



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

Case reference : **LON/OOAK/MNR/2023/0038**

Property : **56 Latymer Road London N9 9PU**

Applicant : **Roughina Chiwe Onyilliagha**

Representative : **In Person**

Respondent : **You Move Lets Ltd**

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
Mrs Alison Flynn MRICS
Mr John Francis QPM**

Date and venue of hearing : **14th December 2023 inspection followed
by hearing**

Date of Decision : **14th December 2023**

DECISION

Referral From Upper Tribunal

1. By decision of the Upper Tribunal, UTLC Case Number LC-2023-256 dated 11th August 2023, Judge Elizabeth Cooke ordered that the original decision of the First-tier Tribunal be set aside and remitted to the First-tier Tribunal for rehearing. This permitted the tribunal to consider further evidence submitted to the tribunal after the original decision.

Decision of the tribunal

2. The tribunal determines the rent at £1840.00 per month. The rent to have effect from the date in the landlords notice of 3rd January 2023, which is the 1st March 2023.

Background

3. The tribunal received an application under section 13 of the Housing Act 1988 dated 12th January 2023. This included the landlord's notice dated 3rd January 2023 proposing a new rent to commence on 1st March 2023. The previous rent being £1894.79 per month and the proposed £2145.00 per month from 1st March 2023.

4. The rehearing included an inspection where the tenant and representative of the landlord was present. The subsequent hearing was attended by the tenant only.

5. The property is an end of terraced house comprising, one living room, three bedrooms, one box room used as a bedroom, one bathroom with WC, kitchen, one outside WC, garden with covered shed area abutting the side of the house. The tenancy commenced on the 1st July 2021.

The Inspection

6. The tribunal inspected the property in the morning of 14th December 2023.

7. The property is an end of terrace build between the wars. The property is of solid brick construction with hipped end roof with clay pantiles tiles. Externally there is a small front garden without vehicular access at the front. To the rear there is a garden which has a wall separating the adjoining pavement, a fence between the adjoining neighbours, one section of which was defective. At the back of the garden there was a wooden fence, beyond which was a garage, originally demised to the property, there was access from the garden to the garage.

8. The property is accessed through a wooden front door; the door is in a poor state. This immediately leads into the living room from which there are stairs to the first floor.

9.The living room had 4 double sockets, two single radiators, electrically lighting. The windows were double glazed, no trickle vents and poor condition.

10.The passageway from the living room led immediately on the right to a room used as a bedroom. This room exhibited significant black mould on the ceiling and walls. There was a radiator, and double-glazed windows. Along the passageway further was the galley kitchen. The floor of the kitchen had two tiles missing and a further two cracked. Fitting units of which one had a missing door. Single drawer sink, wall hung boiler, double glazed windows, no trickle vents, and sufficient sockets.

11.The kitchen leads onto the garden. Within the garden is an attached outside functioning WC with wash hand basin. The door to the outside WC was missing a large section.

12.Accessed from the garden, was also the lean to store area which had a washing machine and tumble drier, with electricity supplied by leads from kitchen through open garden space. Electrical sockets were present but not functioning.

13.The stairs leading to the first floor from the living area were hard wood, 1970s in nature with open steps and wooden side rails of open styling. At the top of the stairs plaster was missing on the return wall.

14.On the first floor there is a landing with hatch area. The hatch area was covered by hardwood and cardboard. Off the landing was the main bedroom to the front this had double glazing, fitted clipboards and a radiator no evidence of mould. A second bedroom the landing had recessed cupboards there was significant evidence of black mould on the ceiling and walls, this room also had a radiator and double glazing no trickle vents. There was also an exposed set of wiring where the electrical socket cover was missing. The smallest bedroom sufficient only for a single bed had a radiator, double glazing and electrical socket.

15.The bathroom accessed from the landing, exhibited mould on ceiling, shower over bath, bath panel in disrepair. There was a wash hand basin and WC. The pull cord for the lights was missing. The ventilation to bathroom was not functioning. Sufficient parking on the side road with no restrictions.

Applicant submissions prehearing and oral evidence in the hearing

16. The tenants submissions comprised; the application form dated 12th January 2023, the tenancy agreement showing commencement date 1st July 2021 for 12 months and the notice of Increase in Rent dated 3rd January 2023.

17. The oral evidence presented by the tenant stated when the tenant first moved in there was no fence dividing the garage from the garden. The landlord then erected a fence dividing the garage from the rest of the property. The garage was subsequently rented out to a third party.

18. The house when first let to the tenant was unfurnished when let, no mould was present, but the tenant notes the mould very soon started to emerge.

19. The electricity supply to the shed was removed and so subsequently there was no electricity to the side shed, the washing machine which is plumbed in within the side shed is supplied by an electricity lead from the kitchen that runs out of the rear door through the garden and into the shed.

20. The determination under section 14 includes a determination as to the effective date of the rent increase should there be one. The tribunal has discretion in the selection of an effective date between the date proposed in the landlords notice of increase in rent and the date of the hearing.

21. The tenant submitted that her household contained herself and three dependent children. Additionally, that she had until recently had a part time job but currently was not employed and sought further employment.

Respondents Submission

22. The respondent landlord made submissions before the original hearing, and between the original hearing and the current hearing. The respondent landlord did not attend the hearing.

23. The respondent landlord submitted a completed Reply Form. The form notes, the living room has “large, double-glazed windows” and is in “good condition”. “Good condition” is ascribed to all other rooms. The house has a floor area of 82 m². The form further notes the house has curtains, carpets, double glazing and central heating. The form does not note who supplied these items. Additionally, there is a garage.

24. The landlord notes in the form that the house was repainted, and new flooring installed before the tenant moved on in July 2021. Finally, that the house is end of terrace with its own side entrance leading to the back garden. Seven photographs are included that show the property in good condition, other than the bathroom bath panel which appears damaged.

25. The landlord additionally submits a letter dated 27th February 2023 from Youmove Property Management which, includes 5 “similar properties”. It is unclear whether these are settled agreed rents or asking rents. They range from £2025 per month to £2550 per month, although the actual sizes or specification are not identified.

26. Subsequent submission from the landlord contained further rental comparables.

The Decision

27. First a number of factual matters were determined. The garage on the plot of the original house and garden it was found did not form part of the occupation which is the subject of the current tenancy.

28. The windows were found to be double glazed.

29. Finally, the kitchen was supplied by the landlord including the cooker and hob. The remaining items were the tenants.

Valuation

30. 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.

31. 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. In coming to its decision, the Tribunal considered what it had seen during its inspection as well as the written evidence. We first considered what the market price would be for a fresh letting as at March 2023. Based on its knowledge and experience of both three and four bedroomed house in the Ng area and particularly in the vicinity of Latymer Road, we came to the conclusion that a market value would be £2,300 per month. However, the property is not in a condition that would command such a rent. To take account of the fact that the tenant provided her own white goods and carpets and curtains and also to take into account the state of repair which included but was not exclusive to dampness and some defective electrics, we concluded a tenant would seek a reduction of 20% to take account of these matters. Accordingly, the Tribunal deducted £460 per month from the market value so arriving at a rent of £ 1,840 per month.

32. Given the size and nature of the accommodation, given the evidence of similar rental properties supplied by the tenant, using its own knowledge of the area, the tribunal determines the rent at £1840.00 per month.

33. The tribunal finds the case for hardship is proven. If there had been an increase the tribunal would have needed to consider from what date the increase would take effect. However, as no such increase has been determined the rent of £1840 will have the effective date as in the landlords notice which is 1st March 2023.

Name: Chairman Waterhouse

Date: 14th December 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.

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(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.

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(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.