



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

**Case Reference(s)** : **BIR/00CN/MNR/2024/0062**

**Property** : **Unit 1118 The Mercian 218 Broad Street  
Birmingham B15 1FF**

**Tenant** : **Mohamed Benrabah**

**Landlord** : **Broad Street Opco Ltd**

**Landlord's  
Representative** : **Hatchers Solicitors LLP**

**Type of Application** : **An application for a Determination of Rent  
under an Assured Shorthold Tenancy – Section  
22(1) of the Housing Act 1988**

**Tribunal Members** : **V Ward BSc Hons FRICS - Regional Surveyor  
Judge M K Gandham**

**Date of Decision** : **13<sup>th</sup> of May 2024**

---

**DECISION**

---

## **Background**

1. On 26 February 2024, the Tenant of the Property applied to the Tribunal under section 22 (1) of the Housing Act 1988 for a determination of the rent which, in the Tribunal's opinion, the Landlord might reasonably be expected to obtain under an assured shorthold tenancy.
2. The Tenant provided a copy of their tenancy agreement which indicated the tenancy began on 1 November 2023 for a term of 6 months at a rent of £1,300.00 per calendar month ("pcm").
3. On 8 March 2023, the Tribunal issued Directions. The Tenant was specifically asked to provide the following information and/or evidence:
  - a) Confirmation that this tenancy is their first tenancy of the Property.
  - b) That there is a sufficient number of similar dwelling-houses in the locality let on assured tenancies (whether shorthold or not) and evidence of the same; and
  - c) Evidence that the rent payable under the assured shorthold tenancy in question is significantly higher than the rent which the Landlord might reasonably be expected to be able to obtain under the tenancy.
4. On 12 March 2024, the Tribunal received confirmation from Hatchers Solicitors LLP, that they were instructed by the Landlord in this matter.
5. Neither party requested an oral hearing.

## **The Law**

6. **Section 22 of the Housing Act 1988 states as follows:**

*22 Reference of excessive rents to appropriate tribunal.*

*(1) Subject to section 23 and subsection (2) below, the tenant under an assured shorthold tenancy may make an application in the prescribed form to the appropriate tribunal for a determination of the rent which, in the appropriate tribunal's opinion, the landlord might reasonably be expected to obtain under the assured shorthold tenancy.*

*(2) No application may be made under this section if—*

*(a) the rent payable under the tenancy is a rent previously determined under this section;*

*(aa) the tenancy is one to which section 19A above applies and more than six months have elapsed since the beginning of the tenancy or, in the case of a replacement tenancy, since the beginning of the original tenancy; or*  
*(b) the tenancy is an assured shorthold tenancy falling within subsection (4) of section 20 above (and, accordingly, is one in respect of which notice need not have been served as mentioned in subsection (2) of that section).*

*(3) Where an application is made to the appropriate tribunal under subsection (1) above with respect to the rent under an assured shorthold tenancy, the appropriate tribunal shall not make such a determination as is referred to in that subsection unless they consider—*

*(a) that there is a sufficient number of similar dwelling-houses in the locality let on assured tenancies (whether shorthold or not); and*  
*(b) that the rent payable under the assured shorthold tenancy in question is significantly higher than the rent which the landlord might reasonably be expected to be able to obtain under the tenancy, having regard to the level of rents payable under the tenancies referred to in paragraph (a) above.*

*(4) Where, on an application under this section, the appropriate tribunal make a determination of a rent for an assured shorthold tenancy—*

*(a) the determination shall have effect from such date as the appropriate tribunal may direct, not being earlier than the date of the application;*  
*(b) if, at any time on or after the determination takes effect, the rent which, apart from this paragraph, would be payable under the tenancy exceeds the rent so determined, the excess shall be irrecoverable from the tenant; and*  
*(c) no notice may be served under section 13(2) above with respect to a tenancy of the dwelling-house in question until after the first anniversary of the date on which the determination takes effect.*

*(5) Subsections (4), (5) and (8) of section 14 above apply in relation to a determination of rent under this section as they apply in relation to a determination under that section and, accordingly, where subsection (5) of that section applies, any reference in subsection (4)(b) above to rent is a reference to rent exclusive of the amount attributable to rates.*

## **Submissions of the Parties**

### *The Tenant*

7. In specific response to the Directions, the Tenant commented as follows:
  - a) This tenancy was their first tenancy of the Property.

- b) They stated that there were currently over 1200 properties unoccupied and advertised in the same area.
- c) To support their contention that the rent under their tenancy was significantly higher than the rent which the Landlord might reasonably be expected to be able to obtain under the tenancy, the Tenant provided extracts from the Rightmove property portal which indicated a range of rentals from £850.00 to £950.00 per calendar month for one-bedroom flats in Birmingham.

In addition, the Tenant stated that the Landlord had continually increased rents at the development and provided a screen shot from the Landlord's website which showed units available from £1420.00 to £1670.00 per calendar month.

*The Landlord*

- 8. The Landlord, in response, denied that they were charging higher rent than might reasonably be expected and submitted as follows:
  - a) The building in which the subject apartment is situated is a newly built residential tower in central Birmingham and provides 481 apartments for rent over 42 floors.
  - b) The units offered range from studios to 3 bedroom and penthouse apartments.
  - c) The apartments within the building (including the Property) are fully furnished with high quality soft furnishings and offer various amenities, which include a 24-hour gym, on site cinema and rooftop terrace.
  - d) The Tenant has use of all of the amenities within the building.
  - e) The building is marketed as luxury accommodation.
  - f) The Landlord does not take a deposit from new tenants.
  - g) The apartments offered boast larger floor space per square metre than usual, with one-bedroom apartments boasting a minimum of 42.7sq metres and, again, are fully furnished with high quality furnishings.
- 9. The Landlord provided a schedule of the rental income for other one-bedroom apartments on the 11th floor, the floor on which the Tenant currently resides.

These are as follows:

Unit Reference	Current Status	Rental (pcm)
05-1101	Let	£1,380.00
05-1107	Let	£1,430.00
05-1108	Let	£1,430.00
05-1102	Let	£1,450.00
05-1114	Let	£1,550.00

05-1115	Let	£1,550.00
05-1112	Let	£1,665.00

The average rent at the Property for 1-bedroom apartments is £1,488.00 pcm ranging between £1,084.00 to £1,900.00, dependant on views and size.

10. The Respondent denied that they increased the rent every three months; during the period of the fixed term, they honoured the monthly rent of £1,300.00, as reflected in the tenancy agreement.
11. The Respondent also provided extracts from the Rightmove property portal, which indicated a range of rentals from £1,025.00 to £1,565.00 per calendar month for one-bedroom flats in Birmingham.

## **Discussion**

12. Initially, the Tribunal considered section 22 (3)(a) – whether there is a sufficient number of similar dwelling-houses in the locality let on assured tenancies (whether shorthold or not). The Tribunal found that there was. The building in which the Property is situated – the Mercian - is located on Broad Street in Birmingham City Centre. In this area, particularly, there are many high-rise buildings offering similar rental accommodation.
13. The Tribunal then considered the provisions of section 22 (3)(b) – is the rent payable under the assured shorthold tenancy in question significantly higher than the rent which the Landlord might reasonably be expected to be able to obtain under the tenancy, having regard to the level of rents payable under the tenancies of similar dwelling-houses in the locality let on assured tenancies.
14. Having regard to the level of rents payable, the Tribunal first considered evidence from the Rightmove property portal, which had been used by both parties to garner information.
15. Using search parameters of:
  - The property postcode
  - One-bedroom flats
  - No house shares.
  - Within a radius of 0.25 miles

Results show a range of properties available at rentals from £750.00 pcm to £2,400.00 pcm. The highest value property with an indicator of “Let Agreed” was one at £1,150.00 pcm. Apartments at rentals from £1,500.00 to £1,670.00 pcm were currently available in the Mercian, hence at the higher end of the range.

16. However, as submitted by the Landlord, apartments in the Mercian offer a range of amenities that would not be considered usual, and were not all available, in the dwellings for which the rents were at the lower end of the scale, including the following:
  - Modern furnishings
  - Concierge and on-site property manager
  - 24/7 security, maintenance and repairs
  - Gym, studio and running track-
  - Pet friendly
  - BBQ areas, communal roof terraces and gardens
  - Cinema and Games hub
  - Parking and bike storage
17. As the Mercian is a “Built for Renters” property, tenants could take shorter or longer fixed term tenancies or rolling monthly contracts. Tenancies could also be taken without the tenants lodging a security deposit.
18. As such, although the Tribunal considered that the rental paid by the Tenant was undoubtedly high in the context of one-bedroom apartments in Birmingham City Centre, the extra amenities over and above those offered with what may be considered more regular properties, did, in the opinion of the Tribunal, justify the higher rental.
19. This was supported by the rental paid under the subject tenancy not being significantly more than that advertised for other high-quality apartments in the centre of Birmingham which featured some of the facilities available at the Mercian, and further endorsed by the letting of other similar units on the same floor as the subject property at similar or higher rentals.
20. The Tribunal, therefore, considered that the rent passing of £1,300.00 pcm was not significantly higher than the rent which the Landlord might reasonably be expected to be able to obtain under the tenancy.

## **Decision**

21. As the Tribunal considers that the rent passing of £1,300.00 pcm is not significantly higher than the rent which the Landlord might reasonably be expected to be able to obtain under the tenancy, section 22 (3)(b) of the Act is **not** satisfied and the Tribunal has no power to make a determination of the rent in this matter.

## **Appeal**

22. A party seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal. This application must be received by the Tribunal no later than 28 days after this decision is sent to the parties. Further information is contained within Part 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013 No. 1169).