FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AW/MNR/2022/0155**
Hearing Type	**:**	**In Person**
Property	**:**	**Flat 9, 59 Drayton Gardens, London, SW10 9RU**
Applicant	**:**	**Mr Siegfried Lupo**
Respondent	**:**	**Bank Holdings Ltd**
Type of Application	**:**	**Section 13 of the Housing Act 1988**
Tribunal Member	**:**	**Mr John A Naylor MRICS, FIRPM** **Valuer Chairman**
		Mrs Helen Bowers BSc (Econ) MRICS MSc
Date of Decision	**:**	**17th May 2023**

DECISION

The Tribunal determines that a rent of £3,000.00 per month is payable with effect from 29th September 2022

REASONS

Background

1. A Notice was served on 23 June 2022 and this proposed that the rent should increase to £3,000 per calendar month to take effect on 29 September 2022.

2. A Second Notice was then served dated 8 August 2022 also proposing that the rent should be £3,000 per calendar month with effect from 15 October *"or next date after that which is the beginning of a periodic tenancy"*.

3. A third and final Section 13(2) of the Housing Act 1988 Notice was served dated 29 September 2022. This also proposed that the rent should be £3,000 but from 25 December 2022 or at a start of a period of the tenancy which begins next after 3 months from the service of the notice

4. On 28 September 2022, the tenant made an application to the Tribunal under Section 13(4) of the Housing Act 1988 for a determination of the market rent.

5. By way of a letter dated 20 December 2022, the Tribunal issued amended Directions.

Hearing

6. A hearing took place on 5 April 2023 at 10 Alfred Place London WC1E 7LR .Documentation was received in line with the directions. The Tribunal carried out an inspection of the subject property following the hearing.

7. At the hearing Mr Matthew Ahluwalia represented the Applicant and Mr Richard Granby represented the Respondent.

8. Joining the hearing as an observer, some 20 minutes after it commenced, was the applicant's brother, Mr Joseph Lupo.

9. The Tribunal heard evidence on behalf of both parties and subsequently attended site with Mr Joseph Lupo in attendance.

10.

The Law

11. When determining a market rent in accordance with the Housing Act 1988, regard must be had to all of the circumstances (other than personal circumstances) including the age, location and state of repair of the property, matters contained within the rent, repairing obligations, etc.

12. The relevant sections of the Housing Act 1988 are in an Appendix to this decision .

The Property

13. On the afternoon of 5 April 2023, the Tribunal inspected the property and were able to determine the following:

    The property comprises a purpose built self-contained flat on the third floor of a six storey mansion block believed to have been built circa 1900 and constructed in solid brickwork with suspended timber floors and a mansard composition slated roof. Windows serving the subject property are timber framed sliding sash or French doors opening onto balconies.

14. Internally, the accommodation comprises entrance hall, room 1 (living room), room 2 (dining room), room 3 (bedroom), room 4 (bedroom), room 5 (bedroom), room 6 (laundry room), kitchen/breakfast room, bathroom, separate WC. Externally, there are no communal gardens, parking spaces nor garage parking. From the lounge there is a small balcony accessed from French doors. The dining room is double aspect with a balcony on each elevation through French doors and rooms 3, 4 and 5 also have balconies accessed through French doors.

15. Located on the third floor, the property does benefit from a single person lift.

16. The property benefits from individual gas central heating but there are original timber windows and French doors, all of which are single glazed.

17. The property is understood to extend to approximately 1,600ft^2. Overall, the Tribunal found the property to be exceptionally spacious, believed to extend to some but requiring full modernisation, upgrading and redecoration.

Evidence

18. The Tribunal had been provided with a hearing bundle which, among other things, contained an Expert Witness Inspection Report from De Vos Consultancy Ltd Chartered Surveyors in respect of the subject property dated 2 November 2022 together and a letter from White Estates to Mr Joseph Lupo dated 22 June 2021 providing rental advice and comparable evidence, a further letter from White Estates dated 31 January 2023 and letting particulars on 16 Kensington Court Gardens from Willmotts, 115 Queengate, London, from Kinleigh Folkard and Hayward and St George's Square from Hamptons.

19. We have also been provided with the applicant's written Statement dated 21 February 2023 and written submissions of the respondent dated 14 March 2023.

20. By way of evidence, the respondent also provided letting particulars of a flat at 98 Elm Park Gardens comprising three bedrooms at a rent of £4,312 per calendar month, a flat in Drayton Gardens comprising three bedrooms, two bathrooms at a rent of £7,778 per calendar month at approximately 1,300ft², a second flat in Drayton Gardens comprising four bedrooms, one bathroom and one en-suite shower room extending to approximately 1,230 ft² at £6,456 per calendar month and an email from Holly Jones at Foxtons providing an opinion on letting value of the subject flat at £4,330 per calendar month.

21. Each of the parties' representatives made submissions on behalf of the parties and were kind enough to talk the Tribunal through the written Statements .

22. In written submissions by both parties, it became apparent that there were a number of issues to be addressed.

23. The first of these was the validity of Notices.

24. Mr Granby, on behalf of the Respondent, advised that the Notices had been served in an attempt to cover the anomalous situation that the commencement date of the tenancy and the period for payment were in dispute and could be a number of different dates depending on the accepted circumstances and that Notices that were served were defensive.

25. He further advised, that he believed that it was accepted between the parties that a valid Notice had been served and the Notice on which the tribunal should also rely, was that dated 23 June 2022

26. He pointed to email correspondence dated 21 october 2022 where he alleged that this had been accepted.

27. Mr Ahluwalia, for the applicant, wished to reserve his position but agreed that the hearing should continue the basis that this Notice was valid and that it is a monthly not quarterly rental period on which the rent was to be assessed.

28. Submissions were then taken from both parties on the element of service charge.

29. On questioning by the Tribunal Mr Granby, on behalf of the respondent, conceded that the clauses within the tenancy did not precisely mirror those within the head lease and that it was unlikely that it would be possible for the landlord to pass service charges to the tenant under the agreement dated 13th June 1973.

30. He further conceded that should the landlord be able to do so, this would affect the level of rent payable as it would result in a variable and unknown

outgoing in addition to rent payable by any assured shorthold tenant of the property which would have a detrimental effect on the rental income.

31. Mr Ahluwalia, for the applicant, confirmed that this, indeed, was his position and the parties agreed that the matter should proceed on the basis that the landlord could not pass the cost of service charge to the tenant and that the rent should be calculated on the basis that it was inclusive thereof .

32. Mr Richard Granby, on behalf of the respondent, reserved his position on the matter.

33. In respect of the rental value, each parties' representative summarised their written Statements as evidenced before the Tribunal as follows:

Applicant's Submissions

34. Mr Ahluwalia, , submitted that when assessing the rent of the property, regard was to be had to the Expert Witness report by De Vos Consultancy Ltd Chartered Surveyors which details at length the repair and condition of the property.

35. In particular, he referred to point 6.14 in which Ms De Vos stated *"…in terms of the provisions of the Homes(fitness for habitation) Act 2018I believe that the premises is currently not fit for habitation….."*. He then referred to the letters of White Estates dated 22nd June 2022 and 31st January 2023 in which they advised that they believed the monthly market rental value of the property should be £2,383.00 per calendar month and £2513.33 per calendar month respectively.

36. Mr Ahluwalia pointed out that both Ms De Vos and White Estates had inspected the property and were familiar with it.

37. He then advised that in paragraph 23 of the landlord's Witness Statement, while a rent was given, no evidence was cited at that time .

38. Referring to the landlord's evidence, Mr Ahluwalia specifically referred to the email from Foxtons dated 28th January 2023 and pointed out that the author Holly Jones had not seen the property and, when compared to the report of Miss De Vos, had dramatically underestimated the disrepair at the property. He submitted that you cannot separate repair and condition and advised that while he thought that lack of decoration might affect the open market rent, this would have far less an effect than disrepair and lack of general modernisation.

39. In conclusion, he suggested that the landlord had heavily relied on Foxtons' assessments which were based on a general assessment of the location and size of the property rather than specifically an assessment of the property itself.

40. In respect of undue hardship, the applicant's representative advised that it was their submission that the tenant would suffer undue hardship if required

to pay back rent and if the rent were to increase considerably. He submitted that the effective date for the implementation of the revised rent should be the date that the Tribunal makes its decision.

Respondent's Submissions

41. Mr Granby, on behalf of the respondent, accepted that the evidence of the applicant was probably superior to that of the respondent in that both White Estates and Ms De Vos had inspected the property. However, he went on to advise that his view was that the landlord has repairing obligations under the lease and the tenant can enforce repair and suggested that the Tribunal should not, therefore, make their determination based on the current condition of the property as the Landlord could be expected to comply with that obligation at some point .

42. He specifically referred to Foxtons' email and their suggestion that only *"…. a repaint recarpet and update in the kitchen …"* would be required before the property could be let at the figures they suggest.

43. On examination by the Tribunal, however, he conceded that Foxtons' assessment of disrepair and condition would have to rely on what they had been told and that this might not truly reflect the condition of the property.

44. In respect of evidence given by the tenant's representative, he suggested that any reference to Local Housing Allowance Rates was irrelevant as these were based on mass generalisations and incorporated many properties, including large purpose built Council blocks which were nothing like the subject property.

45. Referring to the respondent's written submissions, Mr Granby suggested that the flat was in a very dated state but not in disrepair. He suggested that the tribunal should not set a rent based on condition at the date of inspection as this was only a snapshot in time but rather that the Tribunal should set the rent on the basis that the Landlord had complied with their obligations that the tenant could enforce .

46. In this regard, he referred the tribunal to the cases of *Sturolson & Co -v- Mauroux (1988) 20 H.L.R.* and *Ghani -v- The London Rent Assessment Committee* .[2002] EWHC.

47. Mr Granby advised that the respondent chose to rely on the evidence of Foxtons who were familiar with the area and had provided details of properties they had let at a figure far in excess of that being sought. He further concluded that the Tribunal should make its own assessment on repair and condition when undertaking its inspection

48. In respect of undue hardship, Mr Granby, on behalf of the respondent, submitted that the statutory default date for commencement of the lease was the date of the Notice.

49. He suggested that, in his opinion, the applicant would get housing benefit and that, in any event, the applicant had provided no details of their means.

50. He pointed to the fact that the applicant's brother lives with him and might well contribute towards the rent and suggested that the flat was an exceptionally large flat in an expensive area .

51. Mr Granby submitted that the test of 'undue hardship' was not one of affordability and that there was no entitlement within the legislation for a tenant to occupy any property they wished, irrespective of requirement , and that the applicant should move if the rent for a property such as this is beyond their means.

Post Hearing Evidence .

52. Post Hearing the Tribunal has received a note from the Applicant relating to evidence given during the hearing itself. The note refers to evidence given by both parties that Foxtons opinion on rent was given without them having inspected the property The note confirmed that this evidence was in fact given in error and that the Applicants brother has confirmed that Foxton and other agents did in fact inspect the property on 24th January 2023 during which he was present.

53. Whilst the Tribunal generally would not have regard to any evidence or submissions made after the end of the hearing, in this instant the clarification is in favour of the Respondent and corrects an error made at the hearing. As this is deemed to be critical in assessing the evidence of the Respondent and is not prejudicial to the Respondent the Tribunal will note the nature of this additional information .

Determination and Valuation

54. Having heard the evidence of the parties, the Tribunal is satisfied that the Notice dated 23rd June 2022 is accepted as valid by both parties and that the matter is to proceed on the basis that the tenancy is now monthly and that a monthly rent is to be assessed.

55. Further, the Tribunal is satisfied that the tenancy agreement does not allow the passing of service charge from the landlord to the tenant and that any rent to be assessed is inclusive thereof and is thus in line with the majority of Assured Shorthold Tenancy lettings in the open market.

56. In assessing the rent payable under the tenancy agreement, the Tribunal first seeks to ascertain the open market rental value of the property of this size, in this location were it to be let in the open market today in a condition average for this category of property. In so doing the tribunal note both Mr Granby's point relating to the repairing obligations of the landlord and the fact that at

the date of the hearing the landlord does not appear to be complying therewith.

57. The evidence provided by the parties has been useful but also has its limitations. Evidence provided by the applicant while containing comparable evidence is limited to the opinion of one individual and details evidence of properties considerably smaller than the subject property and often at lower ground floor level. The evidence provided by the respondent was of properties that have been extensively modernised and refitted by comparison with the subject property. That said letting details of properties in the area that have let ,provided by both parties , do provide some assistance. The tribunal has therefore attributed the appropriate weight to the evidence provided.

58. In undertaking our assessment of the rent of the subject property, due regard has been had to the Expert Witness report on condition provided by De Vos Consultancy Ltd Chartered Surveyors, however, the Tribunal has also been able to make its own assessment as a result of the inspection undertaken.

59. Overall, the opinion of the Tribunal is that the property is an exceptionally large mansion flat in a sought-after area of Central London.

60. The Tribunal did note, however, that the property does require some repair and maintenance, particularly to external joinery and internal plasterwork ,as well as general modernisation and decoration. In assessing the rent payable for this particular property, the Tribunal has taken account of the repairing obligations of each of the parties and differentiated specifically between the need for redecoration, the need for remedy of disrepair, and the need for modernisation which may not constitute a liability for either party but which, nevertheless, would affect the rent.

61. Taking all of this evidence into account the Tribunal ,using its general knowledge and experience rather than any specific knowledge, considers that the rental value of a four/five bedroom property of this size in this location would be in the region of £5,000 per month. This level of rent, however, reflects a property that is updated with suitable floor coverings, curtains, window coverings and in a good state of repair and decoration with modern kitchen and bathroom fittings.

62. In the opinion of the Tribunal, a prospective tenant would reduce their rental bid for a property without modern carpets, curtains and without modern kitchen, bathroom or kitchen appliances.

63. It is also the opinion of the Tribunal that the rental bid of a prospective tenant would be affected by signs of disrepair within the property, such as gaps at windows and French doors, cracks in ceilings and an electrical installation that is antiquated and limited by modern standards .

64. For all these factors we make a of 40%.

65. Lastly, the Tribunal considers the date from which the rent should begin.

66. Having considered the evidence given by both parties, the Tribunal is not convinced that a sufficient case has been made for hardship to the existing tenant and, in the circumstances, concludes that the start date for the new rent should be 29th September 2022 as set out in the Notice of increase dated 23rd June 2022,

Valuation

Market Rent:	£5,000 per month
• Less 40% for ○ lack of adequate carpets, curtains and ○ white goods ○ to reflect the dated kitchen ○ to reflect the dated bathroom ○ to reflect the condition of external windows and doors ○ to reflect the antiquated nature of the electrical installation	
Less	£2,000.00

Rent Payable £3,000.00

Decision

67. Taking the above into account, the sum of £3,000 per month is determined as the market rent for the property with effect from 29th September 2022 being the date set out in the Landlord's Notice dated 23rd June

Chairman: Mr John A Naylor MRICS FIRPM

Date: 17th 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 might 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 this 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. Any appeal in respect of the Housing Act 1988 should be on a point of law.

If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Housing Act 1988

Section 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).

Section 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 shall determine the rent at which, subject to subsections (2) and (4) below, the appropriate tribunal 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][7] 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 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, 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