



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

Case reference : **LON/OOBK/MNR/2023/0207**

Property : **Flat B (Middle Flat) 90 Saltram Crescent
London W9 3JX**

Applicant : **Dr Oliver Schwickerath**

Representative : **In Person**

Respondent : **Mr Barry Summers and Mrs Diane
Summers**

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**

**Date and venue of
hearing** : **20th April 2023 Hearing in Alfred Place**

Date of Decision : **20 April 2023**

DECISION

Decision of the tribunal

The tribunal determines the rent at £1890.00 per month with effect from 20th April 2023.

Background

1. The tribunal received an application under section 13 of the Housing Act 1988 received 28th November 2022. This included the landlord's notice dated 21st October 2022 proposing a new rent to commence on 1st December 2022. The previous rent being £1450.00 per month and the proposed £1920.00 per month from 1st December 2022.
2. The assured tenancy which commenced in April 2005. The property comprises a first floor flat comprising two bedrooms, the smaller used as a study, living room, open plan kitchen and a bathroom.
3. On 13th January 2023 directions were given to determine this matter.
4. A hearing was held on 20th April where the Tenant Dr Oliver Schwickerath attended, and Mr Barry Summers attended on behalf of the Respondent.

Representations from the Applicant tenant.

5. At the hearing the tenant set out their opposition to the rental increase in similar terms to his written submissions. The tenants' submissions comprised; A completed Reply Form. The Form notes the request for a hearing and an inspection.
6. The tenant notes that only half the flat has double glazing, and that the front reception room has single glazed Victorian sash windows only.

The reply form at "improvements" notes issues with maintenance including boiler, windows, cracks caused by subsidence, issues of staining from water leaks, and execution of the works including dust.

7. Additionally, a separate submission dated 17th February 2023 which covers contextual matters in the landlord/ tenant relationship.

All comments have been carefully noted.

In the hearing the tenant with considerable care and clarity set out their position. They submitted the property was not of the same specification or order as other comparable properties. The accommodation was a one double bedroom with a second single bedroom with living room and kitchen and bathroom. This was confirmed on inspection by the tribunal,

That the property had been and continues to be their home since April 2005 and that roots had been put down in the community.

Their proposal for rental level was £1450 per month and this derived from a combination of view of market, condition of property and what could be afforded.

8. Representations were also made in respect of hardship and the effective date of any rent increase. The tenant carefully explained their financial position noting that £1450 per month was the most they could afford.

Representations from the Respondent landlord

9. The landlord submitted a completed Reply Form, noting they did not require an inspection nor a hearing. The form notes the landlord supplied central heating, double glazing, except front sash which have been recently refurbished, curtains and carpets. With white goods some purchased by tenant.

Recently decorated throughout, recently replaced windows in bedrooms, a new boiler and common parts decorated.

Landlord notes some outstanding work which they are willing to carry out but agreement on time not reached with tenant at date of hearing.

Noting also that specific works have been carried out to the bathroom and kitchen following previous tribunal decision. Also noting that rents have increased in area.

10. By separate submission, dated 21st February 2023 the landlord noted that average value for 2 bed flats in Saltram Crescent is £2450 to £2700 per month. The landlord requests £1920 per month to be determined. Evidence submitted of an opinion of value by Wren Residential suggesting £2000 per month also included.

Additional noting mortgage interest costs have increased considerably landlord suggesting at least 300%.

The landlord presented their case succinctly and professionally.

11. In respect of the rent the landlord had taken their view of the market for a similar property in tip top condition and applied a discount of 20 per cent as identified in the last tribunal decision on the matter, thus reaching £1920 per month. They noted some repairs has been carried out including a replacement boiler.

In respect of their hardship aspect they noted the increase in mortgage interest that has occurred recently.

The Inspection

The tribunal inspected the property and found it in generally good condition the new boiler was noted with pipework yet to be boxed in around it. The windows to the street were large and single glazed. The property was clean and sound.

The Law

12. In accordance with the terms of section 14 Housing Act 1988 (the Act) the Tribunal proceeded to determine the rent at which it considered that the subject property might reasonably be expected to be let on in the open market by a willing landlord under an assured tenancy.

13. In so doing the Committee, as required by section 14(1), ignored the effect on the rental value of the property of any relevant tenant's improvements as defined in section 14(2) of that Act.

Valuation

14. The tribunal considered the submissions of both parties; the condition of the property must be considered but disregarding any improvements by the tenant.

The level of rent ascertained is set out by section 14 and personal circumstances cannot be taken into account.

15. The tribunal considering the representations of the parties and considering its own expertise values the market level of the flat if up to modern letting standards as £2100.00. The property is not at that level so deducts 10%, giving a value of £ 1890.00 per month.

The tenant gave a detailed account of their financial hardship circumstances, for which the tribunal has great sympathy. This is accepted by the tribunal and the effective date of the increase is set at the date of the hearing.

The Decision

16. The tribunal determines a rent of £1890 per month from 29th April 2023,

Name: Chairman Waterhouse FRICS **Date:** 20th April 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.

]

(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.