



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

**Case reference** : **TR/LON/00BK/MNR/2023/0277**

**Property** : **Apartment 30 Cambridge Court, 2  
Sussex Gardens, London, W2 1EU**

**Tenant** : **Adriaan DeJongh & Andrew  
Goldsborough**

**Landlord** : **Fordgate Paddington Limited**

**Landlord's  
Representative** : **Maurice Herskovic – Three Delta  
Management**

**Date of application** : **16 June 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 J Francis QPM**

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

**Date of decision** : **3 November 2023**

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**REASONS FOR DECISION**

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## **Background**

1. The Tenant lives in the property under a statutory monthly periodic tenancy, that began on 12 September 2022 on the expiry of the previous assured shorthold tenancy.
2. The landlord served on the tenant a Notice of Increase, dated 11 June 2023, proposing to increase the rent at the property from £1,100 per month to £2,350 per month with effect from 12 July 2023.
3. On 16 June 2023 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.

## **Hearing**

4. The Tribunal sought to hold a face-to-face hearing at 10 Alfred Place, London, WC1E 7LR on 10 October 2023. Mr Andrew Goldsborough, one of the tenants, appeared in person. Mr Maurice Herskvoic of Three Delta Management appeared on behalf of the landlord.
5. Both parties present raised preliminary issues. Mr Goldsborough made the Tribunal aware that he was suffering from serious medical issues and wished to submit evidence in relation to that. The respondent wished to include in evidence a decision notice from the Tribunal in relation to flat 63 within the subject building. Neither party objected to the other party's submissions and they were accepted by the Tribunal.
6. As the attempted hearing began in earnest, it became apparent that Mr Goldsborough had not read the landlord's statement of case. The respondent averred that it had been provided by email, and that it could be demonstrated that Mr Goldsborough had responded to other issues raised in that email. Mr Goldsborough said that it was possible he had received it but hadn't read it, and he didn't check his emails very regularly.
7. The Tribunal felt it was clear that Mr Goldsborough had received the landlord's statement of case, but had not read it. That statement was detailed, and provided evidence of comparable rents. Whilst in other circumstances the Tribunal may have continued with the hearing regardless, in light of the somewhat exceptional medical circumstances of Mr Goldsborough, who had been diagnosed with a terminal medical condition in the weeks before the hearing, the Tribunal felt it was wrong to continue with the hearing without Mr Goldsborough having an opportunity to read and consider the statement of case submitted by the respondent.
8. The Tribunal therefore adjourned the hearing with directions. Those directions provided for the respondent to serve a copy of their

documents (including their statement of case) on the respondent in hard copy. The directions also provided both sides an opportunity to provide submissions regarding the potential effective date of the Tribunal's decision; the Tribunal having identified it was possible that the tenant may experience financial hardship from a backdating of rent to the date proposed in the notice.

9. Those directions were complied with, albeit Mr Goldsborough sought to provide significantly more information than was permitted by them. This was of little import as the information provided was either properly addressed at the circumstances regarding the potential for financial hardship or was irrelevant to the Tribunal's determination of market rent, instead focussing on disagreements with the landlord and personal circumstances of the tenant.
10. A second face-to-face hearing was held at 10 Alfred Place, London, WC1E 7LR on 3 November 2023. The hearing was again attended by Mr Goldsborough in person, and Mr Herskovic on behalf of the respondent.
11. At that hearing, the tenant sought to adduce new evidence, which was opposed by the respondent. The Tribunal considered that it was significantly too late to provide fresh evidence at that point, following a prior abortive hearing and the issuing of further directions, and therefore refused the tenant's application to adduce that evidence.
12. Having concluded preliminaries, the Tribunal began the hearing in earnest. The hearing was to be conducted essentially in two parts. First, both parties would make submissions regarding the market rent of the property, with an opportunity for questioning, in the usual way. Secondly, the parties were to make submissions regarding the effective date of the Tribunal's decision, were it to be that the rent should be increased at all.

#### Market Rent

13. The tenant submitted that the flat immediately below the subject property, flat 17, was identical in layout to the subject and was let for £1,300pcm. The property is in a refurbished condition. When questioned by the Tribunal, the tenant confirmed he had no documentary evidence of this. He knew the details of flat 17 as he had carried out work in the building for a number of years, and there was a "communal shell" as he put it, which meant that the flats above and below were the same as each other. In terms of the rental price, he had discussed with the landlord of that flat in September this year what she was charging for the property which was on the market at that point.
14. The building, the tenant submitted, was a "nightmare". Other flats were constantly being used for short term lettings, which also served he submitted to increase prices, and the building was a tip. It was very rarely hoovered, insecure and people sleep in communal areas.

The market rent, prior to property specific adjustments, should be £1,300pcm in line with the flat below, and certainly no higher than £1,500pcm.

15. The tenant submitted that the comparable evidence the landlord had relied upon was poor and not relevant. Flat 63, regarding which Mr Herskovic had provided a previous Tribunal decision, was a much larger 1 bedroom flat and wasn't comparable to the subject. The properties at Park West, for which asking rents had been provided, were incomparable – that building was one of the worst blocks in the area.
16. In terms of property specific adjustments, the tenant indicated the Tribunal could observe the condition of the property on inspection, but drew particular attention to the damaged bath, which is something he said had not been fixed.
17. The landlord submitted that much of the tenant's arguments related to historic issues, and they were not relevant to the market rent now. The comparable evidence provided from the flat below was unevidenced, and the details provided were sparse. Mr Goldsborough had criticised the landlord's providing asking rents from Park West, on the basis it was a poor block, which the landlord felt supported their argument rather than hindering it. It was therefore clearly not the case that the landlord had identified comparables from much nicer buildings.
18. As regards the management of the building, the landlord submitted that this is why they had provided the service charge budget. It is clear from that the works are being carried out, and the service charge costs are in excess of 20% of the rent passing. That, it was said, is evidence in itself of underletting. It appeared some of the repairs needed had been reported to Sloan, but they should have been reported to the landlord. The landlord had never been told about disrepair as such.
19. The landlord further said that the comparable evidence referred to could be better, but the rent is substantially discounted from it. The previous landlords had been lax, and it didn't concern them to raise the rent.

#### Backdating of Increase

20. The tenant submitted that a backdating in the increase of rent would cause them significant hardship. The tenants were about to go into a retirement home, but had been delayed in doing so as they had no money for removal fees. The council would not agree to give backdated rent for 3 or 4 months, and it was they who paid the rent now. Once a change in circumstances is reported it can take 6 or 7 weeks for that to be actioned. Mr Goldsborough said he was signed off work due to his medical condition. The tenants didn't have the

money to pay next month's rent. Paying a backdated rent would upset everything.

21. Mr Herskovic referred to the content of his emailed submissions, on which he didn't intend to add. Those submissions were, in essence, that the tenant had not done enough to demonstrate they would experience undue hardship, and as such the date proposed in the notice of increase should be the date the rent was payable from, as it is the 'usual' date. In the alternative, the landlord submitted that the rent should at least be backdated to the date of the previous hearing. Were it not for the respondent's failure to read the landlord's statement of case, the decision would have been made then, and it was not fair that the landlord should suffer financially on account of the tenant failing to prepare properly.
22. The Tribunal sought Mr Goldsborough's submissions on the landlord's position regarding the backdating to the date of the last hearing, but was provided with the answer "no comment". The Tribunal again sought comment from Mr Goldsborough, on the basis that he should comment, but – other than Mr Goldsborough making it clear he thought the landlord's were 'playing a game' by suggesting it - he did not wish to offer any submissions.

### **The Inspection**

23. The Tribunal inspected the property alongside both tenants and an employee of Three Delta Management called Samuel.
24. The property is located on the 3<sup>rd</sup> floor of a larger, purpose built circa 1930s block on the corner of Edgware Road and Sussex Gardens. The building has a small car park area on Sussex gardens through which the building is accessed.
25. On its arrival at the property, the front door to the building was open. However, there were a number of people present, and it was possible it had merely been left open as a temporary measure. The common parts of the property are in a generally shabby condition, with exposed cabling and an 'unfinished' feel.
26. The property itself comprises a relatively small living/bedroom studio area, a separate kitchen and a bathroom. It benefits from central heating and double glazing.
27. The property was generally in a fair condition, being tired decoratively and somewhat unmodernised in the bathroom and kitchen areas. The bath in the bathroom was damaged and there was damage to the wall next to the door. It appeared that there was nicotine damage to the walls and ceiling in the main studio room, however this appeared to be caused by the tenant's use of the property.

## **The law**

28. 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. That section is too lengthy to quote in entirety in these reasons. In brief, the tribunal is to determine the rent 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**

29. 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.

30. The tenant had made reference to Flat 17 below, which had been let for £1,300 per calendar month (PCM) recently. This flat was said to be identical in layout, but refurbished whereas the property is not. As the landlord observed, there was no documentary evidence of this, however the Tribunal felt that Mr Goldsborough provided a credible account of this letting.

31. The landlord, for their part, provided 2 comparables from within the building. A 349 sqft 1 bed flat let on 15 May 2023 for an annual rent of £28,678 per annum (£2,389.58PCM) and a 262 sqft studio flat let on 3 May 2023 for £22,160 per annum (£1,846.67PCM). The subject property was said to be 297 sqft. The landlord provided brief excerpts from tenancy agreements to evidence this, however they were heavily redacted, to the extent even that the flat number had been redacted. The Tribunal also noted that the three signatures provided on each tenancy agreement appeared to be the same across both tenancy agreements, and that the second and third signatures on each tenancy agreement also appeared to be the same. The landlord was unable to clarify why this might have been, or whether the properties were let to the same person. The redactions also meant that the tenant was unable to test this evidence, as they were not aware of what flats in the building were being referred to.

32. One of the lettings in the subject building provided by the landlord is for a 1 bed flat, rather than a studio. Whilst the Tribunal accepts it is often a reasonable practice to have reference to 1 bed flat value evidence in the valuation of studios, due to there often being more evidence for 1 bed flats than studios, this difference must be taken firmly into account in any valuation based on that evidence. The landlord submitted that the subject property, with a separate kitchen area, should be considered more along the lines of a 1 bed flat than a traditional studio, as value was based on what utility a property offered

rather than square footage. Whilst something of a simplification (that is in fact not true in certain local markets), the Tribunal agrees generally with that latter statement – but this does not appear to support the landlord’s assertion the property should be considered as almost akin to a 1 bed. It may be true that the property, like most 1 bed flats, offers a separate kitchen area; however, fundamentally, a true 1 bed flat offers a separate living room and bedroom area. This is a vital feature of a 1 bed flat, and a property such as the subject which offers only one relatively small room for both living and sleeping is not directly similar to a 1 bed flat.

33. In addition, the landlord provided reference to a Tribunal decision regarding a one bed flat in the subject building (63), which had determined a rent of £2,850 per month with effect from 21 May 2023.
34. The landlord also provided reference to asking rents on a 355 sqft studio flat in Court House, Seymour Place W1H (£4,000PCM) and a 294 sqft studio flat in Park West, Hyde Park Estate, W2 (£3,034PCM). The Landlord had also provided a letter from a local letting agent, Plaza Estates, saying they would expect the property to be let for £2,350pcm whether furnished or not, but that that figure was not a formal valuation and was for guidance purposes only.
35. The Tribunal considered the evidence provided. It felt that the asking rents provided for Court House and Park West were not good evidence of value. They were asking rents which were very different one from the other and were both significantly above the amount suggested even by the landlord. The print-outs from Rightmove provided by the landlord regarding them suggested that both properties had been on the market for some time at the time the print-outs were dated on 14 July 2023; indicating that Court House had been added to Rightmove on 27 February 2023, and the asking rent for West Park had been reduced on 13 June 2023. The Tribunal also felt that the letter from a local letting agent was not of assistance, particularly as it stated in it that it was not a formal valuation.
36. The landlord had also referred to a previous decision of the Tribunal in regard to a different property. However, not only are Tribunal decisions based on the evidence and submissions provided to them, different Tribunals come to different decisions. In addition, the tenant submitted that the property referred to was very much larger than the subject, and the landlord had accepted it was a 1 bed flat not a studio. Accordingly, the Tribunal did not feel this previous decision was of assistance in the valuation.
37. By far the best evidence of value available comes from the lettings in the subject building. However, the evidence provided to prove these lettings is thin on the ground. The tenant has not provided documentary evidence at all, and the landlord has provided redacted extracts from tenancy agreements which they were unable to clarify the Tribunal’s queries regarding at the hearing. The Tribunal has no

reason to doubt the veracity of either the landlord or the tenant's submissions, but both parties have essentially asked the Tribunal to exercise some element of trust in what they have offered, which necessarily affects the weight the Tribunal applies to that evidence in its valuation.

38. The Tribunal therefore decided that both the landlord and tenant's rental evidence from the subject building was helpful in the valuation, however it attached more weight to the landlord's evidence on the basis the landlord had provided better particulars regarding those lettings rather than the merely orally confirmed particulars provided by the tenant.

39. In light of the somewhat imperfect evidence provided, the Tribunal considered the value of the property in light of the evidence provided by the parties and its local knowledge and experience. The Tribunal formed the view that the property would have commanded a rent in the region of £2,000PCM, were it let in the open market in the condition and on the terms considered usual for such a letting.

40. 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.

41. The Tribunal made deductions from this hypothetical figure as follows:

- A deduction of 5% to reflect the fact the tenant provided white goods at the property
- A deduction of 7.5% to reflect the condition of the property. Specifically the lack of modernisation at the subject property, particularly in the bathroom and kitchen areas, and the disrepair to the bath and also to the internal wall by the front door.

42. The Tribunal considered that the value it had arrived at initially of £2,000PCM reflected the circumstances of the wider building within which the property was situate, and therefore did not make a further deduction to account for this.

43. The Tribunal therefore arrived at a value of £1,750 per month, as shown in the valuation below:

<b>Market Rent Per Month</b>			<b>£2,000</b>
	<b>LESS</b>	5% White Goods	-£100
	<b>LESS</b>	7.5% Condition	-£150

**Total £1,750 Per Month**



## Effective Date

44. 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.
45. Extensive submissions on this topic were provided by both parties. Whilst the Tribunal notes the landlord's comments that the tenant had not provided financial statements and other proof of the effect of hardship, particularly in light of their being two tenants rather than just Mr Goldsborough, having considered the tenant's submissions in relation to their financial status and medical circumstances the Tribunal finds that backdating the rent to the date proposed in the notice would cause undue hardship to the tenant. The Tribunal found the tenant's submissions that they were reliant on benefits (particularly in relation to housing that cannot be backdated several months to reflect increases), and that Mr Goldsborough was unable to work due to evidenced serious medical circumstances were persuasive, to say nothing of the more general circumstances expanded upon.
46. That being said, the Tribunal is aware that a prior hearing in this matter on 10 October had to be adjourned because the tenant had not prepared properly for that hearing by reading the landlord's statement of case. Whilst the Tribunal was keen to make sure the tenant did not suffer as a result of that omission, given Mr Goldsborough's medical circumstances, the Tribunal does not consider it would be just or equitable were the tenant to benefit from their failure to prepare properly for that hearing either – particularly as this would be at the landlord's expense, who cannot be blamed for the delay from that date. As the landlord submitted, were the tenant to have read the landlord's statement of case in advance of the hearing on 10 October as they should, the Tribunal would have made its decision on that day.
47. At the hearing, the Tribunal sought repeatedly to invite the tenant to make submissions on the potential for the rent to be backdated to 10 October, but they declined to do so.
48. Accordingly, the Tribunal finds that backdating the rent increase it has determined to the date proposed in the notice of 12 July would cause undue hardship to the tenant, and that it is just and equitable that the rent take effect instead from 10 October 2023.

## **Decision**

49. Pursuant to the considerations above, the Tribunal determined a rent of £1,750 per month in this matter, such rent to take effect from 10 October 2023.

Valuer Chairman: Mr Oliver Dowty MRICS

Dated: 17 November 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).