received from the Landlord dated 29th July 2022, noting it did not require an inspection or a hearing but noted the flat was on the first floor. No rental evidence was provided.

The Law

12. The tribunal first had to determine that the Tribunal had jurisdiction to hear the Application in order 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.
13. 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.
14. The first requirement is that a minimum period of notice must be given before the proposed new rent can take effect.
15. 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.
16. The third requirement is that the proposed new rent must start at the beginning of a period of the tenancy.
17. In the present case, there is no evidence to suggest the Notice of Increase was not served correctly in respect of these matters.
18. 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.
19. 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.

The Decision

20. The tribunal determined that the three requirements at pars 14-16 were met.
21. There is a difference between the charges included in the Notice of Increase in rent and the charges the Tenant thinks are correct. There is no written tenancy agreement. In respect of the council tax, the Notice of Increase states the Landlord pays the council tax for the building a sum of £ 2624.28. It is assumed per year. The building no 189 Devonshire Road is listed in the Valuation List for Council Tax as one building Band F. The amount listed corresponds with the liability for that borough. The Tenant states the amount is for the two parts of 189 Devonshire Road. The tribunal agrees with the tenant on this, there is however no evidence to refute that from the Notice of Increase, the landlord pays this and that the rent is determined on the basis the liability rests with the landlord. The second issue; water rates, again stated in the Notice of Increase, in this case the Tenant specifically

notes this is incorrect as “never forming part of the rental agreement”. In unmetered properties the liability for water rates is based on rateable value. There is no evidence that the amount noted in the Notice of Increase applies to the whole building or part. The tribunal therefore finds that on the balance of probability the landlord has responsibility for paying this and that the rent determined should reflect this. As such the rent to be determined by the Tribunal is determined on the basis that the Landlord has liability for both the Council Tax and the water charges noted in the Notice of Increase.

22. In determining the rent, the tribunal relied on its own general knowledge of rental levels in the area. No evidence on rental levels was provided.
23. The Tribunal notes that previously a level of £210 per week was determined in 2019 under the same tenancy and with regard to comparable evidence provided at that time. There has been modest rental growth between the date of the Notice of Increase and 2019. However there have been a number of material changes to the property between the two dates, The first of significance is the discovery of extensive cracking to the ground floor front room and exterior of property. The second is the presence of water leaking into the kitchen. The water leak to the ground floor communal area appears long standing and would have been implicant in the previous determination.
24. Taking into account the tribunals knowledge of the rental markets in the area the tribunal determines a rent of £210 per week, with effect from the 20th June 2022, being the date stated on the landlord’s Notice of Increase.

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.