



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

**Case reference** : **JM/LON/OOBK/MNR/2022/0180**

**Property** : **50 Essendine Mansions , Essendine  
Road, London , W9 2LY**

**Applicant** : **Helen Morris**

**Representative** : **In Person**

**Respondent** : **Long Term Investments Ltd ( PRS3)**

**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 John Francis QPM**

**Date and venue of  
hearing** : **Alfred Place**

**Date of Decision** : **10<sup>th</sup> May 2023**

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**DECISION**

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## **Decision of the tribunal**

The tribunal determines the rent at £1550.00 per month. The rent to have effect from the date of the hearing 10<sup>th</sup> May 2023.

## **Background**

1. The tribunal received an application under section 13 of the Housing Act 1988 dated 27<sup>th</sup> October 2022. This included the landlord's notice dated 15<sup>th</sup> September 2022. The previous rent being £1415.00 per month from 6<sup>th</sup> July 2021 and the proposed £1550.00 per month from 6<sup>th</sup> November 2022.
2. Directions were issued on the 15<sup>th</sup> November 2022.
3. The property comprises a two bedroom, one living room, a kitchen and a bathroom, raised ground floor flat in a purpose-built mansion block.

## **Applicant submissions.**

4. The tenants submissions comprised; the application form dated 27<sup>th</sup> October 2022 the tenancy agreement showing commencement dated 1<sup>st</sup> May 1962 for a rent of £260 per year.

The Application form noted, the property is a ground floor flat, with one single bedroom, one double bedroom, a kitchen, bathroom, and a living room. At box 4 it was noted the current tenancy began on 6<sup>th</sup> June 2015. Under Improvements made by the tenant in box 8 it notes "carpets, kitchen flooring, decorations, electrical light fittings, central heating, bath, basin, kitchen sink and all locks. "

Under box 9 repairs it notes that "all maintenance, repairs and redecorations" fall to the landlord, while all furniture and white goods and tenants' possessions" the repair of fall to the tenant.

5. A letter dated 6<sup>th</sup> March 2015 from Lifespace to Miss Helen J Morris confirming that the latter has succession rights from her mothers Regulated tenancy. Included with the letter was a Notice of Increase effective from 6<sup>th</sup> June 2015 for a rent of £1300.00 per week replacing £534.04 per week. Whilst written as per week clearly intended to be per month.

Additionally, the applicant submitted the following information;

1-A photograph of part of the kitchen showing a free-standing fridge

2-A photograph of the chandelier in the living room

3-A photograph of scaffolding on roadside elevation

4-A photograph of scaffolding along the side of the flat

5-A letter from Arlington Residential to the tenant Miss Morris dated 21<sup>st</sup> October 2022.

It notes “The flat offers a good amount of space but is in poor material condition, as we know, and I have not been able to find any properties of comparable condition for rent in the area. At the time of my visit the neighbouring property was encased in scaffolding, and you advised me that subsidence repairs had been ongoing for several months and expected this to continue in the future.”

The letter then notes eight areas of defects.

It concludes “the flat in its current state would not be one we would be willing to market for rental without significant upgrades”.

6-A “Periodic inspection from Lifespace”, including the following

Hall/Stairs - “no making good carried out following electricians visit, electric meter is located under en suite in flat above (en suite above leaks near meter), old fuse board remains in hallway.”

Kitchen - “Boiler hasn’t been boxed in following previous boiler replacement, flat above isn’t leak proof, various holes/marks from electrical works.”

Bathroom - “Crack behind toilet, draft from window area, crack above door from leak above where electrical wiring located, toilet pipe looks to be in bad condition”

A completed Reply Form, noting;

The flat comprises living room, kitchen, bedroom 1, bedroom 2, and a bathroom.

That the central heating was installed by the tenant, there is no double glazing, carpets and curtain supplied by the tenant, and white goods supplied by the tenant.

The property has access to communal gardens. The reply form also notes disrepair and defects which have been considered.

Additionally, a previous FTT decision was included dated 7<sup>th</sup> August 2021 determining a rent of £1415 per month from 6<sup>th</sup> July 2021.

## **Respondents Submission**

6. The Landlord's submission is derived from the Reply Form completed by L Palmer from Lifespace.

The form noted, the dimensions of the two double bedroom flat.

The property is centrally heated, this was fitted by the tenant's predecessor, the boiler was recently replaced by the landlord.

Within the Reply Form, there is included written representation by Lucy Palmer ARLA Level 3 in Residential Letting and Property Management acting on behalf of the landlord.

The report noted that a similar sized property in good letting condition with furniture would be expected to let for £2400 per month. That the property in the current condition would be expected to rent for £1550 per month. A number of comparables are submitted in support of the report's conclusions.

## **The Inspection**

7. The tribunal inspected the flat in the morning of the hearing. It was found to comprise two double bedrooms, a kitchen, bathroom and living room. The property is single glazed other than sections where the tenant has installed secondary glazing. The bathroom has a metal enamel bath, a china sink and WC with high level cistern. There is central heating and a new boiler. The boiler is not boxed in. Whilst the flat is spacious, the light to the second bedroom is poor, the overall condition of the flat is usable but below modern

standards. Surface trunking is evident throughout the property, fitted by the landlord. There is access to a communal garden.

### **The Hearing**

8. The tenant appeared in person by telephone. The additional elements of the submission covered the tenants proposed rent, and evidence concerning hardship.

The tenant proposed that an accurate rent assessment would be £1200.00 per month. Additionally the tenant anticipated works by the landlord to rectify subsidence. The tenant was concerned that this would be very disruptive. In the circumstances the tenant felt that during the works the rent should be reduced to nil.

9. The tenant also noted their financial position and submitted a concern of hardship and asking the tribunal that if there was an increase that the increase should occur from the date of the hearing , rather than the date contained in the landlords Notice of Increase.

### The Law

#### **Valuation**

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 the application was validly made.

13. 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 parties. In respect of the rental levels the tribunal took notice of the rent proposed by the tenant. In respect of any potential reduction of rent considering potential subsidence works , the tribunal must take into account the physical state of the property at the date of the determination. So potential matters cannot be taken into account.

14. There has been a number of issues with the maintenance of the apartment. The property is not in a condition that would normally be presented to the market for letting.

15. Given the size and nature of the accommodation, given the evidence of similar rental properties supplied by the tenant and the landlord, using its own knowledge of the area, the tribunal considers if the property was in a condition expected by the market it would rent for £2300pcm However it is not and the tribunal reduces this to £1550.00per month. The tribunal determines this figure. In respect of the date of the increase, the tribunal accepts that the tenant exhibits valid hardship and so the effective date of the rent is the date of the hearing.

**Name:** Chairman Waterhouse FRICS  
John Francis QPM

**Date: 10<sup>th</sup> May 2023**

## **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]<sup>3</sup> shall determine the rent at which, subject to subsections (2) and (4) below, the [appropriate tribunal]<sup>3</sup> 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]<sup>9</sup> 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.