FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**HS/LON/00BK/MNR/2023/0374**
Property	**:**	**Flat 5, 21 Devonshire Terrace, London, W2 3DW**
Tenant	**:**	**Mr Igor Stepanovic**
Representative	**:**	**Mr M Beirne – Housing Advisor from Westminster City Council**
Landlord	**:**	**Fairdale Property Trading Ltd**
Representative	**:**	**Baron Management – Ms H Sutherland appearing for the landlord**
Date of application	**:**	**31 August 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	**:**	**21 February 2024**

REASONS FOR DECISION

Background

1. The tenant lives in the property under an unwritten tenancy, which it is common ground is a weekly periodic assured tenancy.

2. The landlord served on the tenant a Notice of Increase, dated 31 July 2023, proposing to increase the rent at the property from £372 per week to £549 per week with effect from 5 September 2023.

3. On 31 August 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 issued Directions on 6 October 2023, which invited the parties to provide a reply form and make any other submissions they wished to make. Both parties provided a reply form and further submissions.

5. The landlord indicated, in their reply form, that they wished the Tribunal to inspect the property, but neither party indicated that a hearing was necessary. The Tribunal therefore arranged for an inspection on 20 November 2023, to be followed by a paper determination.

6. In preparing for that inspection, the Tribunal identified that there appeared to be disputes of fact between the parties. This was discussed briefly with the tenant and the landlord's representative at the inspection, and it was decided that it was necessary to hold a hearing in this matter. Accordingly, the Tribunal sought to arrange a face-to-face hearing.

7. The Tribunal arranged a face-to-face hearing for 19 December 2023. However, the tenant subsequently made an application to postpone that hearing as he had not been provided sufficient notice of it and his representative was not available. The Tribunal, in an order dated 18 December 2023, granted that application.

8. Accordingly, a face-to-face hearing was arranged for 20 February 2024 at 10 Alfred Place, London, WC1E 7LR.

The Inspection

9. The Tribunal inspected the property on 20 November 2023, accompanied by the tenant and a member of the landlord's agents' staff. The property is a small 2 bed flat located on the ground floor of a larger, period building on the corner of Devonshire Terrace and Chilworth Street. The property has its own front door – and offers a large reception/living room with a kitchen area (which is not

separate), a bathroom, a double bedroom which is an unusual shape and a much smaller bedroom currently used as a storage area.

10. The property is single glazed, the windows being generally in a slightly poor condition, and there is a window at ground floor level directly onto the street to the side of the property in the bedroom. It is centrally heated by means of a communal central heating system which is only switched on for part of the year.

11. Internally, the property is in a poor condition decoratively, decoration being the responsibility of the tenant. There is a small crack in the living room wall. The kitchen area is basic and the cupboards damaged, and the bathroom (which is a wetroom to meet the tenant's requirements) was installed by the tenant with assistance from the council. The tenant provided the current floor coverings, curtains and white goods (save for an in-built electric hob which is apparently faulty).

The Hearing

12. At the start of the hearing, the parties enquired why a hearing had been arranged – as neither party had requested it. As the Tribunal explained when it met the parties on inspection, it is not possible to determine a matter on paper when there are factual differences between the parties. Both parties had a great deal they wished to elaborate on at the hearing in this matter, and they engaged in significant disagreements regarding factual matters both in writing and at that hearing.

Validity of Notice of Increase

13. The tenant began their substantive submissions – before recalling that there was a preliminary point they wished to raise concerning the validity of the notice of increase. The notice of increase, they had averred in written submissions, proposed a rental increase from 5 September 2023 – and a previous Tribunal had considered that 1 December 2020 was the first day of a period of the tenancy.

14. As the Tribunal explained, whilst it is not able to make a determination that is binding for all purposes as to whether a notice of increase is valid, this being a matter for the county court, it must necessarily consider whether such a notice appears to be valid, as if it is not then the Tribunal does not have jurisdiction to determine a rent, and must strike out the application made.

15. The Tribunal observed that, whilst the tenant submitted that the Tribunal had previously considered that 1 December 2020 was the start date of a period of the tenancy and the current notice proposed one from 5 September 2023, the tenancy was a weekly one. Both of those days were Tuesdays, and accordingly the notice does not appear to be invalid for this reason. At this point, the tenant's submissions appeared to change. They cited various times in the past when

different days had been determined as the rental period start day, without evidence, and said there had been a county court decision some years ago that had determined a day that wasn't a Tuesday. That decision had not been provided in evidence, and the Tribunal were not willing to allow that evidence to be adduced late. Instead of being categoric as to what the period start day was, the tenant had been inviting – they submitted - the Tribunal to make that decision.

16. The landlord, for their part, averred that they believed the proposed increase date in the notice was correct.

17. The Tribunal considered that the tenant's written submissions were entirely clear as to what the challenge to validity was. There could be no other purpose to the tenant's written submissions, in observing the date accepted as a period start date by a prior Tribunal and the proposed date of the present increase, than to suggest those two dates were incompatible with each other; but they are not. Accordingly, the Tribunal considered that – on the evidence provided to it - the notice was not invalid for this reason, and that it therefore had jurisdiction to determine the tenant's application; having not identified any other cause for it to lack such jurisdiction.

18. During this discussion, it became apparent that the tenant had not provided the landlord with a copy of the statement prepared by their representative Mr Beirne, which served as most of the tenant's case. The tenant apologised for that oversight. The Tribunal considered that it was not procedurally fair to proceed without giving the landlord an opportunity to read those submissions, which were not unduly long or complicated. Accordingly, the Tribunal adjourned the hearing for a brief period to allow for the landlord's representative to read those submissions. On the parties' return, the landlord's representative confirmed she had done so and was happy to proceed with the hearing.

Substantive Submissions

19. The substantive submissions in this matter, from the tenant's side, were straightforward. The property was below the standard that would be expected in the market and the bathroom – which was a 'wetroom' designed to Mr Stepanovic's requirements - had been installed by the tenant with the assistance of the council. The living room and small bedroom windows were in disrepair, the tenant had provided all white goods apart from the electric hob – which was also in disrepair – and the tenant had installed a new lock on the door some years ago following damage from a flood. The value of the property should therefore be reduced to reflect this.

20. The landlord's submissions were more nuanced. The property may be in a state of disrepair, but the tenant had not permitted access to inspect the property to ascertain this. They had not had any repairs reported to them. The lease terms of the subject property were more favourable to the tenant than would generally be expected in the

market, as the tenant is a "protected tenant" and as a result they benefited from security of tenure and could decorate the property how they chose. In addition, the service charge paid by the landlord should be reflected in the valuation.

Access

21. The landlord averred that they had not been granted access to inspect the property, and therefore that they could not carry out repairs. This meant that any disrepair at the property was the result of a breach of the terms of the lease on the tenant's part.

22. The tenant disputed this, and Mr Stepanovic spoke to (and was questioned about) this, the Tribunal felt, credibly. Mr Stepanovic averred that the only time he had denied access was when – on two occasions – people had knocked without giving notice.

23. Conversely, the landlord could provide no tangible evidence. Ms Sutherland, appearing for the landlord, had no first hand experience, and was reliant on what other people in the office had told her. Under questioning, Ms Sutherland averred that often the landlord's agent would call to arrange inspections rather than send letters, and that they had not sought to inspect within the past year. Ms Sutherland said that Mr Stepanovic was keen to allow access for repairs he had requested, but not when it came to inspections.

24. Considering the evidence presented, the Tribunal preferred the evidence and submissions of the tenant. Even on the landlord's account, they had not written formally to the tenant to request an inspection, and the tenant was willing to allow access for repairs in some circumstances. There was no direct evidence presented to the Tribunal that the tenant had prevented access, to say nothing of Mr Stepanovic's credible evidence to the contrary.

25. There was also much discussion between the parties as to whether the needed repairs had been reported, and when. The landlord said they had not been told of the needed repairs, however under questioning, Mr Stepanovic said that a list of the repairs needed had been provided to the landlord as part of prior Tribunal proceedings in June 2021. The landlord averred that that wouldn't have gone to the right team at the landlord's agent's end, and in any case that there was a difference between reporting repairs in the usual way and bringing them up to try and get a rent reduction at Tribunal.

26. The Tribunal was not sympathetic to the landlord's submissions in this regard. It is immaterial whether the tenant informed what the landlord's managing agent considers to be the right 'team' of the landlord's managing agent; and if there were to be a difference between their being informed of disrepair informally, or as part of Tribunal proceedings, it would be that their being told as part of proceedings was more credible, not less. In any case, none of this spoke to whether the disrepair that may or may not have been

reported was a result of the tenant's breaching the terms of their tenancy, and it is therefore not relevant to the Tribunal's current determination.

The law

27. 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 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 carrying out improvements which they were not obliged to carry out by the lease or their failure to comply with the terms of the tenancy. Of particular relevance in this instance are subsections 2 & 7:

(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.

(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, with effect from such later date (not being later than the date the rent is determined) as the appropriate tribunal may direct.

<u>Valuation Submissions</u>

28. The landlord referred to 4 asking rents which they thought were comparable, for which they had provided basic details from Rightmove.

29. Property 1 was a 2 bed flat in Devonshire Terrace advertised for £5,499 per calendar month. Whilst the details regarding this property were limited it was clearly a much better property than the subject.

30. Property 2 was a 2 bed flat on Queens Gardens advertised for £2,999pcm, the details regarding which were extremely limited – not even featuring an internal photograph.

31. Property 3 was a 2 bed, lower ground floor flat on Sussex Gardens advertised for £2,990pcm (at the time the landlord put together their evidence). Again, the details provided were limited, however both bedrooms were said to offer a "good amount of storage and plenty of space".

32. Property 4 was a 2 bed, ground floor flat on Westbourne Terrace which offers "1.5" bathrooms advertised for £3,950pcm. The property is let furnished and, like the subject, heating is provided by a communal boiler which is included in the rent.

33. From those comparables, the landlord arrived at a hypothetical market rent of £2,990pcm.

34. The tenant did not provide any evidence of their own, but instead provided commentary on two of the landlord's comparables – property 2 and property 3. Property 2, the tenant said, was:

    a two bed, one bathroom flat, is of significantly better quality than the subject premises, being described as bright, light and spacious. Unlike the subject premises it has a discrete kitchen, with two reasonably sized bedrooms.

35. Property 3, the tenant submitted, was:

    a two bed, two bathroom flat is also of better quality than the subject premises. According to Rightmove it is very spacious, with good storage in the bedrooms, one of which has an en-suite bathroom. It states that the "flat benefits from having brand new furniture throughout, wooden flooring, a fully fitted & spacious open-plan kitchen complete with an oven, gas cookers, a dishwasher and a large fridge and separate freezer." Like the subject premises, this flat has a reception room/kitchen.

36. In addition, the tenant submitted (in written submissions dated 7 November 2023) that Property 2 had been on the market since 23 August 2023, and Property 3 since 27 September 2023 – and that the asking price for property 3 had been reduced from £2,990pcm to £2,817pcm on 1 November 2023. The tenant averred the length of time the properties were on the market might indicate they were over-priced.

37. Whilst the tenant did not provide any evidence, they averred that the subject property would fetch £1,900pcm if let on the market in a good modern condition. From this, they had made an unspecified adjustment to arrive at a figure of £400 per week, as against the landlord's proposed £549 per week.

Tribunal's Valuation

38. 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 in the condition and on the terms that are considered usual for such an open market letting.

39. The Tribunal considered the landlord's evidence, and felt that both property 1 and property 4 were not helpful in the valuation of the property – despite the landlord's insistence to the contrary when the Tribunal raised this at the hearing. Property 4 was advertised for 32% higher than the landlord's own hypothetical £2,990pcm (which is near to the values advertised for properties 2 and 3), and Property 1 was advertised for 84% higher. These extreme differences indicate either that the asking rents are unreliable, or that the properties themselves are not comparable to one another.

40. As regards properties 2 and 3, the details provided to the Tribunal were limited. In particular, it was not clear how large the second bedroom in Property 2 was, and Property 3 was said to offer 2 bedrooms with "plenty of space". The Tribunal noted the tenant's comments regarding these properties, particularly as regards the length of time they had been on the market and the reduction in rent at Property 3 – but was also cognisant of the landlord's comment at the hearing that letting agents often overstate how nice a property they are advertising is.

41. As the only evidence provided to the Tribunal was in the form of asking rents, only 2 of which the Tribunal considered were useful at all and even then with reservations, the Tribunal considered the valuation of the property both in light of the evidence and submissions provided and its own expert knowledge of rental levels in the area.

42. The Tribunal considered that the subject property would achieve a value in the region of £2,500 per calendar month (approximately £577 per week) were it let on the market in the condition and on the terms considered usual for such a letting. The Tribunal considered that this level of value reflected the property's layout, the size of the second bedroom and the flat in general, and the communal heating and hot water being included in the rent by way of a communal boiler, the heating being on for part of the year only.

43. 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.

44. Both parties had made deductions from their hypothetical market rents to arrive at their final proposed valuations, however this was done on an informal basis (valuation, the tenant averred, being an art not a science) rather than the making of specific adjustments.

45. The Tribunal made a 5% deduction to account for the lease terms at the property. Whilst the Tribunal notes the landlord's submissions that in fact the lease terms are a positive feature, the Tribunal disagrees. The responsibility to decorate, and the other responsibilities on a tenant under section 11 are a significant burden, and are worse than the terms that would generally be expected in the market. In addition, the landlord's point concerning security of tenure was somewhat misguided, as the tenant is not – as the landlord averred – a protected tenant. Whilst some periodic tenancies, such as the present one, carry some extra security of tenure compared with assured shorthold tenancies, this only forms part of the picture when considering the impact of lease terms. Considering the lease terms in the round, the Tribunal considered a 5% deduction was appropriate to reflect them.

46. The Tribunal made a 10% deduction to account for the single glazing at the property and its condition. The Tribunal was cognisant in doing so of the security implications of the single glazed window for the main bedroom at ground floor level directly onto the street.

47. The Tribunal made a 5% deduction to account for the tenant's installing the bathroom with assistance from the council.

48. The Tribunal made a 5% deduction to account for the tenant's provision of white goods, floor coverings, curtains and the like as well as a new lock on the front door.

49. The Tribunal made a 2.5% deduction to account for the basic nature of the kitchen fittings, the lack of an extraction system in the kitchen area (which does not have a window) and the damaged hob. This does not include the disrepair of the cupboards as this would appear to be the tenant's responsibility under their Section 11 repairing obligations.

50. The Tribunal did not make any deduction to account for the crack in the living room, as it considered this was too minor an issue to noticeably affect the hypothetical rental bid of a prospective tenant.

51. The Tribunal made no adjustment to account for the landlord's point regarding the service charge of the property. The rental valuation of a residential property such as this is based on its value in the market – not on the amount spent on it by the landlord in service charge payments.

52. The Tribunal therefore arrived at a value of £420 per week for the property, as shown in the valuation below:

Market Rent Per Week			£577
	LESS	5% lease terms	-£28.85
	LESS	10% Single Glazing	-£57.70
	LESS	5% Bathroom	-£28.85
	LESS	5% White goods, floor coverings, curtains, lock, etc	-£28.85
	LESS	2.5% Kitchen	-£14.43
		Total	**£418.32**
		SAY	**£420 per week**

Effective Date

53. 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.

54. The tenant had made no submissions as to hardship before the hearing, however on the landlord's enquiring as to the effective date of the Tribunal's eventual decision the tenant's representative indicated that they wished to make such submissions. The Tribunal expressed its disappointment at the time that those submissions were left so late in what had been an ongoing matter for some time, especially in light of the Tribunal's directions inviting submissions on this point, and the landlord opposed the tenant making those submissions now. The Tribunal decided it would hear submissions from the parties on the point, and would consider the matter in the round; especially in light of the tenant's representative averring they had not realised when putting their statement together that the matter would continue for as long as it had to this point.

55. The tenant's submissions regarding hardship were short. The tenant receives housing benefit and it was Mr Beirne's experience it could sometimes be "difficult" to arrange this to be backdated.

56. The Tribunal considered that, regardless of what the landlord had to say regarding the matter, this was not sufficient to demonstrate that the tenant would experience "undue hardship", and accordingly that

the rent should take effect from the proposed rental increase date in the notice.

Decision

57. Pursuant to the considerations above, the Tribunal determined a rent of £420 per week in this matter, such rent to take effect from 5 September 2023.

Valuer Chairman: Mr Oliver Dowty MRICS
Dated: 25 March 2024

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 should be made on Form RP PTA available at https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber

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. **Please note that if you are seeking permission to appeal against a decision made by the Tribunal under the Rent Act 1977, the Housing Act 1988 or the Local Government and Housing Act 1989, this can only 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).