



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

**Case reference** : **LON/00BK/MDR/2023/0001**

**Property** : **Flat 1 8 Warrington Crescent Little  
Venice London W9 1EL**

**Applicant** : **Cuevas Cardenas Dulce, Jorge Alberto  
Maytoarena Montano,**

**Representative** : **None**

**Respondent** : **William Thomas Dean**

**Representative** : **Goldsschmidt & Howland Property  
Services Ltd (Simeon Garlick)**

**Type of application** : **Section 22(1) of Housing Act 1988  
Determination of Rent under an  
Assured Shorthold Tenancy**

**Tribunal member** : **Mr D Jagger MRICS**

**Date of decision** : **25th April 2023**

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**DECISION**

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## **Decisions of the Tribunal**

- (1) The Tribunal confirm that section 22(3) (b) is **not** satisfied, and therefore we have no power to make a determination in this matter.

## **Background**

1. The tenants live in the property under an assured tenancy dated 12th November 2022 for a term of 36 months at a rent of £6000 per month.
2. On the 5th December 2022 the tenants of the above property made an application under section 22(1) of the Housing Act 1988.
3. The Tribunal were provided with a bundle of evidence in this matter. The tenants evidence included a schedule of photographs, the completed Reply Form, evidence of disrepair, four rental comparables in the locality and a statement outlining the timeline in connection with three viewings and subsequent information together with the noise intrusion and vibration from the underground railway only evident upon occupation. The landlords evidence included a chronology of events, completed reply form with additional comments, comparable evidence and related schedule of evidence, photographs, a floor plan and an unsigned Inventory and Check in report extending to 74 pages dated 12th November 2022. In addition the Tribunal were provided with a copy of the Tenancy Agreement. Directions were made on the 13th January 2023 and the parties were content for the matters to be determined without a hearing.

## **4. Submissions**

5. Essentially, the Tribunal are being asked to consider whether the rental figure of £6000 per month agreed in the tenancy agreement is *“significantly higher than the rent which the landlord might reasonably be expected to get in comparison with other rents for similar properties in the locality”*

## **Inspection**

6. The parties did not request an inspection and the Tribunal relied on detailed information provided by the tenant and landlord together with their own expert knowledge.
7. The property is a converted lower ground floor flat which forms part of a stucco fronted mid terrace period building. The property has three bedrooms, living room, kitchen, bathroom, two en suite shower rooms and a private

terrace. The photographic evidence included in the parties submissions provided the Tribunal with an insight into the condition of the flat. The floor area is approximately 1579f2 and a helpful floor plan was also attached to the bundle of documents.

## **The Evidence**

### **The Tenants Case**

8. The tenant's case was that they entered the tenancy on the property based upon the pre agreement comments made by the letting agent and no reference was made in connection with underground rail noise. As a firm of property professionals they initially had no reason to doubt their judgement. Doubts had set in later when they commenced occupation. It is stated the property vibrates and suffers from noise intrusion from the underground railway line. It is stated *"If we have been informed of the underground noise we wouldn't have considered moving here; Instead, we would've kept searching as our previous flat lease was not ending until February 2023, hence we did have time"* .In addition, it is states that the property is in need of maintenance which should have been taken into account and a schedule of photographs was provided as evidence. Finally, details of four flats in the area (Warwick Avenue, St Marys Terrace, Clive Court and Clifton Gardens) were provided as evidence. Based on this evidence, it is argued that the present valuation was set too high.

### **The Landlords Case**

9. The landlords' case is that the tenants undertook three viewings prior to entering the tenancy agreement and therefore this provided time to undertake any due diligence A further statement is provided confirming the "premium position" of the subject property being 0.2 miles from Regents canal, close to local amenities and has the benefit of large communal gardens (Formosa Gardens) A further statement confirms the market conditions for rental properties in prime central London where there is a severe lack of supply and over demand which is causing rental levels to increase. Details of 9 properties were provided together with comparable schedules. The Landlord has offered the tenants an early termination based on more favourable terms as set out in the agreement. Finally, it is confirmed the majority of the maintenance matters outlined by the tenants have been remedied. .

## **The Law**

10. In accordance with the terms of section 22 of the Housing Act 1988 (The Act) the Tribunal proceeded to consider whether we have the ability to determine the rent at which it is considered that the subject property might reasonably be expected to be let on the open market by a willing Landlord under an assured tenancy within the terms set out in that section.
11. The Tribunal cite the relevant section below;

**22. Reference of excessive rents to appropriate tribunal.**

*Subject to section 23 and subsection (2) below, the Tenant under an assured shorthold tenancy may make an application in the prescribed form to the appropriate tribunal for a determination of the rent which, in the appropriate tribunal's opinion, the Landlord might reasonably be expected to obtain under the assured shorthold tenancy*

*No application may be made under this section if —*

*(a) the rent payable under the tenancy is a rent previously determined under this section;*

*(aa) the tenancy is one to which section 19A above applies and more than six months have elapsed since the beginning of the tenancy or, in the case of a replacement tenancy, since the beginning of the original tenancy; or (b) the tenancy is an assured shorthold tenancy falling within subsection (4) of section 20 above (and, accordingly, is one in respect of which notice need not have been served as mentioned in subsection (2) of that section).*

*Where an application is made to the appropriate tribunal under subsection (1) above with respect to the rent under an assured shorthold tenancy, the appropriate tribunal shall not make such a determination as is referred to in that subsection unless they consider— (a) that there is a sufficient number of similar dwelling-houses in the locality let on assured tenancies (whether shorthold or not); and (b) that the rent payable under the assured shorthold tenancy in question is significantly higher than the rent which the Landlord might reasonably be expected to be able to obtain under the tenancy, having regard to the level of rents payable under the tenancies referred to in paragraph (a) above.*

*Where, on an application under this section, the appropriate tribunal make a determination of a rent for an assured shorthold tenancy— (a) the determination shall have effect from such date as the appropriate tribunal may direct, not being earlier than the date of the application; (b) if, at any time on or after the determination takes effect, the rent which, apart from this paragraph, would be payable under the tenancy exceeds the rent so determined, the excess shall be irrecoverable from the Tenant; and (c) no notice may be served under section 13(2) above with respect to a tenancy of the dwelling-house in question until after the first anniversary of the date on which the determination takes effect.*

*(5) Subsections (4), (5) and (8) of section 14 above apply in relation to a determination of rent under this section as they apply in relation to a determination under that section and, accordingly, where subsection (5) of that section applies, any reference in subsection (4)(b) above to rent is a reference to rent exclusive of the amount attributable to rates.*

12. In doing so the Tribunal, as required by section 14(1) ignore the effect on the rental value of the property of any relevant Tenant's improvements as defined in section 14(2) of the Act.

## Consideration

- 13 The first consideration to be addressed by the Tribunal was section 22(3) (a) of the Act. In order to be able to make a determination, the Tribunal must first find there to be sufficient number of similar flats in the locality. The law does not define “sufficient” Similarly, there is no definition of “similar “ or “locality” But there is considerable case law to give guidance to the Tribunal and indeed the Tribunal were aware of a number of transactions for flats in Chiswick High Street. Therefore, the Tribunal are able to say we have managed to find a sufficient number of properties to provide adequate comparable evidence to comply with section 22 (3)(a)
14. The second test for the Tribunal is found in section 22 (3)(b) The Tribunal have to be satisfied “*that the rent payable under the shorthold tenancy in question is **significantly** higher than the rent which the landlord might reasonably be expected to get in comparison with other rents for similar properties*” in order to make a determination.
15. Whilst we commend the detailed evidence prepared by Tenants, the Tribunal are of the opinion the comparable does not address: floor areas, specific location, condition, the rent achieved and timescale. Otherwise, the Tribunal is of the opinion the location of the underground rail line does not have a considerable impact on rental value.
16. The comparable evidence provided by the Landlords agent was considered more detailed and attempted to provided specific details of the evidence.
17. In coming to its decision, the Tribunal had regard to the representations made by each party and it preferred the evidence provided by the landlord for reasons given above.
18. In the Tribunal’s view, this case does not meet the test in section 22(3) as set out above. The Tribunal therefore confirm that section 22(3) (b) is not satisfied and thus have no power to make a determination in this instance.

**Name:** Duncan Jagger MRICS

**Date:** 25th April 2023

**Annex**  
**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).