FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**HS/LON/00AZ/MNR/2024/0058**
Property	**:**	**16A Arran Road, Catford, London, SE6 2NL**
Tenant	**:**	**Khaled Allag**
Landlord	**:**	**Mr Richard McFarlane**
Date of application	**:**	**3 January 2024**
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 N Miller**
Venue	**:**	**10 Alfred Place, London, WC1E 7LR**
Date of decision	**:**	**1 October 2024**

REASONS FOR DECISION

Background

1. The tenant lives in the property under a monthly statutory periodic tenancy, that began on 17 June 2016, on the expiry of the 12 month fixed term of a prior assured shorthold tenancy which began on 17 June 2015.

2. The landlord served on the tenant a Notice of Increase, dated 15 January 2024, proposing to increase the rent at the property from £1,250 per month to £1,750 per month with effect from 17 February 2024.

3. There has been something of a chequered procedural history to this case in terms of the Tribunal's arrangements to determine the matter. Going into the minute details of this background would result in disproportionately lengthy written reasons discussing something which the parties are already well aware of themselves, and would not be relevant to any prospective appeal against the Tribunal's decision.

4. What is important is that the Tribunal received an application from the tenant via email on 3 January 2024, however it was unable to open the documents attached. The Tribunal requested, and received, a copy of those documents later, and subsequently issued its directions in this matter on 27th March 2024. A hearing and inspection were then scheduled to take place on 16 May 2024, however this was postponed at the landlord's request. A revised date was then arrived at, of 15 August 2024 – however the tenant applied for that date to be postponed because he was "travelling for medical care". The landlord objected to that postponement, but nevertheless it was granted by Judge Martynski on 6 August 2024.

5. A face-to-face hearing and inspection were therefore arranged for 1 October 2024, which took place.

6. The Tribunal's directions of 27 March 2024 provided that both parties were to provide a reply form, and any other written submissions with a timeframe which culminated in a "reply by the landlord" on 8 May 2024. The tenant provided a reply form, but the landlord did not. Neither party, at any point, applied for a variation of the Tribunal's directions.

7. Despite this, both parties sought to provide written submissions after that timeframe expired, and without copying in the other party. In the tenant's case, he sought in an email dated 28 June 2024 to make representations regarding works that the landlord had carried out and the tenant's dissatisfaction with the landlord's conduct. In the landlord's case, he sought to provide 3 'valuations' from local letting agents, in an email to the Tribunal only dated 24 September 2024.

8. It is difficult to understand why that happened. It is clearly not procedurally fair, in legal proceedings, for either party to seek to

make written submissions to the Tribunal without giving the other party an opportunity to know what those submissions are – to say nothing of the fact that the Tribunal's directions had required that all communications with the Tribunal must be copied to the other party, and marked as such.

9. Accordingly, we had no regard to either the submissions of the tenant concerning the works and conduct of the landlord – nor to the 3 'valuations' provided by the landlord (having asked, at the hearing, whether the tenant had been provided with a copy of them and being told that he had not).

10. In the latter case, we note that this was something of an academic exclusion, as they were not valuations in the sense that they were serious, independent opinions of market rental value compiled by qualified valuation surveyors acting as expert witnesses, considering the market conditions as at the proposed date of increase on 17 February 2024 (which even if so would have required the attendance at the hearing of the experts involved). Instead, they were simply opinions of letting agents as to what value they might market the property at - with a view, apparently, to being instructed by the landlord to do so - provided in various dates in September 2024. This sort of evidence carries very little weight, and this is particularly true in circumstances like this where the condition of the property is significantly worse than would be expected in the market.

The Hearing

11. We held a face-to-face hearing in this matter on 1 October 2024. Mr Allag represented himself at that hearing, but the landlord did not attend. We delayed the start of the hearing in case the landlord was running late, and asked our case officer to try and make contact with the landlord by phone, who was unable to. We considered that sufficient notice of the hearing had been provided, and that – given the language of the landlord's email dated 24 September 2024 in which he sought to provide the 'valuation' evidence we decided we would not consider, before adding "I therefore look forward to your response on this matter. Thanks" – the landlord had simply decided not to attend. Accordingly, we considered that it was in the interests of justice to proceed with the hearing in the landlord's absence, and we did so.

12. The hearing was a straightforward affair. Mr Allag spoke briefly to the background of the dispute, which in truth is of no import to the Tribunal's very limited role in determining a market rent, before turning to the condition and issues he said he had faced at the property. He had installed flooring in the two bedrooms at the property, which were severely affected by mould (which he blamed for medical issues now experienced by his children), and had had to

carry out a number of repairs himself that the landlord was responsible for.

13. The wider building, Mr Allag averred, was "messy", and the kitchen and bathroom are both old and small. The landlord had provided the white goods, a sofa, curtains/blinds and some other furniture (including beds which the tenant had told them to remove as they said they were damp). The tenant had built the shed in the garden and repaired the fence.

14. In terms of repairs, the landlord – the tenant averred – was responsible for all repairs other than damage caused by the tenant in the usual way.

The Inspection

15. We inspected the property after the hearing, on the same day as it. We were accompanied by the tenant, Mr Allag, but again the landlord did not attend.

16. The property consists of a small, 2 bedroom flat on the ground floor of a larger period building on Arran Road in Catford. The exterior of the building, and the shared entrance hallway, are shabby decoratively. Internally, the property is similarly shabby decoratively, and is below the standard that would be expected in the market. In addition, the kitchen and the bathroom are both small and the fixtures a little dated. The garden at the property has a shed which the tenant avers he installed.

17. By far the most important observation on our inspection was the significant mould, and apparent related dampness, present in both bedrooms of the property. This mould was not consistent with having been caused by condensation, nor any apparent fault on the part of the tenant. Instead, on inspecting the side alley to the left-hand side of the property (as viewed from the road), we saw that the external wall for the property was covered in unpainted, and in part cracked, render. That wall is the same wall on which we had observed the mould in both the bedrooms. Relatedly, though less significantly, there is a leak in the ceiling of one of the bedrooms and associated damage to one of the light fittings.

The law

18. 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 ('The Act'). 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 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 worth in quoting are subsections 2 & 7:

(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.

(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 (subject, in a case where subsection 5 above applies, to the addition of the appropriate amount in respect of rates) 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.

Valuation

19. 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 today in the condition and on the terms that are considered usual for such an open market letting.

20. The 3 'valuations' from local letting agents the landlord sought to provide apart (which as explained above we did not consider), neither party provided us with any evidence of value to consider.

21. We therefore considered the value of the property in line with our own, expert knowledge of general rental levels in the area. We determined that the property might have let for £1,750pcm, on the proposed date of increase 17 February 2024, if it were offered to the market in the condition and on the terms considered usual for such a letting – with the furniture that had been provided by the landlord.

22. This hypothetical rent is adjusted as necessary to allow for the differences between the lease terms and physical condition

considered usual for such a letting and the actual lease terms and physical condition of the property. Any rental benefit derived from Tenant's improvements is disregarded.

23. The terms of the tenancy are that the landlord is responsible for repairs at the property, which is the usual expectation in the market. Accordingly, no adjustment is needed to account for this.

24. We made a deduction of 20% to account for the severe damp and mould in both of the bedrooms at the property, as well as the leak in one of the bedroom ceilings. Mould like this is a serious matter, which is likely hazardous to health, and it has a dramatic effect on the value of the property.

25. We made a further deduction of 2.5% to reflect both the bathroom and kitchen at the property being slightly dated and smaller than average.

26. We made a further deduction of 2.5% to reflect the tired decorative condition of the property (both internally and externally) and the tenant's having installed wooden flooring in the bedrooms and a shed in the garden. Section 14(2)(b) of The Act (quoted above) requires, essentially, that tenant's improvements are to be taken into account in our determination – but it is silent as to simple repairs. Accordingly, we made no further deduction for the other repairs complained of by the tenant.

27. We therefore arrived at a value of £1,312.50 per calendar month, as shown in the valuation below:

Market Rent Per Month			£1,750
	LESS	20% Damp & mould in both bedrooms, and leaking ceiling in one of them.	-£350
	LESS	2.5% Small and dated bathroom and kitchen	-£43.75
	LESS	2.5% tired decoration, tenant's flooring and shed.	-£43.75
		Total	**£1,312.50 pcm**

Effective Date

28. 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.

29. The tenant made no submissions concerning hardship, and accordingly we decided that the rental increase should take effect from 17 February 2024 – the date specified in the notice of increase.

Decision

30. Pursuant to the considerations above, the Tribunal determined a rent of £1,312.50 per month in this matter, such rent to take effect from 17 February 2024.

Valuer Chairman: Mr Oliver Dowty MRICS
Dated: 11 November 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).