FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**GB/LON/00AM/MNR/2024/0342**
Property	:	**Flat 16 South Mill Apartments, Hebden Street, E2 8FZ**
Tenants	:	**Justine Louise Glen and Yu Qi**
Landlord	:	**Matthew Barnes**
Date of application	:	**6 June 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 C Piarroux**
Venue	:	**10 Alfred Place, London, WC1E 7LR**
Date of decision	:	**28 October 2024**

REASONS FOR DECISION

Background

1. The tenants live at the property under a monthly statutory periodic tenancy, that began on 10 April 2024 on the expiry of a prior, 2 year fixed term tenancy from 10 April 2022.

2. The landlord served on the tenants a Notice of Increase, dated 9 May 2024, proposing to increase the rent at the property from £2,700 per month to £3,036 per month with effect from 10 June 2024.

3. On 6 June 2024 the Tribunal received an application from the tenants, dated 4 June 2024, 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 15 August 2024, which invited the parties to provide a reply form and make any other submissions they wished to make. Both parties provided reply forms and further submissions.

5. Both parties indicated, in their reply forms, that they wished the Tribunal to both hold a hearing and inspect the property. A face-to-face hearing and inspection were therefore arranged for 28 October 2024.

The Hearing

6. We held a face-to-face hearing in this matter on 28 October 2024. Mr Qi (one of the joint tenants) and Mr Barnes (the landlord) appeared in person at that hearing.

7. At the start of the hearing, the tenant indicated that they wished to submit new evidence from comparable properties. No indication had been given in advance either to the Tribunal or to the landlord that they wished to do this, and it was not in line with the directions in this matter. It is therefore trite to note that the landlord had not had an opportunity to consider that evidence before the hearing. We considered it would be prejudicial to the landlord to permit this evidence to be provided at the start of the hearing and without any warning, and that it was simply too late to provide such fresh evidence at the start of the hearing itself. Accordingly, we did not permit that late evidence to be adduced.

8. The tenant spoke briefly to the background of their dispute with the landlord, which is not relevant to our determination of a market rent, before turning to the matter at hand. The landlord, the tenant said, had cited an increase in the bills he paid at the property (for heating/hot water and council tax), but they were not the landlord's responsibility under the tenancy agreement.

9. The tenant went on to discuss the parking at the property, which is provided by a secure garage below the flats for which an additional monthly fee is paid by the tenant. The tenant averred that, as it was paid for separately, it was not relevant to the rent payable; but also, simultaneously, that the tenant's vehicle had been broken into in that garage – and that this should be reflected in the rent as it was an example of poor building management.

10. The tenant also made a further point concerning the fact that the landlord does not have to pay commission to a letting agent – and that therefore the rent determined by the Tribunal should be lower when compared with other properties on the market where such a commission is paid. When we discussed whether this was relevant in light of the provisions of The Housing Act 1988, which we will come onto below, the tenant advanced that if a professional letting agent were involved they wouldn't have been threatened with unlawful eviction – as they averred they had been.

11. The landlord also spoke to the background, and what he felt were comments as to his character made by the tenants (though, again, these are not relevant to the matter at hand). The landlord did, however, note that he had not appreciated tenancies could roll on and that he accepted he was not a professional landlord and was therefore "learning as I go".

12. The tenant had complained of a severe silverfish infestation and a pigeon infestation on the balcony. The landlord responded to these complaints by saying that the balcony was not pigeon proof, and that – as regards the silverfish – he hadn't been informed of this, and that this might be a matter for the tenants to resolve by cleaning.

13. As regards the bills, the landlord accepted that they were not provided for in the tenancy agreement – but invited us to consider that that agreement had been varied orally between the parties. We therefore, the landlord submitted, should take those bills into account in our decision.

14. In terms of the car park, the landlord advanced that, whilst a separate fee was payable for the fob, the fact that access was available to a secure car park was a valuable feature of the property.

15. There was also some discussion at the hearing concerning the second bedroom at the property. The tenant advanced that it was not really a bedroom at all; the flat consisting, they said, of one massive bedroom and one tiny room. They did not know how they would put a bed in it. The landlord disputed this, and said that there was a bed in it when the property was first let to the tenants.

16. The tenant had also complained that some of the lightbulbs at the property needed replacing, but conceded that he did not know if that

was – in fact – something the tenants were responsible for under the lease.

17. The parties confirmed that the property had been let furnished, including white goods, carpets/floor coverings and curtains.

The Inspection

18. We inspected the property after the hearing, on the same day as it. We were accompanied by Mr Qi and Mr Barnes. The property is a modern two bedroom flat with a balcony

19. The subject property is located on the 4th floor of a modern block on Hebden Street, near to Hoxton train station. The property offers, off a central corridor, a large bathroom, a large bedroom (with an ensuite bathroom), a smaller bedroom, two storage cupboards and a living/dining room with a kitchen area – from which a balcony overlooking Hebden Street is accessed. We find that the property was in a good, modern condition.

20. It was an issue between the parties whether the smaller bedroom was, in fact, a bedroom. The tenant averred that it was not, and it was not conceivable that a bed could be placed in there – whereas the landlord submitted that it was let as a two bedroom at the time the current tenant's took the property, and that therefore it could be used as a bedroom. Having seen the room ourselves, as an expert tribunal, and considered the submissions of both the landlord and the tenant, we are entirely content that it is a bedroom - and we find as a fact that it is a double bedroom (albeit one that would be considered a "small double" on the market).

21. The property is in a good, modern condition. As regards the silverfish, we did not observe any evidence of a silverfish infestation on our inspection (though we are aware of a video provided in evidence showing a small number of them in the bathroom area) – and in regards to the pigeons the only evidence of this was an area in the corner of the balcony where pigeon excrement had marked the walls.

22. The property has access to a communal garden area to the rear, as well as a secure parking garage below (which the tenant has to pay an additional £69 per month for a fob to access).

The law

23. 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 1, 2 & 7:

(1) Where, under subsection (4)(a) of section 13 above, a tenant refers to the appropriate tribunal a notice under subsection (2) of that section, the appropriate tribunal shall determine the rent at which, subject to subsections (2) and (4) below, the appropriate tribunal 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.

…

(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

24. First, we had to consider whether, and to what extent, the landlord's payment of the heating/hot water and council tax at the property - and the presence of a parking garage – should be reflected in our determination.

25. As regards the heating/hot water and council tax, we must – pursuant to Section 14(1)(c) of The Act - make our determination on the basis of the terms of the tenancy. In this case, there is a written tenancy agreement between the parties, and the landlord conceded that it did not provide for the landlord to pay for these bills – including saying in his written submissions that they were "not stipulated in contract". The landlord had averred that we should consider that the written tenancy agreement had been varied orally so as to include them, but the tenant didn't agree and we were not persuaded by the landlord's argument. The parties have entered into a written tenancy agreement, in the not too distant past, and that is the agreement they have with each other. Accordingly, we took no account of the landlord's paying of the heating/hot water and council tax bills at the property.

26. As regards the car parking, the tenant's submissions on this were ill thought out, the suggestion being that simultaneously it wasn't relevant to the rent of the property at all as a separate fee is paid – but also that it should be considered that his vehicle was broken into in that garage. Instead, the landlord's position on this is correct. It is something for which an additional fee is paid, but it is only available to the tenants because they are tenants of a flat in the building. It is therefore a feature that is offered with the property, and one that necessarily then should be reflected. That being said, the impact on value - given that a relatively substantial fee of £69/month must be paid for access to it and the fact such 'secure' garages are never entirely so (as alluded to by the break in suffered by the tenant in that garage, about which we saw no reason to doubt his evidence) – is not likely to be particularly significant.

27. Turning to the determination itself, in the first instance we determined what rent the landlord could reasonably be expected to obtain for the property in the open market if it were let on the proposed increase date in the condition and on the terms that are considered usual for such an open market letting.

28. The tenants provided details of 7 asking rents in their written submissions – and the landlord 3 (albeit there was some overlap in terms of properties referred to). All bar 2 of the properties referred to were too far located from the subject property to offer good evidence of value, with rents from as far away as Sclater Street, Brick Lane and

even Osborn Street & Fieldgate Street in Whitechapel. Of the remaining two, one of them was for what was said to be a 3 bed flat and not a 2 bed one – and it is therefore not comparable to the subject.

29. Accordingly, we considered that the only piece of potentially, genuinely comparable evidence we had been provided was an asking rent for what is said to be a 2 bed flat in the same development as the subject (advertised for £2,475pcm on an unspecified date). Asking rents carry very little evidential weight in any case, but this is particularly true in the present case, where all we were provided was a screenshot from the Zoopla listing apparently from a mobile phone which did not provide us with anywhere near enough information to consider it properly. That screenshot mainly consisted of a single photograph – taken looking out from that flat over its balcony.

30. The landlord also referred to inflation, and the increase in costs such as mortgage costs. He averred that an indexed rent for the property by CPI would be £3,152. Whilst we would be reluctant to say that indexation was never appropriate as part of a wider valuation approach, this is not an unusual property in a remote location where it might otherwise be difficult to establish general market sentiment – it is a 2 bed flat in a popular area of inner East London with an extremely active rental market. It is therefore not necessary to resort to indexation, and it does not provide evidence of value in the present case which we find persuasive.

31. We therefore did not feel that any of the valuation evidence advanced by the parties was of particular assistance in the valuation of the property. Accordingly, we considered the value of the property both in the light of the submissions of the parties and our own expert knowledge of general rental levels in the area.

32. We considered that a value of £2,800 per month would have been an appropriate value for the property as at 10 June 2024 were it let with the furniture provided by the landlord on the terms and in the condition considered usual in the market.

33. This hypothetical rent is adjusted as necessary to allow for the differences between the terms considered usual for such a letting and the actual one, as well as to account for any differences between the condition of the property and its actual condition at the proposed rental increase date.

34. The terms of the tenancy are such that the landlord is responsible for repairs at the property. This is typical in the market and therefore no adjustment is necessary for this.

35. The tenant had outlined various things which they said detracted from the value. There was a silverfish infestation, a ‘pigeon infestation’ (which in fact referred to pigeons settling in the balcony

area, which had caused marking to a small area of the wall from pigeon excrement) and some lightbulbs needed replacing. Having inspected the property, and seen it with our own eyes, we don't agree. The property is in a good modern condition, and all of these matters – taken at their highest – are trivial and would not noticeably affect the rental bid of a hypothetical tenant.

36. The tenant had also suggested that the value should be discounted as the landlord did not have to pay a commission to a letting agent as other properties in the market would. To the extent that this is a suggestion that it should be borne in mind that the actual tenant is a sitting one and not one 'fresh to the scene', the effect of that is specifically excluded by Section 14(2)(a) of The Act (quoted above). The tenant also appeared to say that the rent should be discounted for letting agent's commission as if there were a professional letting agent they wouldn't have been threatened with unlawful eviction and the property would've been managed better, but this isn't relevant to what we're doing here. The Tribunal's function in this matter is to arrive at a rental value for a hypothetical tenancy granted on the same terms as the actual one. The actual landlord's conduct and level of skill as a landlord are not relevant to this.

37. We did not consider that there were any other circumstances that would lead to us making a deduction from, nor addition to, the 'starting point' adopted above – and accordingly we determined a market rent for the property of £2,800 per month.

Effective Date

38. 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.

39. The tenants submitted that they would experience hardship were the rent to be backdated due to general 'cost of living' increases. The tenant is not in receipt of benefits, and did not evidence any significant circumstances as regards hardship. We did not consider that this was sufficient to show that the tenant would experience undue hardship were the rent to take effect from the date proposed in the notice. Accordingly, we determined that the rent would take effect from 10 June 2024, being the date proposed in the landlord's notice.

Decision

40. Pursuant to the considerations above, the Tribunal determined a rent of £2,800 per month in this matter, such rent to take effect from 10 June 2024.

Valuer Chairman: Mr Oliver Dowty MRICS
Dated: 16 December 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).