



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

Case reference : **JM/LON/00AN/MNR/2023/0058**

Property : **161 Ashcroft Square, London, W6 0YN**

Tenant : **Ms L Rodriguez**

Landlord : **Ms D Spencer**

Date of application : **21 February 2023**

Type of application : **Application for determination of market rent following a Notice of Increase served pursuant to Section 13 of the Housing Act 1988.**

Tribunal member(s) : **Mr O Dowty MRICS
Mr N Miller**

Venue : **10 Alfred Place, London, WC1E 7LR**

Date of decision : **31 July 2023**

REASONS FOR DECISION

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Background

1. The Tenant lives in the property under an oral lease, which it is common ground constitutes a weekly assured periodic tenancy, that began on or about 1 September 1992.

2. The landlord served on the tenant a Notice of Increase, dated 19 January 2023, proposing to increase the rent at the property from £288.75 per week to £461.54 per week with effect from 27 February 2023.
3. On 21 February the Tribunal received an application from the tenant referring the landlord's Notice of Increase to the tribunal, challenging the increase and seeking a determination of the market rent.

Inspection

4. The Tribunal inspected the subject property on 27 July 2023, accompanied by both parties. It is a two bed flat on the 5th floor of a larger building within a local authority estate, near to Hammersmith station. The property is generally in a good condition, however the kitchen is somewhat dated.

Hearing

5. Following the inspection, a face-to-face hearing was held at 10 Alfred Place, London, WC1E 7LR at which the parties appeared in person. The parties were accompanied both at the inspection and at the hearing by Ms Wagner, a friend of the tenant's, and Ms Anguille, the landlord's daughter.
6. The hearing began with a discussion of the terms of the oral tenancy. The property is held by Ms Rodriguez on an oral weekly assured periodic tenancy. Ms Spencer originally provided a fully furnished flat, and is responsible for all repairs and decoration at the property.
7. A large part of the parties' submissions focussed on historic issues regarding the state of repair of the property and the tenant's carrying out minor works of decoration and repair allegedly without the landlord's permission, however these are not issues which are relevant to the Tribunal's role in determining a current market rent. That being said, the tenant did note that she provided the dishwasher and has replaced some other items of furniture over the years at the property, and that the property and the wider building within which it is situated suffer from occasional leaks in bad weather. The necessary repairs to correct this are the responsibility of the council and are not within the landlord's immediate control.

The law

8. The way in which the Tribunal is to determine a market rent in this circumstance is set out in Section 14 of the Housing Act 1988. In particular, the tribunal is to determine the rent for each flat at which the property might reasonably be expected to be let in the open market by a willing landlord under an assured tenancy, subject to disregards in relation to the nature of the tenancy (i.e. it being

granted to a “sitting tenant”) and any increase or reduction in the value due to the tenant’s improvements or failure to comply with the terms of the tenancy.

Valuation

9. In the first instance the Tribunal determined what rent the Landlord could reasonably be expected to obtain for the property in the open market if it were let today in the condition that is considered usual for such an open market letting.
10. The tenant did not provide any comparable evidence, instead referring to discussions she had held with other people and the difficulties she had had in finding comparable evidence given it is a flat located in a council estate. The tenant asserted that the rent should not increase because there was no reason for it to. When asked by the Tribunal to say what figure she thought might be reasonable, the tenant said she would consider a rent of circa £300 a week.
11. The tenant submitted, in her papers and at the subsequent hearing, that there were various issues in the wider estate such as people dumping rubbish and regular anti-social behaviour. However, the Tribunal did not consider this was a fair criticism on the evidence provided.
12. The landlord provided some evidence as to value, consisting of a mixture of asking rents for flats in the area and the opinions of letting agents. The Tribunal invited the landlord to make representations regarding that evidence, however the landlord indicated she had merely intended to provide a basket of evidence in support of the rent proposed in the notice for the Tribunal to consider, and had nothing specifically to say regarding any individual piece of evidence.
13. The tenant criticised the landlord’s evidence on the basis it was not from ex local authority properties such as the subject; however, it appeared to the Tribunal that the landlord’s evidence was indeed from ex local authority and/or housing association stock. Nevertheless, the evidence provided by the landlord was summary and somewhat vague, some of the pictures were not visible and in part the evidence consisted merely of emails from letting agents concerning the estimated rental values of different properties.
14. The Tribunal therefore considered the value of the property in light of its local knowledge and experience. The Tribunal formed the view that the property would command a rent of £2,000 per calendar month, which is equivalent to £461.54 per week, were it let in the open market in the condition and on the terms considered usual for such a letting.

15. This hypothetical rent is adjusted as necessary to allow for the differences between the terms and conditions considered usual for such a letting and the condition of the actual property at the date of the determination. Any rental benefit derived from Tenant's improvements is disregarded.
16. The Tribunal made deductions from this hypothetical figure as follows:
 - A deduction of 1.5% to reflect the fact the tenant provided the dishwasher and replaced some other items of furniture.
 - A deduction of 5% to reflect that the condition of the kitchen is worse than would be expected in the market.
 - A deduction of 2.5% to reflect the water ingress at the property in bad weather.
17. The Tribunal did not consider it was necessary to make any deduction from the market rent to account for the lease terms of the tenancy, as they are not significantly worse from the hypothetical tenant's perspective than would be considered usual in the market.
18. The Tribunal therefore arrived at a value of £420 per week.

Effective Date

19. As set out in Section 14(7) of the Housing Act 1988, the effective date of a Tribunal determination under that section is the rent increase date that was provided in the landlord's Notice of Increase – unless it appears to the Tribunal that this would cause the tenant undue hardship. In those circumstances, the Tribunal may adopt a later effective date for its determination, being not later than the date on which the determination is made.
20. At paragraph 36 of the tenant's witness statement, the tenant said that:

In respect of the effective starting date of the rent, I am hoping there will not be any increase in the rent and ask the Tribunal to make the starting date of any change when the Tribunal makes its determination.
21. Other than that, the tenant did not mention the effective date, nor provide any detail as to hardship, in her statement.
22. At the hearing, the tenant spoke for some time offering submissions, but made no mention of the effective date of the decision. At the end of the hearing the Tribunal reminded the tenant that she had requested a later effective date and invited the parties to make submissions regarding this. The submissions made by the tenant in

reply were unevidenced and, the panel felt, quite vague - consisting mainly of a brief reference to housing benefit and an assertion that the tenant couldn't afford to pay any increase.

23. The panel considered that it had not been evidenced that the tenant would suffer undue hardship as a consequence of the rental increase taking effect from the date provided in the notice. Accordingly, the date from which the decision takes effect is the date specified in the landlord's Notice.

Decision

24. Further to the considerations above, the Tribunal determined a rent of £420 per week in this matter, such rent to take effect from 27 February 2023.

Valuer Chairman: Mr Oliver Dowty MRICS

Dated: 21 August 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. 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).

