



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

Case reference : **LON/00BG/MNR/2023/0191**

Property : **27 Trahorn Close, London, E1 5EE**

Applicant : **Miss N Aka**

Representative : **In Person**

Respondent : **Tower Hamlets Community
Housing Ltd**

Representative : **Not represented**

Type of application : **Decision in relation to section 13 of
the Housing Act 1988**

Tribunal member(s) : **Mr Anthony Harris LL.M FRICS
FCI Arb
Valuer Chair**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **12 March 2024**

DECISION

Decision:

The tribunal has jurisdiction to determine a rent for the reasons stated below. The tribunal does not have jurisdiction to determine the validity of the deeds of assignment or the notice of increase as these are matters for the County Court but will determine a market rent on the basis that there is an assured periodic tenancy with rent payable weekly.

The tribunal determines a market rent of £425.00 per week.

Background:

1. The Respondent Landlord served a rent increase notice on the tenant under Form 4 dated 27 February 2023. The Notice specified the rent would change from 3 April 2023 and also stated that the first rent increase date after 11 February 2003 is 7 April 2003. The previous rent inclusive of services was £167.10 and the new rent proposed was £163.59 per week. The accompanying letter set out that the increased rent element was capped at a 7% increase rising from £144.13 to £154.22. The service element reduced from £22.97 to £9.37.
2. The tribunal received an application under section 13 of the Housing Act 1988 dated 31 March 2023.

The tenancy

3. The property was let on an assured shorthold tenancy agreement commencing in 2002. Rent was payable weekly. A set of standard terms was supplied to the tribunal but the particulars relating to the tenancy are missing. A deed of assignment has been provided dated 27 February 2015 under which the applicant became tenant of the property.

The law:

4. Section 13 of the Housing Act 1988 provides as follows: (emphasis added)

"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, the first anniversary of 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, the first anniversary of the date on which the increased rent took effect.

(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.

(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)."

5. The Court of Appeal considered the question of validity of a landlords notice in *Mooney v Whiteland* (Neutral Citation Number: [2023]

EWCA Civ 67).

6. The Court held that the final decision on the validity of a notice was a matter for the County Court

48. That is not to say that a rent assessment committee may not sometimes need to take a view whether a notice is valid. If it considers that a notice is invalid, it may decline to proceed until the question has been determined by the court. Conversely, if it considers that a notice is valid and that objections are without substance, it may proceed to determine the appropriate rent, but its determination will not prevent a tenant from disputing the validity of the notice. In the present case, Miss Whiteland did not refer the notice to the local rent assessment committee. She therefore took the risk that the notice might be held to be valid, in which case the new rent of £100 per week would have taken effect pursuant to section 13(4). But her failure to refer the notice to the committee did not deprive the court of jurisdiction to determine the validity of the notice.

7. The tribunal takes the view that it cannot make a decision on the issue of the validity of the notice which is binding for all purposes. However, it is entitled to decide whether it is satisfied, on balance, that the legal and factual matrix forming the background to the application demonstrates that it has jurisdiction.

Evidence

8. The tenant has submitted a written statement in which she claims that the landlord made false representations concerning the subject property including that the rent would be £138.25 per week and that there were no problems with the property or difficulties with neighbours.
9. In reliance on those allegedly false representations the applicant agreed a tenancy swap with the previous tenant.
10. The Applicant states that the 1st deed of assignment was at all times invalid or void as the landlord did not charge the rent for the property at £138.25 and started building at £141.12.
11. In or around August 2015 a 2nd deed of assignment was prepared allegedly by the Respondent and this is also void as the Applicant's signature was recycled from a separate photocopied document without her consent. The Respondent wrote in hand £2.87 service charge equals £141.12 and initialled the alteration to make it appear it had been agreed. The deed was then backdated as effective from 3 March 2015 and made to appear as if the document was signed and agreed on 27 February 2015 which did not take place. The deed was not attested.

12. The statement goes on to give evidence of property defects including a rodent infestation defective plumbing and inadequate security to the front entrance door.
13. The Applicant states that in or around March 2021 the Respondent contacted Universal Credit to notify them the rent was £142.61 broken down as £136.40 rent and £6.21 service charges. This was paid directly to the Respondent.
14. The Applicant states that the notice served is invalid as the rent for the property was never £146 .01 in that service charges were never £7.56 and the rent was never £138.25 as of the effective date on the deed of assignment.
15. On 1 April 2022 the Applicant applied to this tribunal regarding an invalid section 13 notice served by the Respondent.
16. On 12 July 2022 the tribunal ruled it did not have jurisdiction due to defects in the notice. No evidence was submitted by the Respondent in that case, and no evidence has been submitted in this case.

Decision

17. Since the tribunal made its decision in 2022 the Court of Appeal has ruled in *Mooney v Whiteland* that the tribunal does not have jurisdiction to determine for all purposes the validity of a notice of increase. The tenant’s case is based on the deeds of assignment and determining the validity of these is not within the tribunal’s jurisdiction. The tribunal’s jurisdiction is confined to fixing a market rent.
18. No rental evidence has been submitted by either party and the tribunal has therefore relied on its own expert, general knowledge of rental values in the area and considers that the open market rent for this property in the condition and with the amenities the market would expect would be in the region of £500 per week. We have noted the tenant’s comments on condition of the property and adjust this figure by 15% as set out below

		PW	
AST Market rent		£	500.00
less condition/terms	15.0%	-£	<u>75.00</u>
	£	£	425.00

19. The Tribunal directs the new rent of £425.00 to take effect on 3 April 2023 this being the date as set out in the Landlord’s Notice of Increase.
20. The tribunal notes that this is significantly above the rent sought by the Respondent as the rent payable is capped by government guidelines.

Name: Mr A Harris

Date: 12 March 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 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 First-tier Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

