FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BH/MNR/2023/0422**
Property	**:**	**33 Hibbert Road, Waltham Forest, London, E17 8HB**
Tenant	**:**	**Jamie & Thasdao Griffin**
Representative	**:**	**None**
Landlord	**:**	**Paul & Hazel Forbes**
Representative	**:**	**Edward Bowen**
Date of application	**:**	**29 September 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 J Francis QPM**
Venue	**:**	**10 Alfred Place, London, WC1E 7LR**
Date of decision	**:**	**21 May 2024**

REASONS FOR DECISION

Background

1. The tenant lives in the property under a monthly, statutory periodic assured tenancy which began on 5 April 2022, on the expiry of a prior, fixed-term assured shorthold tenancy which began on 5 April 2021.

2. The landlord served on the tenant a Notice of Increase, dated 7 September 2023, proposing to increase the rent at the property from £1,400 per month to £1,650 per month with effect from 5 November 2023.

3. On 29 September 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 18 January 2024, 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 tenant indicated, in their reply form, that they wished the Tribunal both to inspect the property and to hold a hearing. The Tribunal therefore arranged for an inspection of the property, to be followed by a hearing, on 25 March 2024.

6. The Tribunal inspected the property on 25 March 2024, and sought to hold a face-to-face hearing in this matter later that same day. That hearing was attended by the tenant, Mr Griffin, and Mr Edward Bowen on behalf of the landlord.

7. During that hearing, it became apparent both that a number of documents provided by the tenant had not been provided to the Tribunal panel, and that the landlord had requested to give evidence from abroad. Whilst the landlord had - correctly - requested the relevant guidance note, the Tribunal's case officer did not provide it to them.

8. The Tribunal considered that it would not be procedurally fair to either party to continue with the hearing under these circumstances. Accordingly, with the agreement of both parties, that hearing was adjourned so that these issues might be resolved prior to another hearing.

9. The Tribunal issued further directions dated 3 May 2024, with which both parties complied. Those directions erroneously stated that both parties had agreed to a video hearing, however this was apparently a misunderstanding of the tenant's position – who wished instead to attend the subsequent hearing in person. The Tribunal therefore held

a hybrid hearing on 21 May 2024 – the landlords having applied and been granted permission to appear from the United States of America, in a direction made by Judge Vance on 17 May 2024.

10. In addition to the evidence supplied by the parties in compliance with directions, the landlord had sought to adduce further evidence after the Tribunal's previous, postponed hearing in this matter. This was discussed at the start of the Tribunal's revised hearing, and the tenant was happy for the Tribunal to consider that evidence.

11. The landlord had also previously raised a point concerning the jurisdiction of the Tribunal, based upon the Tribunal's guidance sent out alongside its original directions. In essence, the landlord queried if the Tribunal had jurisdiction, as the Tribunal's guidance said it only had jurisdiction in assured shorthold tenancy matters during the first 6 months of such a tenancy. The Tribunal explained at its previous, postponed hearing, that this referred to applications made regarding the determination of market rent under assured shorthold tenancies, however (whilst the property had initially been let under an assured shorthold tenancy) the subject tenancy was now an assured periodic tenancy – not an assured shorthold one. The Tribunal therefore appeared to have jurisdiction. At the start of the new hearing on 21 May, the Tribunal invited the landlord to submit formally that the Tribunal did not have jurisdiction should they so wish, however the landlord did not wish to do so.

12. That hearing was attended in person by Mr Griffin and his daughter, and was observed in person by the Tribunal's Ms Roheemun and Ms Fisher. The hearing was attended virtually by the landlords Mr and Mrs Forbes, and their representative Mr Bowen; however, whilst Mr Bowen was their representative, Mr and Mrs Forbes mainly made their own submissions with input from Mr Bowen.

The Inspection

13. The subject property is a 2 bed, ground floor flat in a mid-terrace, 2 storey, period property. The property is located on a predominantly residential street on the border between Walthamstow and Leyton nearby to the junction of Markhouse Road and the Lea Bridge Road. Sybourn Primary school is opposite to the front, and Dagenham Brook runs behind the garden of the property.

14. In addition to the 2 bedrooms, the property offers a medium size living room, a bathroom and a kitchen. The wider building has a garden, which is subdivided so that the subject flat has the north-western half of the garden proper – accessed via a shared pathway from the property. The other half of the garden is reserved for the use of the upstairs flat.

15. On inspection, the property was generally in a fair condition, being tired decoratively both externally and internally, with vegetation apparent in the guttering for the wider building.

16. The windows at the property are double glazed, but are dated and do not offer any passive ventilation such as trickle vents. The wooden frame around the window for the rear bedroom is in poor condition, and appears to be rotten. The front door showed clear signs of damage from an attempt to enter the property.

17. There is black spot mould and damp in the property, which appeared to be caused by condensation.

18. The bathroom shower door is broken, and the kitchen sink counter unit was damaged.

19. There is a crack in the plasterwork in the front room.

20. The brick pathway to the garden area is warped.

The law

21. 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 is subsection 2:

    (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.

Hearing & Valuation

22. There was a great deal of disagreement and ill-feeling between the parties at the hearing, but – as regards the valuation exercise – much of it was not relevant. In particular, there was much argument about the damage to the front door, and whether the landlord had agreed to repair it, but the fact is that the door was damaged (much as the Tribunal understands it has now been fixed after its inspection), and it is accepted that that is not because of a failing on the part of the tenant. The tenant also made reference to how the property had not been cleaned prior to their moving in, and the landlord to the requirements placed on them by their mortgage provider, the costs of that mortgage and their desire for a return on investment. However, none of these things is relevant to determining the value of the property in the market at the proposed rental increase date.

23. As regards the condition of the property, there are a number of items of disrepair. The front door is damaged following an attempted burglary some years ago. The rear external brickwork path is warped. The window units are dated, and do not offer any passive ventilation – and the wooden window frame surround in the rear room is in poor, rotten condition. There is mould and damp at the property. The bathroom shower screen door is broken, and the kitchen sink unit is damaged (though again, has apparently now been repaired after the Tribunal's inspection). In addition, the property is in a tired decorative state internally, with a crack in the plasterwork in the front room and wallpaper peeling from the walls in places.

24. The Tribunal notes for completeness that - both in their written submissions and at the hearing – the landlord appeared to aver that the windows were in a good condition, and that this was indicated by the Energy Performance Certificate (EPC) for the property. Whilst cognisant of these submissions, the Tribunal notes that the energy performance of the property does not appear directly relevant to the matter at hand – and the Certificate itself was not provided in evidence (nor even a statement of the associated EPC rating number). In any case, the Tribunal is an expert one, and has made its findings of fact regarding the condition of the property in light of its own inspection of it.

25. The damage to the front door was not caused by the tenant, having been caused by an attempted burglary prior to the tenant's moving in, and no suggestion was made that the warped brickwork path in the garden might be the result of the tenant's actions. Similarly, the tenant cannot be said to be responsible for the fact the window sets at the property are dated – nor that the wooden surround to the rear window is in poor condition.

26. As regards the mould and damp at the property, the tenant accepted that some of it might be caused by condensation due to drying clothes. The tenant averred that ventilating the property would not

necessarily help, as damp air would enter the property - but this is wrong. Ventilation is a key part of keeping a property free of mould and condensation, and the Tribunal considered that the mould and damp it had observed on inspection was most likely caused by a lack of ventilation, as well as some of the other tired features of the internal decoration. That being said, whilst the tenant's failure to ventilate the property adequately is a major cause of those disrepairs, the fact remains that the dated window sets at the property do not have trickle vents, nor any other form of passive ventilation, which does not assist any hypothetical tenant in keeping the property well ventilated.

27. The landlord had also suggested that some of the damage at the property might have been caused by the tenant's cat, which they had not given permission for them to have. However, the Tribunal did not observe any damage on its inspection consistent with damage by cats – and the Tribunal does not agree that cats necessarily cause damage as the landlord appeared to suggest.

28. As regards the broken shower door, the tenant accepted that their son had broken it (and the Tribunal is sympathetic to the injuries sustained by him in so doing). The tenant's argument in this area was that the shower door was somehow unlawful, and therefore should have been replaced anyway. This appeared to be a reference to building regulations which would apparently nowadays require a different sort of glass be used. This was an unevidenced and, the Tribunal felt, in any case misguided argument, as it is perfectly common for properties to have features that would not be permitted were the building designed now. That modern regulations would require a different shower door be installed does not mean that the tenant is not liable to repair the damage they caused.

29. As regards the market value of the property were it in a good condition, the tenant's submissions were straightforward. They averred that the £1,650pcm asked for by the landlord would be reasonable, were the property in good condition – but it is not. Accordingly, the valuation should be lower. The tenant had referred to three asking rents, but these were from a wide area and were provided as very brief screenshots which did not provide enough detail for the Tribunal to consider them fully. The tenant did not seek to speak to the comparability of any of them in particular, and instead included them to show that rents lower than that which they had been asked to pay were being asked in the local area. In any case, asking rents do not carry much weight as evidence, and are only useful in establishing a background picture – of which the Tribunal is already well aware in its expert capacity.

30. The Landlord's submissions as to value were more difficult to follow. When asked by the Tribunal how much the property would be worth if it was in a good condition, Mrs Forbes averred that it would be worth around £2,500 per month - but Mr Bowen, also for the

landlord, averred the property was already in a good condition. The Tribunal observed that this figure of £2,500pcm was significantly more than the amount the landlord had requested (£1,650pcm), and Mrs Forbes initially said that she didn't want to increase someone's rent by "a thousand dollars" in one go. However, the Tribunal then observed that it was the Landlord's own evidence that they had had an independent 'valuation' of £1,600pcm provided by someone in connection with the mortgage. Mrs Forbes averred that this was because of the condition of the property as a result of the tenant's treatment of it, but when the Tribunal asked Mrs Forbes to confirm its understanding of her submission that the tenant's actions were so as to cause the value to drop by £900 per month, she did not do so.

31. Mr Bowen, again on the Landlord's behalf, then said he wouldn't start as high as £2,500pcm - but that is exactly what Mrs Forbes had already submitted, and Mrs Forbes was absolutely unequivocal that a figure of "at least £2,000" would be appropriate if the property were in a good condition. Even taking this at its weakest, this would mean the landlord was suggesting the tenant's misuse of the property had caused such damage as to lower the rent by £400 a month when compared with the £1,600 pcm it was their submission was an independent valuation of the property as it is that the landlord themselves sought to rely upon in evidence (though the landlord's figure proposed in the notice was, for unexplained reasons, higher than this at £1,650pcm).

32. It is also notable that, under later questioning by Mr Griffin, the landlord said they did not accuse Mr Griffin of having caused various items of disrepair, such as to the front door and the rear bedroom window.

33. As regards the evidence to support their figure, the landlord referred to asking rents in Walthamstow in general, but the fact is that Walthamstow is a very large place - and one that has submarkets which bear very little relation to each other. The landlord pointed out several times that 1 beds in Walthamstow might let for as much as £1,800pcm - but this is the sort of value one might expect from a modern property near to Blackhorse Road station, not a flat in a period building on the border with Leyton near the junction of Markhouse Road and the Lea Bridge Road.

34. The landlord also referred to an "independent valuation" from a 'mortgage inspector' at £1,600pcm. No report was provided in evidence to support that valuation (the landlord apparently not having access to it) and the only paperwork concerning it provided to the Tribunal was an email from a mortgage advisor simply advising of that £1,600pcm figure having been arrived at. The landlord did not know if the person who provided that valuation was a surveyor.

35. The Tribunal therefore considered the value of the property in light of the submissions of the parties, and its own expert knowledge of rental

values in the area. It considered that a value of £1,750pcm would be appropriate for the property, were it let on the market in the condition and on the terms considered usual for such a letting, considering that it was let with furniture (albeit some of those furnishings have since been replaced or disposed of by the tenant).

36. The lease terms of the tenancy are such that the landlord is responsible for all repairs that are not the result of damage (above fair wear and tear) caused by the tenant. This is standard in the market, and requires no adjustment be made. The landlord had advanced in their written submissions that "a significant premium is usually added to month-by-month leases", but this was unevidenced and the Tribunal does not agree.

37. The Tribunal then made deductions in relation to the disrepair at the property, that was not the result of the tenant's breach of a term of the tenancy (which, as above, the Tribunal considered extended to the mould and condensation at the property, some of the internal decorative condition and the broken shower door).

38. The Tribunal made a deduction of 10% to account for the dated window sets, the damage to the window frame in the rear room and the condition of the front door which showed evidence of damage from an attempted burglary. The latter in particular has a marked impact on the value of the property to any hypothetical tenant. For clarity, the Tribunal considered that this deduction would reflect the role the lack of any passive ventilation provided by the window sets played in the condensation at the property.

39. The Tribunal made a further deduction of 5% to account for the other disrepairs at the property (which were not the result of the tenant's actions), including the external decorative condition of the building, the damage to the external path, the condition of the kitchen sink unit and the crack in the plaster in the front room.

40. The Tribunal made no deduction to account for the entry of slugs and ants at the property. This is a common feature of ground floor period flats in the area and is therefore already reflected in the market value starting point adopted.

41. The Tribunal made no deduction to account for the lack of an extractor fan in the bathroom, as the impact on the rental bid of a hypothetical tenant in the market would be negligible if existent in this case. It is relatively common for period properties such as the subject to not have bathroom extractor fans, particularly where bathrooms have reasonably sized opening windows such as at the subject property.

42. This provides a value of £1,490 per calendar month, as shown in the valuation over-page:

Market Rent Per Month			£1,750
	LESS	10% Windows & Doors	-£175
	LESS	5% Other Disrepairs	-£87.50
		Total	**£1,487.50**
		SAY	**£1,490 per month**

Effective Date

43. 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.

44. The tenant made no submissions concerning hardship, and accordingly the Tribunal determined that the rent would take effect from the date proposed in the landlord's notice, 5 November 2023.

Decision

45. Pursuant to the considerations above, the Tribunal determined a rent of £1,490 per month in this matter, such rent to take effect from 5 November 2023.

Valuer Chairman: Mr Oliver Dowty MRICS
Dated: 28 June 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).