



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

Case reference : **JM/LON/00BK/MNR/2022/0188**

Property : **27 Alma Square London NW8 9PY**

Applicant : **Naomi Kaugben**

Representative : **In Person**

Respondent : **Mr Delcan Sheehy**

Representative : **Gerald Holland Fusion Commercial**

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

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

**Date and venue of
hearing** : **22nd February 2023-Hearing on the
papers**

Date of Decision : **22nd February 2023**

DECISION

Decision of the tribunal

The tribunal determines the rent at £1500.00 per month. The rent to have effect from the date in the landlords notice of 15th December 2022.

Background

1. The tribunal received an undated application under section 13 of the Housing Act 1988. This included the landlord's notice proposing a new rent of £2100.00 to commence on 15th December 2022.
2. An oral hearing and an inspection were requested.
3. The property comprises a raised ground floor flat with one studio living sleeping room, a shower /WC and a kitchen. The property has central heating.
4. The property had been held on a Regulated Tenancy by the current Tenants parents. On the death of the Naomi Kuagben's mother, on the 24th September 2022, Naomi Kuagben succeeded the tenancy. The tenancy at this point becomes an assured tenancy. The improvements made by Naomi Kuagben's parents pass to the ownership of the landlord Mr Delcan Sheehy.
5. The landlord's Notice of Increase of Rent dated 14th November 2022 proposed a rent of £2100 per month replacing the existing one of £798.33 per month. The rent to come into effect on 15th December 2022.

Applicant submissions Paper and Oral at Hearing

6. A number of documents have been supplied in support of the applicant's case.

Letter from Mark Kenward dated 3rd September 2013. The letter notes;

“The ceiling has fallen 3 times in 3 years and it has taken the landlord 6-7 months on each occasion to repair it.

“The flat has only recently .. had central heating installed by the Council.”

The letter also includes extracts from an electronic messaging process between the previous tenant, and her legal representative discussing legal action re the landlords alleged failure to repair the property.

A number of marketing details from Zoopla ;

Abbey Road NW8 – Studio flat £1275 pcm – available 6th January 2023

Abbey Road NW8 – Studio flat £ 1450 pcm – listed 22 December 2022

Abercorn Place NW8 – Studio flat £1625 pcm – available 4th February 2023

Boundary Road NW8 – Studio flat £1625 pcm – available 11th January 2023

Hamilton Gardens NW8 – Studio flat £1495 pcm – available November 2022

La Residence , Marlborough Place NW8 – Studio - £1842 pcm - “available”

Langford Court Abbey Road NW8 Studio -£1850 pcm

Mortimer Court , Abbey Road NW8 £1625 pcm

Further photographs of the property;

Damage to ceiling and associated damp with mould

Interior of flat showing WC wash hand basin, and kitchen sink area. condition

Window overlooking gardens, window single glazed with straps holding the catches

Uncovered Gas meter

Ceiling lath and plaster damage in corner

Damp or water staining to ceiling

Front door showing gaps at top and bottom

The kitchen – cooker, sink drainer with cupboards below, vinyl flooring.

Ceiling of inside of wardrobe

Sash window

Photograph of fire place

An extract from a instant messaging dialogue noting dust and noise undated

Copy of letter dated 1st February 2022 noting a charge for maintenance of the communal garden

A document entitled “Response to Mr Sheehy” detailing her personal circumstances and the impact of the rent rise.

“Letter to Mr Holland” detailing distress and hardship surrounding the case.

Letter to Tribunal from Naomi Kuagben detailing hardship and distress caused by the rent increase – undated

7. A Reply form noting;

A request for an inspection and a hearing

The property has single glazed windows and is hard to keep warm. There is noise from the flat above as there is no sound insulation. Within kitchen tiling was added behind the gas cooker for safety.

Carpets and curtains are provided by the tenants.

Under improvements, it was noted that work was carried out in 2014 by the landlord to rectify ceiling damage.

A further 24 areas of defect are noted under the improvements section.

Respondent submission Paper and Oral at Hearing

8. The Respondents have submitted a completed Reply form.

The form notes they do not require a hearing or an inspection.

Under accommodation it is noted the flat is 48 m² and “feedback from independent agents the condition of the flat is in rentable condition to their market base,”

Also noting access to exclusive communal garden in St Johns Wood.

Centrally heated but no double glazing.

Details of renovation works carried out in 2014.

“Stripped out and dispose of existing kitchen fittings, cooker and shower, new drainage to suit wash hand basin, WC, shower and sink, Shower – 40mm pipe diameter, minimum gradient 20mm/m with low level bath shower trap. WC-

100mm pipe diameter, minimum gradient of 100mm/m. Sink – 40mm pipe diameter, minimum gradient 20mm/m with a tubular S or P trap.

Internal wall surfaces with the shower cubicle shall be moisture resistant plaster board. Fully tiled shower cubicle in 150mm white tiles and install single course of 150mm white tiles to form skirting with plastic trim to top side with mitred corner joints to remainder of shower room. Extend wall tiling 150 mm beyond the shower.

Supplied and installed a new kitchen facility comprising base units with stainless steel sink and electric oven with hob in separate location. Allow the PC sum of £1500 for the supply of base units and cooker, relocated existing gas cooker to new cooker position and ran extended gas supply within floor void to new position. Supplied and installed humidistat and timer operated kitchen extract fan such as Xpelair SL150HT extract fan, or similar approved.”

The Reply form notes, similar fitted to shower room, and painting of new plaster carried out.

In terms of rental level, in the same building number 27, the un-refurbished basement is let at £2750 per month and the first floor of similar size is let at £2058 per month.

Additionally, Mr D Sheehy submitted a response to Miss Kuagben’s Reply Form.

At point two it was submitted that the comparable were not good because those supplied by Miss Kuagben were all studio flats on busy roads.

At point 4 it was noted that Miss Kuagben enjoys significantly greater security of tenure under the assured tenancy than if she was holding under an assured shorthold tenancy.

At point 6 , disrepair mentioned by Miss Kuagben has now been followed up by the property manager. At point 7 Mr D Sheehy considers the responsibility to rectify the disrepair may rest with the tenant.

Additionally in Appendix 1 comparables were noted and at Appendix 2 photographs of the kitchen and window to communal gardens. Appendix 3 the EPC graded at C and Appendix 4 noted specification of works from 2014 and invoices.

Plan of property and photographs of the exterior of the building, the tenancy, local estate agents view of rental value of the property.

. The Law

9. In the present case, the tenancy started on 4th November 2020. The Notice of Increase proposed the new rent on the 4th January 2022.

10. 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.

11. 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

12. The tribunal determined that these three requirements were met. The tribunal can determine the rent under section 13 and 14.

13. It was acknowledged and understood that the flat had been the home of the applicant for 54 years and the passing of her mother with the uncertainty from the change of tenancy from regulated to assured resulted in considerable anxiety and distress.

14. The condition and specification of the flat must be taken as at the date of the Notice to Increase. Matters relating to issues and their resolution prior to this date are not material to the determination of the rent.

15. The flat structure and layout must be considered as it is. The flat from the Respondents evidence is 48 m² and constitutes a large studio flat, that is to say there is no separate bedroom.

16. The comparables supplied by the Applicant are of studio flats, largely from inferior locations in terms of noise and outlook. They are as comparables given weight but such as to take these differences into account.

17. Of importance also are the comparables supplied by the Respondent in particular those within the subject building. The first relates to a passing rent of £2700.00 per month for the basement flat. Evidence heard during the submissions showed the flat to be 8 m² larger, to have superior kitchen, bathroom and condition and additionally with direct access to the communal square garden. To this extent this comparable is of a property different in nature to the subject property.

18. The next comparable that of the first floor, this is laid out as a one-bedroom flat, it has a passing rent of £2050 per month. The size is approximately the same but the quality of the specification is superior. The market for a one bedroom compared with a studio is different in that the one bedroom is more desirable. As such a discount is needed to compare the two

properties. A further discount is required to address the difference in quality and specification.

19. 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.

20. The tribunal has used its expertise also looked at comparables in the immediate locality.

21. Given the size and nature of the accommodation, the tribunal determines the rent at £1500.00 per month effective from the date of Notice of Increase.

Name: Tribunal Chair Waterhouse **Date:** 22nd February 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]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.