FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON//00BD/MNR/2022/0105**
Property	**:**	**Flat 27 Sheengate Mansions, 259 Upper Richmond Road West, London, SW14 8QS**
Applicant	**:**	**Mr A Teviotdale**
Representative	**:**	**In person**
Respondent	**:**	**Avon Estates (London) Ltd**
Representative	**:**	**Mr Ost**
Type of Application	**:**	**Determination under Housing Act 1988, section 14**
Tribunal Members	**:**	**Tribunal Judge Richard Percival** **Mr S Johnson MRICS**
Date of Inspection and Hearing	**:**	**18 November 2022**
Issue of Reasons	**:**	**17 February 2023**

REASONS

The application

1. The landlord having served a notice under Housing Act 1988, section 13(2) proposing a new monthly rent from 1 August 2022 of £1,500, in place of the existing rent of £1,000 per month, the tenant applied to the First Tier Tribunal (Property) for a determination under Housing Act 1988 ("the 1988 Act") section 14.
2. The tenant's tenancy apparently started in 1996, as a final succession to a regulated tenancy, on the death of his mother. The original tenancy had been let in 1968 to the tenant's father. The tenant had lived in the property since he was four years old. If there was a written tenancy agreement, it has not survived.

The hearing

3. The hearing was listed for the morning, in advance of the inspection.
4. We did consider what might have been comparable properties on the open market, both from the landlord and, in one case, our own researches (which was shared with the parties), and the tenant provided details of a Rent Act 1977 flat in the same block. However, in the light of the results of our inspection, they have little relevance, and we do not detail them here.
5. Mr Ost submitted that Mr Teviotdale had refused to move out of the property to allow repairs to be made. He had, accordingly, breached the term implied into the tenancy by section 16 of the Housing Act 1988. Mr Ost then relied on *North Lincolnshire Homes Limited v Bentley* [2015] UKUT 451 (LC) for the proposition that, where there had been a breach of the implied term, the Tribunal should determine the market rent on the basis that the property was in the condition it would have been in, had the breach not taken place and repairs been effected. Mr Ost relied on correspondence between the parties (see below).
6. Mr Teviotdale denied that he had refused access. He said, first, that he was prepared to allow access (and had done so, for instance, to allow a new electrical consumer unit to be installed). Secondly, he said he was not prepared to leave the property altogether for the purposes of the repairs. Thirdly, he said that he had never received an adequate statement of what works the Respondent was proposing.
7. There was some dispute as to recent or imminent work on the windows. Mr Ost seemed to be suggesting that the landlord had sought to gain access to replace the windows, but been unable to do so. Mr Teviotdale said that his understanding was that work was being done to the windows externally by the freeholder, not by the landlord, and that he had arranged to take time off work to facilitate the work on 5 December 2022.
8. In answer to a question from the Tribunal, Mr Ost said that the work they intended to do was to install central heating, provide a new kitchen and bathroom, replaster, redecorate and renew the windows, and provide double glazing.

Inspection

9. The property was inspected on 18 November 2022 in the presence of the tenant.

10. Sheengate mansions comprises a long block, or series of blocks, on a main road. The blocks consist of commercial units at floor level. At regular intervals along the street are entrances serving four of the flats above the commercial units.

11. We had the advantage of a description of the property given in the Tribunal's determination of the rent in 2009 (ref LON/OOBB/MNR/2009/46). At that time, the Tribunal noted that the rooms were dark, the sash windows ill fitting, and the kitchen was "very small and ill-equipped", with "a few old units and an enamel sink". The bathroom was "wholly unmodernised". Damp was noted in several rooms.

12. It is clear that the condition of the property has deteriorated to a very considerable degree since the last inspection.

13. The floor coverings – carpets and lino – were in an extremely poor condition throughout the flat – worn, discoloured, dirty and old, to the extent of frequently amounting to trip hazards. The decorative state of the walls was also very poor indeed. In some rooms, wallpaper had been partially painted over. Elsewhere, the paint was generally (although not universally) worn and in places peeling.

14. We noted damage to and cracking of plaster in a number of places throughout the flat.

15. Of particular concern was raked cracking above two lintels, which indicated a high likelihood that the lintels had failed. One such lintel was over the hall, the other the door from the kitchen to the fire escape balcony (see below). Additionally, a large crack was noted in the hallway party wall with the next door flat.

16. We noted a new electrical consumer unit in the entrance hall.

17. In the main living room, the light did not work. Only one electrical socket worked. There was evidence of water ingress to the left hand side of the window (which was generally in poor condition). There was (as had been noted in 2009) a high level of traffic noise in the room.

18. In the first bedroom, in addition to the general issues, the sash window was ill fitting and in a poor state of repair. The room contained a large internal television aerial. There was also evidence of what looked like copper pipes that seemed to carry electrical wire on the surface of the walls.

19. The plaster in the rear hall was blown towards the floor level. Cracking to the plaster/wall appeared deep and serious.

20. In the small second bedroom, there was evidence of damp at the top of the right hand side wall, and plaster damage to the whole length of that wall. There was only one electrical socket.

21. The third bedroom also showed signs of damp penetration with staining of plaster, but at the time of the inspection it appeared to have dried.

22. The kitchen, which is small, was made smaller still by the presence of three large cast iron water tanks, open at the top, which apparently held the cold water supply to the flat. A constant dripping noise was apparent from the area of the tanks. The cooker was an old-style solid hot plate electric cooker. The external wall immediately above the sink had in part collapsed, leaving a large hole. The sole means of heating water appeared to be an immersion heater.

23. The fire escape led off the kitchen. From the fire escape balcony immediately outside the kitchen, it could be seen that one of the external windows had recently been replaced (it seems, by the freeholder). The other was in very poor external condition, the timber rotten and split.

24. Above the single glazed door to the kitchen, the render had broken away, and the brick work to the left hand side was damaged. As noted above, it appeared that this lintel was failing. There was further evidence of leaking waste pipes from the flat above on the rear elevation which had been patch repaired.

25. The step below the door from the kitchen to the fire escape was worn to a considerable degree, such that there was a gap of perhaps 150mm between the central part of the step and the bottom of the door.

26. The bathroom, next to the kitchen, had had a "new" but second hand WC fitted, the tenant said, just before the first Covid-19 lockdown. The sink and bath were old and worn. The sink pedestal was loose, and the brickwork behind it broken. The wall under the window was similarly damaged. Polystyrene ceiling tiles had become detached and were noted to be resting on the ceiling mounted light and heater. The occupier informed the Tribunal that he does not use the heater.

The law

27. Under the Housing Act 1988, section 14, the Tribunal must determine the rent that would be obtained in respect of the same property on a new letting on the open market by a willing landlord under an assured tenancy, on otherwise similar terms (other than rent) to the existing tenancy. The rent so determined must, however, disregard the effect on the rent of the granting of the tenancy to a sitting tenant; any increase in the value of the property as a result of improvements carried out by the tenant during the tenancy (or a previous tenancy), otherwise than as a result of his or her obligations to the landlord under the lease; or any reduction attributable to a failure to comply with such an obligation. The rent does not include a service charge, but does include sums payable for furniture or council tax.

28. As to the landlord's argument that it was necessary for Mr Teviotdale to move out of the property in order for repairs to be effected, the leading case is *McGreal v Wake* (1984) 13 HLR 107, CA. The effect of the case is

succinctly stated in Woodfall's Landlord and Tenant at paragraph 13.068 as follows:

> the [landlord's] right to enter and occupy is limited to that which is strictly necessary in order to do the work of repair. The tenant is not obliged to give the landlord exclusive occupation unless this is essential for the execution of the repairs, nor is the tenant obliged to give the landlord access to all parts of the premises at the same time unless again this is essential (and it would seem not to be enough for the landlord merely to show that, while the works could be carried out without the tenant wholly vacating, the works would be more expensive if carried out in this way).

Determination

29. We had before us copies of correspondence from the parties comprising a letter dated 15 December 2016 from the tenant to the landlord, and exchanges between the landlord and the tenant in May and June 2018.

30. The 15 December 2016 is a reply to a letter from the landlord of 7 December 2016 (of which we do not have a copy). The tenant's letter refers to correspondence in 2011, which resulted (the letter states) in no work being carried out. It refers to the letter of 7 December 2016 as specifying different works. The letter then requests the landlord to carry out an inspection so as to draw up "a proper schedule of works", given the level of disruption anticipated. The tenants refers to his resistance to moving out of the property.

31. On 15 May 2018, the tenant wrote to the landlord, replying to a letter (of which we have no copy) of 8 May. In it, the tenant again asks for a schedule of works. The landlord replied on 15 June, and states that the landlord would endeavour to carry out (undescribed) refurbishment as quickly as possible, but the tenant would have to move out because "you will not have the use of bathroom and kitchen facilities for several days at a time". In his reply of 23 June 2018, the tenant repeats that he has "requested several times that you let me have a document setting out clearly what works your client intends to carry out together with a time frame for their expeditious completion", which the landlord has not done.

32. In both sets of correspondence, the tenant quoted a passage from the RICS Private Rented Sector Code of Practice referring to the need for consultation with tenants when arranging repair and maintenance work.

33. We also note the useful advice, addressed to landlords and provided by the Government at https://www.gov.uk/renting-out-a-property/making-repairs, in particular this passage, which appears under the heading "If the property is temporarily unfit to live in":

"You can ask tenants to move out during major repairs. Before this happens, you should agree in writing:

- how long the works will last
- the tenants' right to return
- details of any alternative accommodation

You cannot repossess a property to do repairs. However, if you're planning substantial works, or want to redevelop the property, you can apply to the courts for an order for your tenants to leave. The courts are more likely to grant this if you provide alternative accommodation."

34. In *North Lincolnshire Homes*, upon which Mr Ost relied, it was uncontested that the tenant had breached the term implied by Housing Act 1988, section 16. In this case, insofar as we can determine from the correspondence provided, the landlord had asked the tenant to move out so that it could effect repairs, but without an indication satisfactory to the tenant of what those repairs were, and what would be the duration of his absence. The closest that the 2018 correspondence comes to quantifying the latter is that the bathroom and/or kitchen would be unavailable for a matter of days.

35. The correspondence suggests that the tenant was requesting a formal schedule of works at one point, but more generally a "document" setting out these matters. We doubt that the tenant is entitled to a full formal schedule of works. However, we have set out the effect of *McGreal v Wake* above. If a tenant is only required to move out of a property for repairs if it is essential to do so, then the tenant must be entitled to reasonable information demonstrating that necessity. There is no evidence that the landlord did so in this case. We also note that it was the tenant who invited the landlord to undertake a proper survey of the property, at least in 2016. It was the tenant's evidence that the landlord had not done so.

36. It is important to note that at no time has the tenant expressed any resistance to the landlord entering to undertake repairs. What he has objected to is moving out for that purpose.

37. In these circumstances, we do not think that the tenant has breached the implied covenant in section 16 of the 1988 Act, as the landlord maintains. The tenant has never denied access for repairs. If the landlord requires that he moves out, then it is incumbent upon it to give at least some reasonable basis for its belief that it is essential that he does so, and, if resumption of occupation is agreed, that some reasonable estimate of the time during which he must remain absent is given.

38. Having come to that conclusion, we must come to a decision on the market rent on the basis set out in section 14 of the 1988 Act, without making any artificial assumption as to repairs that have not been carried out.

39. As will be evident from our description of our inspection above, the flat is in a terrible condition. Using the term in a vernacular rather than a technical sense, it is not fit for human habitation. No property on the market can be said to be comparable to it, given its condition. In these

circumstances, we concluded that the best we could do was to decline any increase in the rent.

40. We add the following by way of observation, in case it is of assistance to the parties. As is necessarily the case in these proceedings, our inspection of the property was relatively brief. We spent perhaps 40 minutes there. However, our clear impression is that to bring the property up to a marketable standard for renting extensive works are required. A detailed schedule of works would be of assistance in determining not only how to approach the works but also to determine the likely time needed to complete the works. It is apparent from the inspection that the required works go considerably beyond that which was indicated by Mr Ost at the hearing. We emphasise again that nothing in this paragraph is in any way authoritative, and should be taken as no more than an observation.

Name: Tribunal Judge Richard Percival **Date:** 17 February 2023