



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

Case Reference : **LON/22AJ/MNR/2022/0030
V:CVPCOURT**

Property : **Flat 62 Apsley House Dickens Yard,
Longfield Avenue, London, W5 2AZ**

Applicant : **Ms Carol Welstead**

Respondent : **Catalyst Housing Limited**

Date of Application : **21 March 2022**

Type of Application : **Determination of the market rent
under Section 14 Housing Act 1988**

Tribunal : **Mrs E Flint FRICS
Mr A Ring**

**Date and venue of
Determination** : **10 October 2022
10 Alfred Place London WC1E 7LR.**

DECISION

The market rent as at 4 April 2022 is £300 per month inclusive of £39 service charge.

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Background

1. On 21 March 2022, the tenant referred to the Tribunal a notice of increase of rent served by the landlord under section 13 of the Housing Act 1988.
2. The landlord's notice, which was dated 18 February 2022 proposed a rent of £191.78 per week inclusive of £58.53 service charge with effect from 4 April 2022 in place of the existing rent of £171.03 per week inclusive of £43.03 service charge.
3. The tenant occupies under a periodic tenancy which commenced on the expiry of a tenancy for 12 months from 13 May 2013.
4. Directions were issued by the tribunal on 27 June, and amended on 23 August 2022.

The Hearing

5. The hearing was attended by Ms Welstead via a telephone connection, the landlord was represented via a video link by Miss Tina Conlan of counsel, Mr Paul Shulver and Mr Ricardo McFarlane, employees of the landlord. The Tribunal members attended via a video link within the tribunal offices.
6. Ms Welstead in written submissions had explained that the flat is within a purpose built social housing development of 70 flats for the over 55's which was completed in 2013. Although it is described as being within the Dickens Yard development it is unlike the private flats within the development which are built to a much higher standard, have balconies, the use of a fitness suite, spa, underground car park and benefit from a 24 hour concierge.
7. The entrance to the block is not similar to the private blocks, it is obvious that it is a social housing block from the entrance. There are two lifts. One of the lifts is often out of order which is inconvenient as the block provides housing for the over 55's. The previous weekend there were no lifts working on the Saturday.
8. She described the flat as being nice but very small and does not benefit from the same amenities as the flats in Dickens Yard. Her flat faces onto the main road and does not have a balcony and therefore no outside space, unlike the flats in Dickens Yard.
9. She said that she cleans the common parts leading to her own flat every week, some neighbours also help with the cleaning. The decorations in the common parts are poor, there has been no redecoration since the block was built. There are cracks in the plaster in some areas of the common parts. There has been a mice infestation.

10. The service charge has increased. The breakdown refers to a charge for gas but there is no gas in the block. The management charge has gone up without any explanation.
11. Miss Conlon said that the Tribunal ought to look only at the rent and not the service charge.
12. The Tribunal explained that this is not the case. The tenancy agreement at paragraph 4a states that the rent includes a fixed service charge. *“The service charge is fixed for twelve months irrespective of the Association’s costs of providing these services.”*
13. The guidance notes attached to the landlord’s notice states at note 12 that the only amounts to be entered in the schedule at 5 of the notice are fixed service charges which have been agreed to in the tenancy agreement.
14. The service charge is not therefore covered by section 18 of the Landlord and Tenant Act 1985 which covers variable service charges where the whole or part of the sum payable may vary according to the costs incurred. Consequently, it is a matter which the Tribunal should take into account when determining the rent in accordance with section 14 of the Act.
15. Miss Conlon stated that market rents in the area were much higher than that proposed by the landlord. She referred to two flats available in Dickens Yard at rents of £554 and £681 per week without providing any details regarding size or amenities. Furthermore she did not know if the rents included membership of the fitness suite etc. She suggested a starting point of £500 per week to reflect the differences in quality and terms but not the additional facilities as they may be subject to a further charge.
16. Miss Conlon said that the issue with the lift had been dealt with, the hairline cracks in the common parts were not structural and referred to photographs provided by Ms Welstead which she considered irrelevant as they were of the common parts on floors other than the fifth.
17. Mr McFarlane, a property manager, said that there had been issues with the lifts since the beginning. The maintenance contractors had been changed four times. It was difficult to source the spare parts because some items were now obsolete. The landlord was in contact with St George’s, the developer regarding the lifts.
18. He referred to his photographs of the common parts which he said showed some scuff marks. However, the common parts are clean and there is no evidence of any rodent infestation.
19. Mr Shulver accepted that there may have been some mislabelling of items on the service charge account: he confirmed that the gas supply referred to the electric heating supply. When asked he confirmed that he was not aware of how the rent had been set.

20. Mr McFarlane also confirmed that he was not aware of how the rent was set: it was dealt with by a different department.
21. Miss Conlon advised that the amount by which the housing association is able to increase the rent is subject to regulation. Here the increase is limited to CPI + 1% which, in this instance, equates to 4.1%. The service charge element of the rent is not capped in the same way.

The Inspection

22. The Tribunal inspected the property accompanied by the tenant and Mr McFarlane in the afternoon of 10 October 2022. Prior to visiting the flat the Tribunal inspected the locality. The block provides the social housing element of the development known as Dickens Yard which comprises a number of blocks of flats, with 24 hour concierge, and onsite facilities including fitness spa, gym, restaurants, fashion outlets and underground car park.
23. Apsley House faces onto New Broadway opposite a block of offices and adjacent to the entrance to the underground car park for the Drakes Yard development. There is entryphone access to the entrance hall which is basic in style having a tiled floor, painted walls and 70 individual letterboxes along one wall. A further entryphone controlled door leads to the lift lobby, where there are two lifts. At the time of our inspection only one was in use. There were a number of cracked tiles on the floor in the lift lobby. Elsewhere in the block the floors and stairs were covered in vinyl flooring which in some areas showed some scuffing. The floor on the fifth floor was in noticeably better condition than the flooring elsewhere. A rubbish chute was located on each floor.
24. The accommodation comprises a small living room with full width windows overlooking the main road and offices opposite. The open plan kitchen is fitted with a range of units, oven and hob. The oven and hob were gifted to the tenant when she took up residence: any repairs or replacement are therefore the responsibility of the tenant. The white goods were supplied by the tenant. There was one double and one single bedroom and a bathroom/wc. There were two cupboards in the entrance hall: one for storage the other housing the hot water boiler and plumbing for the tenant's washing machine. The flat is centrally heated and also has a ventilation system via outlets in the ceiling.

The law

25. In accordance with the terms of section 14 Housing Act 1988 the Tribunal proceeded 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.
26. In so doing the Tribunal, as required by section 14(1), ignored 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

27. In coming to its decision, the Tribunal had regard to the evidence supplied by the landlord and the tenant and its own general knowledge of rental values within this area of Ealing. The flats within the private part of Dickens Yard are superior to the subject flat, not only in terms of quality and amenity. Many are larger with two double bedrooms and two bathrooms and do not overlook the main road. The common parts are carpeted and more spacious: the ambiance of the blocks is different to Apsley House. Flats without membership of the fitness suite and spa are available for less than the rents quoted by counsel. The rental value of a two double bedroom two bathroom flat with larger living space is a little under £400 per week, exclusive of membership of the spa.
28. The service charge account for 2022-2023 listed the items charged to the account. The itemised services are not well explained and not easy to relate to the services described in the tenancy agreement. The management charge appeared to be excessive at £30.88 per week, totalling £1605.76 per year. Even assuming that the charge includes the out of hours service which is provided, the charge is much higher than would be paid in the market for management services. Using its own expertise as the landlord was not able to provide any background to the makeup of the service charge account the Tribunal determines that the service charge, inclusive of the management fee should be reduced to £39 per week based on a reduction in the management charge but accepting all the other charges on the service charge account provided. The tribunal wishes to emphasise that, in accordance with the terms of the tenancy agreement, this is a fixed, not a variable service charge and that it is an integral part of the market rent and not separate from it. Given Counsel's attempt to persuade the tribunal that the service charge element of the rent lay outside its jurisdiction under section 14, and the misleading explanation in the landlord's correspondence with the tenant of the reason for excluding this element of the rent from the cap it has applied to the remainder of the rent increase, it appears that the distinction between fixed and variable service charges has not been properly understood.
29. Doing the best it can on the limited evidence available the Tribunal determines a weekly rent of £300 inclusive of service charges of £39 per week to reflect the location and size of the flat in a social housing block fronting the main road and having no outdoor space.

The decision

30. The Tribunal determines the open market rental value of the flat is £300 per week inclusive of £39 service charge effective from 4 April 2022 in accordance with the date in the landlord's notice.

Chairman: Evelyn Flint

Dated: 13 October 2022

ANNEX - RIGHTS OF APPEAL

- i. 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.
- ii. 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.
- iii. 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.
- iv. 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.

Appendix Housing Act 1988

14 Determination of rent by rent assessment committee.

(1) Where, under subsection (4) (a) of section 13, a tenant refers to a rent assessment committee a notice under subsection (2) of that section, the committee shall determine the rent at which, subject to subsections (2) and (4) below, the committee 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.

(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 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....

(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 ... 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, with effect from such later date (not being later than the date the rent is determined) as the appropriate tribunal may direct.

