



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

Case Reference : **LON/00AB/MNR/2023/0089**

Property : **2 Boulton Road Dagenham SS12 3DD**

Applicant : **Ms Elizabeth Francesca
Alexander & Miss Zrouge Billy-
Red Misuke Alexander**

Respondent : **Mr Mark Middleton**

Date of Application : **1 March 2023**

Type of Application : **Determination of the market rent
under Section 14 Housing Act 1988**

Tribunal : **Mrs E Flint FRICS
Mr J Francis QPM**

**Date and venue of
Determination** : **14 August 2024
10 Alfred Place London WC1E 1LR**

DECISION

The market rent as at 31 March 2023 is £1200 per month.

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Background

1. On 1 March 2023, the tenant referred to the Tribunal a notice of increase of rent served by the landlord under section 13 of the Housing Act 1988.
2. The landlord's notice, which was dated 28 February 2023, proposed a rent of £1400 per month with effect from 31 March 2023 in place of the existing rent of £1100 per month.
3. The tenant occupies under a periodic tenancy which commenced on the expiry of a tenancy for twelve months from 31 July 2019.
4. Directions were issued by the tribunal on 28 March 2023.
5. Prior to the hearing on 16 August 2023 the landlord and tenant sent their submissions to the tribunal and copied them to each other.
6. The Tribunal issued its decision dated 31 August 2023. The tenant sought permission to appeal to the Upper Tribunal which this Tribunal refused. The application was renewed before the Upper Tribunal and a substantive decision was issued referring the matter back to the Tribunal for the following questions to be answered and the rent re-determined:
 - (i) What was the landlord's conduct in connection with attempted repairs at the property prior to the date the new rent fell due to commence (i.e. 31 March 2023)?
 - (ii) What was the tenant's conduct in connection with attempted repairs at the property prior to the date the new rent fell due to commence?
 - (iii) Does that conduct have any impact on the sum to be paid as the new rent from 31 March 2023, and if so how?

The Hearing

7. Both the landlord and the tenant attended the hearing. The Tribunal explained that this hearing was to answer the queries raised by her Honour Judge Cooke which are set out above and that the condition of the house was to be taken as at 31 March 2023. The Tribunal confirmed that it would not be inspecting the house again.
8. Miss Alexander said that the condition of the house had deteriorated since the hearing almost a year ago. She said that the landlord was difficult to contact, his responses were late and sometimes he had refused to carry out repairs. Emails to his email address had bounced back and the telephone number had been disconnected since 2019.
9. The black mould had been painted over rather than dealing with the cause, the fuse box had been replaced in 2023. She was concerned that there was lead on the canopy over the front door which she assumed

was dangerous to their health. Due to a leaking wc cistern they had received a water bill for £900 despite the landlord advising that it had been repaired.

10. In written submissions the tenant stated that the landlord had not reached out to schedule any access to the property for repairs for over a year. The repairs on the schedule prepared by the Environmental Health Officer remained outstanding.
11. Miss Alexander was adamant that the Environmental Health Officer had become involved due to her contacting the council regarding the central heating boiler, which in cross examination she agreed had been replaced. She had made contact again regarding the gas hob, which the landlord subsequently replaced.
12. Under cross examination Miss Alexander said that they had refused access because they did not believe the landlord would carry out the work. As regards the schedule of works, they had not understood what was required. They had offered weekends and Bank Holiday Mondays because in the past the landlord had been willing to come round at those times to carry out small repairs.
13. Mr Middleton said that in November 2022 a plumber had attended the house regarding the bath water not draining away. The plumber had discovered hair, grease and plastic flossers in the drain resulting in a blockage. Photographs of the contents of the drain were supplied by the plumber.
14. He had begun external repairs in 2022 but in about February/March 2023 the tenants began to refuse access to complete the works he had intended to carry out. He was of the opinion that he required between 7 and 10 days to complete the work with the assistance of several contractors. When planning the work, he had anticipated that it would be completed before the end of March. This was on the assumption that he would be given sufficient access to the house.
15. An electrician had attended on 10 March 2023 and a leak to the kitchen sink had been repaired on 12 March 2023. Mr Middleton had attended the house with his contractors on 15 March, expecting to be allowed access over the coming days, with 5 workers with different trades represented. They started the work expecting to be there for several days. After the first day he was told that they couldn't come back until the 21st March, which he duly arranged.. However, on 17 March Miss Alexander advised that access would not be provided on 21 March, the next date would be 28 March.
16. As a result of the cancellations, he contacted the Environmental Health Officer in March 2023 to ask for help in gaining access to the property because the tenant had not allowed further access to the inside of the house. He offered to carry out all works which she proposed even if they were the tenant's responsibility under the tenancy agreement. The Environmental Health Officer inspected the house on 21 March 2023.
17. In his written submission he stated that the tenant had been asked to nominate seven days from a list of 26 days to choose from for the works scheduled by the Environmental Health Officer. Initially there was no

response, subsequently in response the tenant offered three days, one of which was a Bank Holiday.

18. At the outset of the initial hearing both parties agreed that if the house was modernised and in good condition the open market rent was £1400 per month.
19. Miss Alexander described the property as requiring a number of repairs and modernisation: the canopy over the entrance door is rotten and the door handle is cracked. She accepted that the condition of the door handle did not compromise the security of the house. The gutters need cleaning out, the front gutter leaks.
20. On the ground floor there is mould in the hall, lounge where it abuts the bathroom wall, and in the kitchen where the cupboards have no back. The pipe for the washing machine is not connected to the drain. The bathroom is in the process of being renovated; there has been no wash basin for two months or silicon around the bath, the lock on the bathroom window is broken.
21. There is no wash basin in the wc, hands must be washed down stairs. There is mould in both bedrooms and above the stairs. Most of the radiators are rusty.
22. Mr Middleton said that he had owned the property for about twenty five years, the house has always been let out and had not had any damp issues until the present tenants moved in. Double glazing and new front and back doors had been installed not long before the tenants moved in. The tenants used a shower fitment in the bathroom; the room is a bathroom and not a shower room as showers create additional steam. The house is an ex-council house built in the 1920's. He had agreed a schedule of works with the Environmental Health Officer however he had not been able to complete the works because the tenants offered limited access. He agreed that on occasions he had worked into the evening but said that was because he had not been given access in the morning. He referred to a damp report dated 14 November 2022 which suggested that the mould in the property was due to condensation.

The inspection

23. The Tribunal inspected the house on the afternoon of 16 August 2023 in the company of the tenants and the landlord.
24. The property, which is a two storey end terrace house with rendered walls, concrete tile pitch roof and small front and rear gardens, is situated on the Becontree estate. Externally the property is in only average condition, the remainder of the terrace appears to have been well maintained. The main door is on the flank wall. The canopy over this door, which is covered in mineral felt, is partially rotten and not fully attached to the wall. The very small back garden contained a broken wash basin and other materials relating to the work which had been undertaken by the landlord.
25. Internally on the ground floor there was mould at a low level on the right hand wall of the living room. The kitchen was fitted with a range of units which had deteriorated over their life. The worktop of the sink

base unit was not attached to the adjacent unit. The bath was worn and very badly stained, the wash basin had not been replaced.

26. On the first floor there was mould at a high level in the front bedroom and poor plasterwork in the rear bedroom. The inner obscured glass in the wc was broken and missing.

The law

27. In accordance with the terms of section 14 Housing Act 1988 the Tribunal proceeded to determine the rent at which it considered that the subject property might reasonably be expected to be let on the open market by a willing landlord under an assured tenancy.
28. In so doing it, as required by section 14(1), ignored the effect on the rental value of the property of any relevant tenant's improvements as defined in section 14(2) of that Act.

Valuation

29. The Tribunal found Miss Alexander to be an unreliable witness, some of her statements were contradictory. Despite it being almost a year to the day since our inspection access has not been given to complete the schedule of works issued by the Environmental Health Officer on 22 March 2023. Indeed on 15 May 2023 she emailed the tenant: *“unfortunately as you have failed to supply the landlord with suitable access to carry out works as scheduled in my email to the Landlord on the 22nd March 2023 I will be closing the case”*.
30. In coming to its decision, the Tribunal took into account the lack of modernisation and condition of the house but did not adjust the agreed rental value for any works which had been agreed with the Environmental Health Department but not completed simply because the tenant had not afforded the landlord the necessary access to complete the work. However, the bathroom and kitchen were both worn and dated, there was no wash basin on the first floor, some of the radiators were rusty and the mould at the junction of the walls and roof may be due to poor insulation.
31. Having heard all the evidence and reviewed that given in August 2023 the Tribunal finds that the landlord was not able to carry out repairs to the house prior to, or indeed after 31 March 2023, because the tenant was not prepared to give him access to the interior of the house sufficient to complete the works. Had access been given when first requested then the works would have been completed prior to 31 March 2023. The Tribunal determines that the open market rent of the property as at 31 March 2023 is £1200 per month.

The decision

32. The open market rental value of the premises is £1200 per month effective from 31 March 2023, being the effective date in the landlord's notice.

ANNEX - RIGHTS OF APPEAL

- i. 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.
- ii. 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.
- iii. 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.
- iv. 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.

Appendix Housing Act 1988

14 Determination of rent by rent assessment committee.

(1) Where, under subsection (4) (a) of section 13, a tenant refers to a rent assessment committee a notice under subsection (2) of that section, the committee shall determine the rent at which, subject to subsections (2) and (4) below, the committee consider that the dwelling-house concerned might reasonably be expected to be let in the open market by a willing landlord under an assured tenancy—

- (a) which is a periodic tenancy having the same periods as those of the tenancy to which the notice relates;
- (b) which begins at the beginning of the new period specified in the notice;
- (c) the terms of which (other than relating to the amount of the rent) are the same as those of the tenancy to which the notice relates; and

(d) in respect of which the same notices, if any, have been given under any of Grounds 1 to 5 of Schedule 2 to this Act, as have been given (or have effect as if given) in relation to the tenancy to which the notice relates.

(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.

(3) For the purposes of subsection (2)(b) above, in relation to a notice which is referred by a tenant as mentioned in subsection (1) above, an improvement is a relevant improvement if either it was carried out during the tenancy to which the notice relates or the following conditions are satisfied, namely—

(a) that it was carried out not more than twenty-one years before the date of service of the notice; and

(b) that, at all times during the period beginning when the improvement was carried out and ending on the date of service of the notice, the dwelling-house has been let under an assured tenancy; and

(c) that, on the coming to an end of an assured tenancy at any time during that period, the tenant (or, in the case of joint tenants, at least one of them) did not quit.

(4) In this section “rent” does not include any service charge, within the meaning of section 18 of the Landlord and Tenant Act 1985, but, subject to that, includes any sums payable by the tenant to the landlord on account of the use of furniture or for any of the matters referred to in subsection (1) (a) of that section, whether or not those sums are separate from the sums payable for the occupation of the dwelling-house concerned or are payable under separate agreements....

(7) Where a notice under section 13(2) above has been referred to the appropriate tribunal, then, unless the landlord and the tenant otherwise agree,

the rent determined by the appropriate tribunal ... shall be the rent under the tenancy with effect from the beginning of the new period specified in the notice or, if it appears to the appropriate tribunal that that would cause undue hardship to the tenant, with effect from such later date (not being later than the date the rent is determined) as the appropriate tribunal may direct.

