



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

Case reference : **LON/OOAW/MNR/2023/0204**

Property : **7A McGregor Road, London, W11 2DE**

Applicant : **Mr P Bree**

Representative : **In Person**

Respondent : **Notting Hill Genesis**

Representative :

Type of application : **Market Rent under s13 & 14 of the
Housing Act 1988**

**Tribunal
member(s)** : **Mr Richard Waterhouse MA LLM
FRICS
Mr C Piarroux JP**

**Date and venue of
hearing** : **2nd February 2024 Hearing and
Inspection**

Date of Decision : **2nd February 2024**

DECISION

Decision of the tribunal

The tribunal is required to determine a rent under section 14 of the Housing Act 1988, a rent that the property would let for in the open market. The landlord has requested a rent of **£156.97** per week from **3rd April 2023**. The landlord may choose to charge a rent less than the rent the tribunal determines.

The tribunal determines the rent at **£288.46** per week from **2nd February 2024**.

Background

- 1.** The tribunal received an application under section 13 of the Housing Act 1988 received **2nd April 2023**. This included the landlord's notice dated **24th February 2023** proposing a new rent to commence on **3rd April 2023**. The previous rent being **£146.70** per week and the proposed **£156.97** per week from **3rd April 2023**.
- 2.** The tenant, Mr P Bree, requested an inspection and an oral hearing.
- 3.** The property is a lower-ground flat comprising one living room, one bedroom, and one bathroom/WC, and a kitchen. The flat has sole use of the rear garden.
- 4.** The tenancy commenced on the **Monday 18th July 2005**.

Applicant submissions.

- 5.** The applicants' submissions included; the first bundle of 97 pages the second of 123 pages the contents are noted.

Respondents Submission

- 6.** Landlord completed a Reply Form noting, they did not request a hearing nor an inspection. The property has no double glazing but does have heating supplied by the landlord. Also included is a document titled social rent valuation which shows a figure of **£172.18** with a date of **22/11/23**.

The Inspection.

- 7.** The tribunal inspected on the **2nd February 2024**, in attendance was Mr P Bree, the tenant, who provided access.
- 8.** The property is accessed via steps from the pavement level. The steps are capped with natural stone and may be slippery when wet. Within the lower

ground external area there are two external store areas. The stores are not water-proofed and the door to one is broken. The light switch to external light and doorbell not working. The external lobby area of the flat is protected by a metal grill door with a deadlock. The handle to which is missing. Off the external lobby is a storage area which is under the main stairs to the house/flats above. This is not watertight and water ingress is causing the plaster to fall off the ceiling of the area plus, to cause rust to the service piping.

9. The main front door has a handle that is positioned that causes a risk of fingers being trapped when the door is opened or closed.
10. Flooring throughout the property was fitted by tenant. Immediately inside the front door is an area of wall which the plaster is coming away from potentially caused by damp. The light in the first section of the corridor not functioning apparently due to defective wiring. Off the hall is access to the front room. The front room has large single glazed windows, these are draughty. The front room has central heating. The ceiling of the front room has damp patches caused potentially from ingress from the flat above.
11. The bathroom contains a bath with side handles but not a nonslip base. There is a wash hand basin which is not securely fixed to the wall. Additionally, there is a WC which has a defective syphon system.
12. Along the corridor there is access to the rear room which is used as a bedroom. This has single glazed sash windows which do not open, central heating and on the ceiling some evidence of damp from above.
13. The kitchen is tiled by the tenant and all the units and white goods are supplied by the tenant.
14. There is access to the garden via a door, the handle mechanism to the door is defective and the door has sunk, allowing a large gap at the top which is draughty. The wooden slope from the kitchen door to the garden is rotten.
15. The tenant has sole use of the garden, the garden wall to the rear of the garden requires rebuilding. The garden contained broken plant pots which had fallen from the first floor above, and so for safety reasons the tenant has limited the use of the garden.

The Hearing

16. Mr P Bree the tenant, attended. There were no attendees from the landlord.

17. The tribunal is grateful to Mr Bree for carefully explaining the context of the history of the occupation of his flat and the relationship with his landlord.
18. The tribunals remit is very limited upon the determination of the rent for the Mr Bree's flat and critical to this was the nature size and condition of the flat and rental evidence.
19. In respect of the first Mr Bree described the flat and the improvements he had made and the various elements of disrepair the property was in.
20. On the second matter that of the rental level. Mr Bree had helpfully made investigations with both his neighbouring lower ground flats but unfortunately to no avail in the securing of specific rental details. Additionally Mr Bree had identified a similar property in a neighbouring road occupied by Mr White, the property was located in St Lukes Road. Whilst the tenant Mr white noted his rent was no close to that paid by Mr Bree unfortunately the precise details were not available.
21. Mr Bree was content that the tribunal could use its knowledge of the area to establish the rental level.
22. In respect of the effective date of any rent increase. Mr Bree kindly set out his financial position in respect of hardship. Hardship needing to be proved in order for the tribunal to utilise its jurisdiction to amend the date from which any rental increase can come into effect.

The Law

23. Sections 13 and 14 of the Housing Act 1988 ("the 1988 Act") make provision for the increase of rent under an assured periodic tenancy. 10. Under section 14 of the 1988 Act, the Tribunal must determine the rent that would be obtained in respect of the same property on a new letting on the open market by a willing landlord under an assured tenancy, on otherwise similar terms (other than rent) to the existing tenancy. The rent so determined must, however, disregard the effect on the rent of the granting of the tenancy to a sitting tenant; any increase in the value of the property as a result of improvements carried out by the tenant during the tenancy (or a previous tenancy), otherwise than as a result of his or her obligations to the landlord under the lease; or any reduction attributable to a failure to comply with such an obligation.

The Decision

Valuation

24. 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.
25. The general locality of the flat is one of strong demand for tenants and the starting point for a flat of this size in the locality with sole use of the garden is **£2500** per month.
26. The flat however is not in the condition that a property on the contemporary rental market would be expected to be offered. Taking into account the disrepair the tribunal makes a deduction of **50%**. The tribunal determines a rent of **£1250** per month which is equivalent to **£288.46** per week. Mr P Bree is a tenant of a social housing provider. The tribunal notes the rent proposed under the Notice dated **24th February 2023** with effect from **3rd April 2023** of **£156.97** per week. The landlord can choose whether to charge the rent determined by the tribunal or a lesser amount.

Effective date of the Decision

27. The tribunal has discretion over the effective date of a rental increase determined by the tribunal. The tenant has made a case of hardship which the tribunal accepts. The tribunal therefore determines the rent should have effect from the date of the hearing which is the **2nd February 2024**.

Name: Chairman Waterhouse

Date: **2nd February 2024**

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.

]

(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.