



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

Case reference : **LON/OOAE/MNR/2022/0123**

Property : **Flat 57 Williamson Heights , 5 South
Way, Wembly Middlesex , HA9 0JY**

Applicant : **Mr S Patel**

Representative : **In Person**

Respondent : **Peabody**

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
Mr O Miller BSc.**

**Date and venue of
hearing** : **8th November 2022 Video hearing**

Date of Decision : **8th November 2022**

DECISION

Decision of the tribunal

The tribunal determines the rent at £1419 per month. The rent to have effect from the date in the landlords notice of 27th June 2022.

Background

1. The tribunal received an application under section 13 of the Housing Act 1988 dated 7th July 2022. This included the landlord's notice dated 27th June 2022 proposing a new rent to commence on 12th August 2022.
2. An oral hearing was requested an inspection was not requested nor one considered proportionate.
3. The property comprises an eighth floor flat with an open plan kitchen dinner, a living room, two bedrooms, one bathroom and one ensuite bathroom. The tenancy commenced on the 12th July 2021 and rent is payable on the 12th of the month.

Applicant submissions.

4. The tenants submissions comprised; the application form dated 7th July 2022, the tenancy agreement showing commencement date of 12th July 2021, Notice of Increase of Rent, and a completed reply form undated.

5. The application form notes;

The property is on the eighth floor and comprises, one Open Plan Kitchen and Living Room, two Bedrooms, one Bathroom and one ensuite Bathroom.

6. The Notice of Increase of Rent states the rent is to rise from £1419 per month to £1477.11 per month effective from 12th August 2022. The Notice was issued with an accompanying letter dated 27th June 2022. The covering letter noted the increase of rent was due to commence on the 1st September 2022.

The tenants reply form undated noted ;

Under disrepairs and defects;

“Heating and Hot water is from a communal boiler which regularly broke down in Winter for days at a time. Boiler in flat was left at 40% installation operating capacity level... Only in June/July 2022 the engineer after countless visits put it to 80% operating capacity. Heating still not getting to every radiator and I have been told by multiple engineers that I have to bleed and balance the radiators every time I want to use them, which is a 1hr process. So now I have to learn how to balance heaters through the system in my flat to ensure every room is heated in winter. Lifts

constantly out of service and or only partially operating – ground level button not working, doors not operating normally, lifts getting jammed on floors. Lottery every time you get into lifts whether or not you're going to get stuck. Services such as Communal Wifi promised at time of viewing is still not available to residents. There is a list of building defects and issues currently being catalogued by residents.

Under any other comments

“Examples of Current flats being advertised by Peabody in Williamson Heights: Prices being currently advertised for vacant flats in the same building with same 2 bed and 2 bath setup. Plot 14 – 2 bed – 2 bath – balcony – 2nd floor £1,421 Plot 101 – 2 bed – 2 bath – 17th Floor £1,317 Source: SiteSales Property Group (acting on behalf of Peabody to rent or sell properties in Williamson Heights.) The rental is under London Living Rent / Intermediary Scheme which supposed to be assisting and helping reduce rent and any increase in rent should be modest and under the schemes ethos. By increasing my rent I will be paying more than advertised rentals in my building for similar rentals.”

Respondent's submission

6. None

The Hearing

The Appellant Mr. Patel, provided verbal submissions, which were supported by his written submissions above, that the heating worked intermittently and inefficiently. That the lifts were on occasions out of service and that similar flats were being offered to rent in the block for less money than that requested by the Notice of Increase. Examples of rental levels provided by the tenant are contained in the tenants reply, details above.

The Law

Validity

7. 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.

8. 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.

9. The first requirement is that a minimum period of notice must be given before the proposed new rent can take effect.

10. 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.

11. The third requirement is that the proposed new rent must start at the beginning of a period of the tenancy.

12. In the present case, the covering letter accompanying the Notice of Increase stated 1st September 2022 as the commencement date of the rent, and the Notice of Increase stated 27th June 2022.

Valuation

13. 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.

14. 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

15. The tribunal determined that these three requirements for validity 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. Given the size and nature of the accommodation, given the evidence of the issues around heating, and lifts being out of service for periods of time the tribunal determines the rent at £1419 per month effective from the date of Notice of Increase.

Name: Chairman Waterhouse

Date: 8th November 2022.

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.

]

(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.

[

(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]⁹ 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.