



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

Case reference : **LON/00BG/MNR/2023/0390**

Property : **68 New Atlas Wharf, 3 Arnhem Wharf, London E14 3SS**

Landlord : **Ms Jia Qu & Dr Qian Li**

Tenants : **Mr Pasha Rashid & Ms Rohima Khatun**

Type of application : **Market rent determination in accordance with section 14 of the Housing Act 1988**

Tribunal members : **Judge M Jones
Ms S Phillips MRICS**

Date of decision : **05 March 2024**

Date of Reasons : **06 March 2024**

REASONS FOR DECISION

Decision of the tribunal

The FTT determines the rent to be £1,850.00 per calendar month, with effect from 20 September 2023.

Background

1. On 17 August 2023 the Tenants applied to the First-tier Tribunal (“**FTT**”) referring a notice proposing a new rent under the assured periodic tenancy of the Property.
2. The notice, which was served under section 13(2) of the Housing Act 1988 (“**the Act**”) and was dated 1 August 2023, proposed a rent of £1,950 per calendar month with effect from 20 September 2023.
3. Both parties sent written representations to the FTT regarding the application, and the Landlord requested an oral hearing.
4. The tenancy commenced on 20 February 2021. The Tenants remained in occupation as a statutory periodic tenant until 13 February 2024, when vacant possession was returned to the Landlord consequent upon service of a notice under s.21 Housing Act 1988 in July 2023. The current rent payable is £1,600.00 per calendar month.

Inspection

5. Neither party having requested an inspection, the FTT did not inspect the Property.

Hearing

6. This was a remote video hearing which was consented to by the parties. The hearing proceeded by use of the Video Hearings Service. A face-to-face hearing was not held by the agreement of the parties, where all issues could be determined in a remote hearing. The documents to which we were referred are contained in and appended to a series of written submissions made by the parties, the contents of which we have noted.
7. The Landlord and the Tenants each represented themselves at the hearing, Mr Li appearing for the former and Mr Rashid and Ms Khatun for the latter. After initial difficulties in connecting to the video hearing service, Mr Li was able fully to participate.
8. In written representations, augmented by their oral evidence and submissions, the Tenants had argued that the rent should reflect the poor condition of the Property caused in their view by issues with the

balcony door lock, which they said was unable to be locked and was not repaired until around 18 months after they first moved in, problems with the flush mechanism in the bathroom lavatory, problems with the boiler, a blind in the bedroom, and a defective trickle vent in the living room. They complained of poor decorative finish in the living room and the installation of laminate flooring that had been carried out poorly, causing ridges to form between the wooden slats during the summer months when the wood expanded.

9. In further written representation sent to the Tribunal and the Landlord's agent on 21 February 2024, the Tenant also contended that the rent should reflect development work to the building containing the Property, involving the erection of scaffolding, and recurring problems with silverfish and moths within the building, the former also being found on occasions within the Property. The Landlord himself had not seen these documents, but was afforded the opportunity to comment upon the allegations contained therein, the Tribunal noting that they had been sent to the email address of the Landlord's nominated agent both in the tenancy agreement, and for the purposes of these proceedings.
10. In written representations, augmented by oral evidence and submissions, the Landlord stated that he had had the Property redecorated prior to the Tenants moving in. A handyman had been employed to repair the trickle vent and he had heard nothing further from the Tenants regarding that issue since March 2021. He believed the balcony door to be lockable by pulling up the handle, but had provided a key to it promptly after being requested by the Tenants, again in March 2021. It was not until July 2022 that he was advised by the agent that the Tenants wished the balcony door lock to be replaced, which he again attended to promptly. He produced correspondence by way of confirmation. The damaged blind, he said, was caused by the Tenants. As to the bathroom flush, he sent plumbers promptly on two occasions when complaints were made; thereafter he had been informed of no further issues. As to the boiler, he stated that he had effected necessary repairs in 2022 and there had been no further problems reported. The flooring, he said, was entirely adequate.
11. At the hearing, attention was drawn to the comparable evidence provided, respectively, by the Tenants and by the Landlord. In relation to the exterior works issue, the Landlord said that this was attributable to the freeholder or its managing agent, with which the Tenants agreed. Similarly, steps being taken to eradicate moth and silver fish infestation in common parts was the work of the freeholder or its managing agent.
12. The Landlord raised the issue of why, if the Property was so bad, the Tenants had not simply left, either before or following service of two successive s.21 notices, in February and then July 2023, but had instead repeatedly sought a new tenancy from him, and he had in the event

incurred solicitors' costs, ultimately paid by the Tenants, in taking procedures to secure vacant possession. The Tenants, in turn, explained that they were parents of two young children, the elder of whom was enrolled in a school convenient to the Property, whom they did not wish to disrupt, and further stated that the logistical necessities of moving presented a difficult burden that they would rather not have had to undertake. They also said that they would have agreed to the proposed new rent had the Landlord been willing to grant them a new tenancy agreement.

13. An issue that arose shortly before and at the hearing, as raised by the Tenants, concerned the specific terms and potential legal consequences of clause 7.1 to the tenancy agreement, insofar as it may have the effect, in certain circumstances, of limiting any rent increase. We shall return to this point below.

The Law

14. In accordance with the terms of section 14 of the Act, the FTT is required to determine the rent at which it considers the Property might reasonably be expected to let in the open market by a willing landlord under an assured tenancy on the same terms as the actual tenancy ignoring any increase in value attributable to tenant's improvements and any decrease in value due to the tenant's failure to comply with any terms of the tenancy. The FTT is also required to take into account (a) the condition of the Property, save to the extent that any disrepair is due to the Tenant's failure to comply with any terms of the tenancy and (b) the terms of the tenancy.

Valuation

15. The starting point is to determine the rent which the Landlord could reasonably be expected to obtain for the Property in the open market in the condition considered usual for a modern letting ("**the initial valuation**").
16. When calculating the initial valuation, the FTT noted the comparable evidence provided by the Tenants and the Landlord, as well as the comparable evidence obtained by the FTT. The range of rents for 1-bedroom properties in the neighbourhood, ranged from £1,700 to £2,100 per calendar month. The FTT considered that further comparators suggestive of slightly lower rental levels were too far from the Property and/or possessed differing characteristics to permit of meaningful comparison.
17. Having considered the comparable evidence together with its own general knowledge of market rental levels for comparable properties in the vicinity of the Property, the FTT arrived at an initial valuation of £1,850 per calendar month.

18. The Tribunal then considered whether adjustments needed to be made to this initial valuation to take into account (a) the actual condition of the Property and (b) the differences (if any) between the terms of this letting and the terms of a standard assured shorthold tenancy.
19. Applying these principles to the Property, the FTT considered that there were no grounds to depart from this initial valuation. The tenancy agreement itself contained no unusual provisions (save, perhaps, clause 7.1 which we shall address below).
20. As to the various complaints of disrepair, the Tribunal noted that the Landlord responded swiftly and effectively when complaints were communicated to him, albeit that his agent may on occasion have been less than prompt in passing on messages. More pertinently, by section 14(1)(b) of the Housing Act 1988, the date at which the market rent falls to be assessed in this case is 20 September 2023, the date specified in the Landlord's notice. The Tribunal finds that of the various allegations of disrepair, the potentially more serious (the boiler, the bathroom flush, the balcony door) had all been rectified long before that date, and no further complaints had been made. The other matters raised were in the view of the Tribunal minor, and not of such a character or effect as to cause the Tribunal to consider that it should depart from that initial valuation.

The Effect of Clause 7.1 of the Tenancy Agreement

21. The Tribunal has carefully considered the terms of clause 7.1 of the tenancy agreement, and whether that has the effect of limiting the amount of any rental increase in the circumstances of this case. The clause reads as follows:

“7.1 After the initial term of this tenancy any renewal or extension will be subject to rent increase by 5% on anniversary of the tenancy which may be negotiated as per market RPI (the retail price index). Agreed to not fall below current price.”
22. This, the Tenants contend, has the effect of limiting any rental increase either to 5%, or in the alternative by a formula contingent upon RPI fluctuations.
23. The current rent (until the Tenants vacated the Property) was £1600, agreed between the parties as an increase to the contractual rent, and paid by the Tenants from July 2022. If the Landlord were constrained by this clause to a rent increase of just 5%, the Tenants contend, any increase should now be limited to £80 per month, a total of £1,680.
24. Having considered this point carefully, the Tribunal finds that this is not a case, first, of any *renewal* of the tenancy: no new tenancy agreement has been executed between the parties, and indeed the Landlord not only refused to grant a new tenancy, but served s.21

notices on two occasions in 2023, clearly indicating his desire to terminate the Tenants' occupation.

25. The Tribunal also finds that there has been no *extension* of the tenancy, on these facts, where there has been no agreement between the parties to an addition to the term of the contractual tenancy. Rather, the Tenants have been holding over on a periodic tenancy which arose by operation of law on the effluxion of the contractual term. This was contingent on no act or consent of the Landlord that could properly be considered a renewal or extension.
25. Further, it is evident that there has been no negotiation between the parties by reference to a rent review mechanism relative to the Retail Prices Index.
26. For these reasons, the Tribunal holds that clause 7.1 of the tenancy agreement is of no effect in limiting any rental increase in the circumstances of this case.

Conclusion

27. Accordingly, the Market Rent for the Property, determined by the FTT for the purposes of section 14 of the Housing Act 1988, is £1,850.00 per calendar month with effect from 20 September 2023, being the date that the new rent was to take effect pursuant to the Landlord's notice.

Name: Judge M Jones

Date: 06 March 2024

ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.
- If a party wishes to appeal against 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.