



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

Case reference : **LON/OOBD/MNR/2023/0065**

Property : **63 Sheen Court, Richmond, TW10 5DF**

Applicant : **Naresh Bhatia and Vimla Bhatia**

Representative : **In Person**

Respondent : **Ms Asawari Churi and Mr Abhijeet Godbole**

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 : **19th June 2023 video hearing from Alfred Place**

Date of Decision : **19th June 2023**

DECISION

Decision of the tribunal

The tribunal determines the rent at £1825.00 per month. The rent to have effect from the date in the landlords notice of 28th February 2023, the effective date being 29th March 2023.

Background

1. The tribunal received an application under section 13 of the Housing Act 1988 dated 1st March 2023. This included the landlord's notice dated 28th February 2023, proposing a new rent to commence on 29th March 2023. The previous rent being £1595.00 per month and the proposed £1825.00 per month from 29th March 2023.
2. The tribunal inspected the property in the morning of the hearing and the hearing was conducted by video the same day.
3. The property comprises a second floor flat, with one living room, one kitchen, a bathroom, with toilet and two bedrooms. The tenancy commenced on the 29th November 2021.

Applicant submissions.

4. The tenants submissions comprised; the application form dated 1st March 2023. Which included the tenancy agreement showing commencement date of 29th November 2021, Notice of Increase of Rent, dated 28th February 2023.
5. The application form notes;

The tenant is not responsible for repairs. The landlord at the start of the tenancy provided, "2 bedframes, 1 chest of drawers, 1 wardrobe, 1 dining table, 2 chairs, one nest of three tables, one two-piece sofa and one sofa chair. All old except sofas."

The tenants' responsibilities do not include "repair".

6. By email letter dated 27th February and signed by Naresh Bhatia and Vimla Bhatia the tenant's state;

"There are numerous issues/defects with the property which are yet to be addressed. These include lack of agreed full window replacement; lack of a thermostatic shower; non controllable heating; downgrading of the EPC; and other matters"

"The property shall only attract the current rent level of £1595.00 per month if in good condition."

“The proposed increase is yet a further example of your continued harassment against us.”

“We strongly believe that your proposed increase is in revenge/retaliation for own claim against you, currently going through the courts.”

The agreement for the assured tenancy dated 29th November 2021 notes that the initial contractual period was of 12 months concluding on 28th November 2022. The rent initially was £1595.00 per month.

Additional information has been provided by the tenants to the tribunal, this has been fully considered but includes;

An EPC showing the property as C bordering B.

Landlord Homeowner Gas Safety Record showing defects and their rectification no warning notices issued

An EPC valid to 17 October 2032 showing D

Various correspondence indicating a breakdown in relationship between the landlord and the tenant.

From e mail chain dated 3rd February 2022 comprising 26 pages, the contents of which are noted.

An email to Ms Churi dated 21st January 2022 concerning trades persons and repairs contents noted.

A photograph of;

a thermostatic showing 15 degrees Celsius

Metal framed single glazed windows with condensation

Notice of trial date for county court case between landlord and tenant

Notes from British Gas engineers

A series of instant Messenger screen shots

Note dated 11th February 2022 concerning the shower temperature control

Note dated 31st March 2022 re cooker hood and thermostatic shower valve.

Two pictures of a screw head holding down corrugated metal.

A cast iron radiator

Further details of the County Court case “Reply to Defence and Counter Claim detailing the matters in dispute”

A photograph of balcony or window

A photograph of shower head and shower support broken.

A photograph of the over bath shower x 2.

Correspondence between landlord and tenant dated 30th March 2022 detailing issues of disrepair and contractors.

Various documents relating to British Gas.

Two pictures showing aged radiators and pipework

A document titled “Tenants Statement in Support for Decrease in Rent” comprising 13 pages, the contents of which are noted.

Respondents Submission

7. An email from the landlord to the tribunal dated 27th April 2023, detailing, a response to the tenant's submissions of the 24th April. The contents of which are noted.

It includes at D11 evidence of a three-bedroom flat available for rent in East sheen for £2500 per month. Additional submissions on the rental level of property in the vicinity.

Photographs of 63 Sheen Court, showing £1595 pcm as agreed rent.

Two-bedroom flat to rent in Sheen Court £2500 pcm

Photograph of entrance to Sheen Court.

Further letting particulars from Sandycombe Road showing asking rent of £2500 per month, and various other properties which the tribunal notes.

A letter to the tribunal from the landlord, dated 27th April 2023, the contents of which are noted.

Also “Landlords statement in support of Notice of Increase in Rent” including that the rent includes hot water and heating in the rent.

Within the document the landlord submits that given the location of the flat and the status of the building along with levels of rents, a rent of £2000,00 per month would be appropriate if let now,

The Determination

8. The applicants referred the tribunal to their written submissions. Both Ms Bhatia and Mr Bhatia gave evidence. Summarising their concerns over the cleanness of the property at the start of the tenancy, concern over the disrepair of several items including the oven hood, refrigerator and gas hob. Of primary concern was the shower, and the heating. With the shower, the issue was of faulty thermostatic valve. The shower still could be used by manual control through the taps. With the heating, the radiator in the living has a value which can be only on or off. The radiator in the hall is constantly on. The hotwater is supplied by a central communal boiler.

9. In terms of an appropriate figure for the rent the applicants cited £1398.00 per month with further discount for the issues raised so suggesting £1200.00 per month.

10. With the landlords both Ms Churi and Mr Godbole gave evidence. They explained that relations between the parties had been strained from the beginning of the tenancy. That there had been frequent requests from the tenants in the early weeks of the tenancy. Issues had arisen regarding the mattress, the speed and effectiveness of responses to issues.

11. In terms of rental evidence Ms Churi noted that there was a one-bedroom flat within Sheen Court currently to rent £1850.00 and from this derived a minimum rent for the subject property of £2000.00 per month. Mr Godhole confirmed his agreement with this position.

12. The respondent landlord similarly covered their written submissions and proposed a figure of £2000.00 per month.

The Law

Determination of the Valuation

13. 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.

14. 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

15. The tribunal has some sympathy with the contentions of the applicant, that it is frustrating if upon taking up a tenancy that all matters are not as anticipated with the property. Similarly, from the evidence of the respondents it is evident that considerable efforts were made to ameliorate the concerns of the applicants.

16. 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.

17. The tribunal in reaching its determination must determine the rent based on the physical condition of the property at the date of inspection. The tribunal that the property is generally in a good condition, although there are a few minor aspects that were in disrepair. These included two cracked panes of glass, the shower fixings and functionality and the heating being the original 1930s had issues with the valves that limited control. Also, the windows were single glazed metal framed. The tenant benefits from furniture and hot water within the rent.

18. Given the size and nature of the accommodation, the evidence of similar rental properties supplied by the tenant and the landlord, using its own knowledge of the area, the tribunal determines the rent at in complete repair the property would be expected to let for £2100 per month. Given that there are a number of features that detract from this specification, the tribunal determines £1825 per month, effective from the date of Notice of Increase.

Name: Chairman Waterhouse FRICS **Date:** 19th June 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.

[

(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.