



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

Case reference : **LON/00AB/MNR/2023/0209**

Property : **134 Ford Road, Dagenham, RM9 6LS**

Tenant : **Ms Adelaide Amponsah Amadi**

Landlord : **Mr Emmanuel Mwamba**

Representative : **Mr Kazadi Mwamba**

Date of application : **20 March 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 C Simons**

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

Date of decision : **26 January 2024**

REASONS FOR DECISION

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Background

1. The Tenant lives in the property under a statutory assured monthly periodic tenancy, that began on 7 June 2013 on the expiry of a prior fixed term assured shorthold tenancy.
2. The landlord served on the tenant a Notice of Increase, dated 2 March 2023, proposing to increase the rent at the property from £900 per month to £1,900 per month with effect from 7 April 2023.
3. On 20 March 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. That application was subsequently re-sent to the Tribunal on 18 April 2023. The Tribunal then wrote to the parties on 8 June 2023 to indicate one of its legal officers was of the preliminary opinion the Tribunal might lack jurisdiction in this matter, as if the application had been received after the proposed rental increase date of 7 April 2023 the application would have been made too late.
5. The Tribunal considered the matter of its jurisdiction, inviting submissions from the parties, and found in a decision dated 14 July 2023 that it had jurisdiction as the tenant's application had originally been received by the Tribunal on 20 March 2023, meaning the application was not made too late.
6. The Tribunal subsequently issued directions on 3 August 2023. Those directions invited both parties to provide a reply form and any other submissions. Both parties provided reply forms, the tenant also providing a document containing photographs from the property.
7. The tenant indicated in their reply form that they wished the Tribunal to both hold a hearing in this matter and inspect the property. The Tribunal therefore arranged a hearing on 26 January 2024, with an inspection later that same day.

Hearing

8. A face-to-face hearing was held at 10 Alfred Place, London, WC1E 7LR on 26 January 2024. The tenant appeared in person, alongside her daughter. The landlord did not attend.
9. The Tribunal considered that sufficient notice of the hearing had been provided to the landlord, and that the landlord had not made contact with the Tribunal to indicate a reason for their absence. Accordingly, the Tribunal considered it was appropriate to proceed with the hearing in the landlord's absence.
10. At the hearing, the tenant submitted that the rent increase proposed by the landlord was significantly too high due to the condition of the property. The property, the tenant said, had been in a good condition when the tenant moved in, but the landlord fails to carry out repairs, even when he says he will.

11. The tenant averred that in September 2022 the landlord started a construction project, and the tenants have not been able to use the garden since. There are trenches around the property, and the tenant has to walk across a board over one of those trenches to enter the property. The pipe from the toilet had been broken due to the construction. Inside the property, one of the landlord's workmen had broken the cooker and it had not worked since. The windows were faulty, and the carpet on the stairs was in a poor condition. The tenant had previously had to change the radiator in the bathroom and one in the hall due to disrepair.
12. The Tribunal enquired as to which party was responsible for what repairs at the property. The tenant indicated that she thought the landlord was responsible for all repairs including internal decorations, except damage caused by the tenant. However, on further enquiry the tenant very honestly said that, whilst they had thought the landlord was responsible for all repairs, they were not in fact entirely sure what the contractual arrangement was in relation to repairs.
13. As regards the market value, the tenant averred that – were the property in a good condition – it would be likely let for around the £1,700 - £1,900 per calendar month range.

The Inspection

14. The Tribunal inspected the property on the same day as the hearing after its conclusion. The tenant attended the inspection, however the landlord did not.
15. The subject property is a 3 bedroom, end of terrace house located on Ford Road, a residential road close to Dagenham Heathway station in the London Borough of Barking and Dagenham. The property offers a ground and first floor under a pitched tiled roof. It benefits from central heating and double glazing. The front door to the property is located to the side of the property as looked at from the road.
16. The plot of land the house sits on is broadly rectangular, however the house does not extend the full width of it as looked at from the road. This results in the house being surrounded by an 'L' shaped grass area to the front and side, with a more rectangular area to the rear that was formerly the property's rear garden - previously in exclusive use by the tenant.
17. The landlord has begun construction on a cavity wall structure in that rear garden area, a very short distance away from the back wall of the house. Trenches have been dug across the tenant's land, and builders' rubble and materials have been left variously throughout the property's external areas. As the tenant submitted, access to the property is provided by crossing over one of those trenches on top of a piece of what appeared to be chipboard. The effluent pipe from the toilet, which is located near to the front door, is slightly damaged.

18. Internally, the property is in a poor decorative state. The bathroom and kitchen at the property are basic, and the cooker is visibly in a poor state. The tenant indicated various windows which they said were faulty, which appeared consistent with what the Tribunal saw.
19. There is part of what used to be the subject property's exclusive garden area that is beyond the construction works. This might be accessible via the back door from the kitchen, however the path leading from it to that garden is filled with significant quantities of building material and rubble and it is not possible to do so.

The law

20. 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 be 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 improvements or failure to comply with the terms of the tenancy.
21. Of particular relevance to these proceedings are the contents of Subsection 2 of Section 14:
 - (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.*

Valuation

22. 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 that is considered usual for such an open market letting.
23. Neither party provided any comparable evidence for the Tribunal to consider, the tenant making informal reference to a property they had viewed nearby, and the landlord providing a link that simply lead to a Rightmove search.
24. The Tribunal therefore considered the value of the property in light of its local knowledge and experience. The Tribunal formed the view that, at the proposed rental increase date, the property would have commanded a rent in the region of £1,950 per calendar month, were it let – with an accessible rear garden - in the open market in the condition and on the terms considered usual for such a letting.
25. 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.
26. The tenant had submitted that the landlord was responsible for all repairs at the property (saving damage caused by the tenant), though at the hearing accepted they were unaware of whether that was contractually correct. Clause 3 of the original assured shorthold tenancy agreement in this matter, from which the statutory tenancy arises, provides:

3. *THE TENANT AGREES with the Landlord*

...

(vii) To keep during the tenancy hereby created (and any continuation thereof) the interior of the said premises and the Fixtures and Fittings (including without prejudice to the generality thereof the painting decorations and papering thereof the fixtures fittings and appliances for making use of the supplies of water gas and electricity and fireplaces windows fittings sashcords glass and door furniture) and the Furniture and Effects in good clean and tenantable repair and conditions (damage by accident fire and any repairs for which the Landlord may be responsible under the provisions of the Landlord and Tenant Act 1985 excepted) and to replace immediately any broken glass.

27. The Tribunal considered that this clause of the agreement provided that the tenant was responsible for internal decorations, some internal repairs including minor repairs to the kitchen fittings and also for minor repairs to the windows that were not of a structural nature (which would therefore be the landlord's responsibility pursuant to their obligations under Section 11 of the Landlord and Tenant Act 1985).

28. The Tribunal therefore made no deduction to account for the decorative condition of the property, the damage to the kitchen fittings (with the exception of the cooker) nor the difficulties in opening some of the windows, as it found these were the responsibility of the tenant under the tenancy agreement. However, the Tribunal made a 5% deduction from the hypothetical market rent to account for the fact that those lease terms were less favourable to a prospective tenant than would generally be expected in the market.
29. The impact of the construction works on the property and the access issues caused by it are severe, and the Tribunal considered that a deduction of 20% from the hypothetical market rent was appropriate to reflect this.
30. What is more, those construction works are taking place in what used to be the garden for the exclusive use of the tenant, and have blocked access for the tenant to the rear garden entirely. The Tribunal therefore made a 10% deduction to account for the lack of an accessible rear garden at the property.
31. The tenant averred that one of the landlord's workmen had broken the cooker at the property, and the landlord had not fixed it. For his part, the landlord submitted that the tenant had not kept the kitchen in good repair, and included the cooker in that. Whilst the landlord is correct about the condition of other parts of the kitchen, this was also referred to by the tenant who appears to have, mistakenly, believed this was the responsibility of the landlord. The tenant was entirely credible and apparently honest throughout the hearing. Conversely, the remainder of the landlord's submissions in writing, in which they state there are "No disrepairs or defects currently in the property" and describe the construction work at the property as "renovation work" are simply not credible. The Tribunal therefore preferred the tenant's evidence regarding the cooker.
32. The Tribunal made further deductions from the hypothetical market rent figure as follows:
- A deduction of 2.5% to account for the bathroom fittings being basic
 - A deduction of 2.5% to account for the kitchen fittings being basic (but not the state of repair of those fittings)
 - A deduction of 2.5% to reflect the fact the tenant provided some white goods at the property, and that the cooker is inoperable.
 - A deduction of 2.5% to reflect the damaged effluent pipe.
33. The Tribunal did not make any deduction in relation to the tenant's having replaced the bathroom and hallway radiators at the property. Whilst it might be argued those repairs were the responsibility of the landlord, those were works of repair not improvement, and in any case it was not clear on the evidence provided that the landlord had in fact been made aware of the need for those repairs prior to their taking place.

34. The Tribunal therefore arrived at a value of £1,072.50 per month, as shown in the valuation below:

Market Rent Per Month		£1,950
LESS	5% Lease Terms	-£97.50
LESS	20% Construction and Access	-£390
LESS	10% No rear garden	-£195
LESS	2.5% Basic kitchen	-£48.75
LESS	2.5% Basic bathroom	-£48.75
LESS	2.5% Partial white goods and broken oven	-£48.75
LESS	2.5% Damaged effluent pipe	-£48.75
	Total	£1,072.50
		Per Month

Effective Date

35. 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.

36. No evidence or submissions were provided with regard to hardship, and accordingly the Tribunal determined that its decision would take effect from the date proposed in the notice, 7 April 2023.

Decision

37. Pursuant to the considerations above, the Tribunal determined a rent of £1,072.50 per month in this matter, such rent to take effect from 7 April 2023.

Valuer Chairman: Mr Oliver Dowty MRICS

Dated: 10 April 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 Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).