FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**JM/LON/00AG/MNR/2023/0214**
Property	**:**	**Flat 6, 102-104 Whitfield Street, London, W1T 5EB**
Landlord	**:**	**Dr Mohammed Akmal**
Landlord's Representative	**:**	**Dr Serap Akmal**
Respondent	**:**	**Mr Hakan Tuyunuklu**
Date of application	**:**	**24 April 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**

REASONS FOR DECISION

Background

1. The Tenant lives in the property under a statutory assured monthly periodic tenancy, that began on 7 August 2021 on the expiry of the fixed term of the previous assured shorthold tenancy. The Tribunal understands the tenant has been in occupation of the property since 7 June 2020.

2. The landlord served on the tenant a Notice of Increase, dated 18 April 2023, proposing to increase the rent at the property from £1,350 per month to £1,925 per month with effect from 7 June 2023.

3. On 24 April 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.

4. The Tribunal notes there has been some disagreement regarding the status of Dr Serap Akmal. For the avoidance of doubt, as is standard practice, any reference by the Tribunal to submissions made by "the landlord" includes any submissions made by the landlord's representative on their behalf.

The Hearing

5. A face-to-face hearing was held at 10 Alfred Place, London, WC1E 7LR on 10 October 2023. The tenant, Mr Hakan Tuyunuklu, appeared in person. Dr Akmal, the landlord's wife, appeared on behalf of the landlord.

6. The tenant raised three preliminary issues. Firstly concerning the validity of the notice of increase he had been given by the landlord, secondly concerning the admissibility of the landlord's evidence and submissions and thirdly concerning the Tribunal's decision to hold a hearing in this matter, which the tenant opposed.

   Validity of Notice

7. The Tribunal explained that, in line with the decision in *Mooney v Whiteland [2023] EWCA Civ 67*, whilst it was unable to provide a binding determination as to the validity or otherwise of a notice of increase, the Tribunal necessarily needed to consider whether a notice was valid to establish whether it had jurisdiction to determine a market rent. If the notice was invalid, then the Tribunal would not have jurisdiction.

8. The tenant submitted that the notice was invalid for two reasons. First, the tenant's name was spelt incorrectly, as Mr Hakan Tuyukunlu rather than Mr Hakan Tuyunuklu. Secondly, the tenant averred that they had not been provided sufficient notice of the increase. The notice of increase was dated 18 April 2023 and

proposed an increase with effect from 7 June 2023. The tenant submitted that, as his initial tenancy at the property had a term of 3 months, the rental periods of the property were 3 monthly. It was therefore necessary to provide 3 months notice, which the landlord had not done.

9. The landlord submitted that they thought they had complied with requirements.

10. As regards the spelling of the tenant's name, it is obviously unfortunate that the landlord did not spell it correctly. Nevertheless, it is clear that this is a minor typographical error. The Tribunal considered that this would not cause confusion to a reasonable recipient, and therefore – in accordance with the 'Mannai principle' (from *Mannai Investment Company Limited v Eagle Star Life Assurance Co Ltd [1997] 1 EGLR 57*) – this did not mean the notice was invalid.

11. As regards the requirement for sufficient notice to be given of a proposed increase, the Tribunal acknowledges the research the tenant has conducted and the clarity and affability with which their submissions were made. However, this is a complicated area, and the tenant is wrong about the period length of their tenancy.

12. The period length of a tenancy is not determined by how long the contractual term is for in total – it is determined, in the absence of any specific contractual provision, by the periods for which rent is payable. In the specific instance, as the tenancy is a 'statutory periodic' tenancy arising from the expiry of a prior fixed term tenancy, this finds expression in statute, in Subsections 2 & 3 of Section 5 of the Housing Act 1988 (the section which provides for the existence of statutory periodic tenancies such as the subject one). In particular, Subsection 3 provides that:

    (3) The periodic tenancy referred to in subsection (2) above is one—

    ...

    (d) under which the periods of the tenancy are the same as those for which rent was last payable under the fixed term tenancy; and

    ...

13. In this case, rent was payable on a monthly basis under the fixed term tenancy agreement, and continues to be payable monthly now. The Tribunal therefore found that the periods of the tenancy are monthly. Accordingly, the notice of increase was served a sufficient amount of time before the proposed date of increase (being more than 1 month), and was not invalid for this reason.

14. The Tribunal considered the remainder of the notice, and could not identify any other likely cause for the Tribunal to lack jurisdiction.

15. Accordingly, the Tribunal found the notice was likely to be valid – and that therefore the Tribunal had jurisdiction in this matter. However, the Tribunal made clear this was not a binding determination, and that if either party sought such a binding determination this was a matter for the County Court. The Tribunal's role in this matter is restricted purely to determining at what rent the property should be let, and it only considers the validity of a notice because if it appears to the Tribunal a notice is invalid then it does not have jurisdiction to determine that rent at all.

Admissibility of the landlord's evidence

16. The Tribunal provided directions on 9 June 2023. Those directions were, in essence, that the landlord was to provide its statement of case and any other documents it might rely on by 30 June 2023. The tenant was then to provide their statement of case and any documents they relied on by 14 July 2023. The landlord was provided an opportunity to "provide a brief response to the points raised by the Tenant" by 21 July 2023. Instead, the landlord did not provide any statement of case or documents by 30 June 2023. In compliance with directions, the tenant had provided their statement and associated documents by 14 July 2023. The landlord then sought to use the 'brief reply' provided for by the directions to submit a large number of documents to make out their own case, alongside a "response letter" to the tenant's submissions. This was clearly not in compliance with the directions, and no application to do so was made.

17. When asked by the Tribunal why the landlord had not complied with directions, the landlord responded that they had not seen the point in so doing as they didn't know what the tenant's case was, and therefore didn't know what to say. The Tribunal is unimpressed by this. It is clear from the fact that the tenant objected to the notice that they think the proposed rent is too high, and the Tribunal had directed that the landlord was to set out its case first. The landlord should have no problem with so doing, given they must presumably have based their opinion of the rental value expressed in the notice on something.

18. Whilst not provided in accordance with directions, the Tribunal was concerned to establish what prejudice the tenant might experience as a result of the Tribunal's considering these documents. The tenant submitted that he would be prejudiced, as he had not had an opportunity, in compliance with directions, to respond to the landlord's case.

19. Accordingly, the Tribunal considered that the tenant would be unfairly prejudiced were the Tribunal to consider the documents provided by the landlord in non-compliance with the Tribunal's directions. The landlord had provided a document as part of their

submissions which was a 'response letter' to the tenant's submissions. This appeared to be the 'brief response' provided for in the directions, and anything more than that brief response was not provided for. Accordingly, the tribunal decided that it would have regard to the 'response letter' document, but not the other documents the landlord provided. Those documents had not been provided in compliance with directions, there had been no application made for the Tribunal to consider them, and the Tribunal found that considering those documents would unfairly prejudice the tenant.

Hearing

20. The tenant submitted that, as the landlord had not provided a reply form when they were directed to, their subsequent request for a hearing should be ignored. The tenant had requested the matter be determined on the papers, and it therefore should have been. The tenant made various reference to the Tribunal's procedure rules (The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013), including a section regarding consent orders, in apparent support of this position.

21. Whilst the Tribunal is sympathetic to the tenant's affably made submissions, they are misguided in this area. The relevant Tribunal rule is rule 31. In summary of that rule, if neither party objects having been given notice, then the Tribunal "**need not"** hold a hearing before making a decision disposing of proceedings before it. Whether the Tribunal then chooses to do so is a matter for the Tribunal and not for the parties. Whilst the tenant identifies an interesting point regarding whether the landlord's request for a hearing was provided too late to prevent the Tribunal from deciding the matter on the papers should it have wanted to, it is an entirely academic one in this case. There were clearly significant matters which required a hearing, not least the tenant's arguing successfully that a large part of the landlord's submissions should not be considered, and the Tribunal panel felt it would have been inappropriate to make a decision in this case without a hearing, regardless of what the landlord had to say about the matter.

Substantive Submissions

22. The tenant submitted that there had been no improvements since the tenancy agreement had started, and therefore the rent should stay the same or even be lowered. There was some disrepair at the property. The floor of the kitchen and the living room were damaged.

23. The landlord submitted that the rent they had proposed in the notice was fair. The property was in a good condition when it was let. They had been unaware of the issues at the property, and had installed a new boiler previously when they were aware that was a problem. The wider house has been poorly maintained over the years. The damage to the floor in the kitchen and living room may have been caused by the tenant's cat. They had tried to access the property, but the tenant wouldn't let them in.

24. The tenant disputed that their cat had damaged the floor, and said they had needed to acquire the cat to deal with mice at the property. The tenant had repeatedly said that the landlord could attend provided he was given proper notice and at least 24 hours.

25. The landlord said this wasn't true. They had emailed in the past and been told they needed to provide formal notice.

The Inspection

26. Following the hearing, on the same day, the Tribunal sought to inspect the property. However, due to difficulties in arranging transport and the over-running of this and other cases, the Tribunal was unable to do so. Accordingly, the Tribunal arranged to inspect the property on 3 November 2023.

27. In advance of that inspection, the landlord and tenant engaged in further communication away from the Tribunal, and the tenant was no longer willing to allow the landlord access to the property to attend the Tribunal's inspection. The Tribunal asked if the landlord was happy for the Tribunal to inspect in their absence, which they indicated they were. Accordingly, the Tribunal inspected the property in the presence of the tenant only.

28. The property is a small 1 bedroom flat on the 1st floor of a larger, period building. It offers a large room divided between 'living room' and kitchen areas, a bedroom and a bathroom. It has single glazed sash windows and central heating. The property is generally in a fair condition, below that which would be expected on the market, with some tired decorative features and damage to the floors. The cause of this damage was a source of disagreement at the hearing, however on inspection, the Tribunal felt this damage was not consistent with damage from a cat.

The law

29. 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

30. 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.

31. The only evidence of value provided by the tenant was in the form of two fair rent registrations for Flat 5, 102-104 Whitfield Street and for Flat 4, 153 Whitfield Street. Fair rent registrations are governed by Section 70 of the Rent Act 1977, and are arrived at under a very different basis from the current matter. In particular, they involve the making of a significant 'scarcity' deduction, and are subject to capping arrangements (both of the fair rents referred to being so capped). Fair rent registrations are in fact so unique between properties that they do not generally form good evidence for other fair rent registrations – let alone general rental valuations. In addition, both of these registrations were dated significantly before the date of the proposed rental increase, in November 2007 and July 2021 respectively. Accordingly, the Tribunal considered these registrations did not assist in the valuation of the property.

32. The landlord had sought to adduce evidence of screenshots from Zoopla, and discussions with letting agents, however this was not submitted in compliance with directions and was therefore not considered by the Tribunal. This is a largely academic exclusion, as this sort of evidence does not generally hold much weight in any case.

33. The landlord had also provided, within their 'response letter' document (which was correctly submitted), details regarding flat 5, 102-104 Whitfield Street. They pointed out that the fair rent registration for that flat (referred to by the tenant) was dated a number of years ago (in 2007), and that it was now let for £2,513 pcm. This flat was said to be the same as the subject flat, "the only difference" being that it is a 2 bedroom flat rather than a 1 bedroom flat. The Tribunal does not consider this to be good evidence. Whilst the landlord avers that flat is the same as the subject save for there being an additional bedroom, that cannot be because it has two bedrooms and must therefore have a different configuration. In any case, all this evidence might do was indicate the value of the subject, having 1 bedroom, should be significantly lower – something the landlord appears to aver themselves.

34. Having established that none of the evidence provided by either party was of assistance in the valuation, the Tribunal considered the value of the property in light of its local knowledge and experience. The Tribunal formed the view that, at the proposed rental increase date, the property would have commanded a rent in the region of £1,925 per calendar month, were it let with the furniture provided by the landlord, in the open market in the condition and on the terms considered usual for such a letting.

35. 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.

36. The Tribunal made a deduction of 10% from the hypothetical market rent figure to account for the disrepair at the property, and its being in a more tired state than would be expected on the market.

37. The Tribunal notes that the landlord submits they have been denied access to the property to carry out inspections and repairs. Were it to be the case that the disrepairs at the property were the result of the tenant's breaching the terms of the lease (for example by not allowing access when they were obliged to), then any impact of that breach would be disregarded for the purposes of the valuation.

38. At the hearing, the landlord averred that they had sent emails requesting access but had been told they needed to provide formal notice in writing. This appears to be a reference to the terms of the tenancy agreement between the parties, and was presented as speaking to the tenant's unreasonableness. Whilst it may be inconvenient to the landlord, and perhaps slightly unhelpful on the part of the tenant, there is no fault to be found in a tenant seeking to enforce an agreement strictly. If the parties have agreed that 24 hours written notice is required, then it is not a breach of that agreement for the tenant to require it, nor to require it be provided formally.

39. The tenant denies strongly that they have prevented access. Mr Tuyunuklu had been balanced throughout the proceedings in making submissions regarding the property. It appeared to the Tribunal that Mr Tuyunuklu was very concerned to be honest, and his submissions were entirely credible.

40. Doing the best it could with the information available to it, the Tribunal preferred the submissions of the tenant. The Tribunal found that the tenant had not denied access for repairs, or at least had not done so in a way that was a breach of the tenancy agreement. Accordingly, the Tribunal had regard to the current condition of the property in the making of its decision, rather than a hypothetically repaired property.

41. The Tribunal therefore arrived at a value of £1,732.50 per month, as shown in the valuation below:

Market Rent Per Month		£1,925	
LESS	10% condition	-£192.50	
	Total	£1,732.50	
	SAY	**£1,732.50**	**Per Month**

Effective Date

42. 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.

43. No evidence or submissions were provided with regard to hardship, and accordingly the Tribunal determined that its decision would take effect from the date proposed in the notice, 7 June 2023.

Decision

44. Pursuant to the considerations above, the Tribunal determined a rent of £1,732.50 per month in this matter, such rent to take effect from 7 June 2023.

Valuer Chairman: Mr Oliver Dowty MRICS
Dated: 30 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).