



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

Case Reference : **LON/00BK/MNR/2024/0352**

Property : **Flat A, 30 Gloucester Terrace,
London W2 3DA**

Tenant : **Skander Bayahi**

Representative : **Ramy Souei**

Respondent : **Stephen Peter Cox**

Representative : **Chris McCandlish Dexters Property
Management**

Type of Application : **Determination of
a rent under an Assured Shorthold
Tenancy Section 22 Housing Act
1988 (“1988Act”)**

Tribunal Member(s) : **Judge Tildesley OBE
Alison Flynn MA MRICS**

**Date and venue of the
Hearing** : **10 Alfred Place London WC1E 7LR
21 February 2025**

Date of Decision : **11 March 2025**

DECISION
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Senior President of Tribunals Practice Direction: Reasons for Decisions 4 June 2024

1. This Practice Direction states basic and important principles on the giving of written reasons for decisions in the First-tier Tribunal. It is of general application throughout the First-tier Tribunal. It relates to the whole range of substantive and procedural decision-making in the Tribunal, by both judges and non-legal members. Accordingly, it must always be read and applied having regard to the particular nature of the decision in question and the particular circumstances in which that decision is made (paragraph 1).
2. Where reasons are given, they must always be adequate, clear, appropriately concise, and focused upon the principal controversial issues on which the outcome of the case has turned. To be adequate, the reasons for a judicial decision must explain to the parties why they have won and lost. The reasons must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the main issues in dispute. They must always enable an appellate body to understand why the decision was reached, so that it is able to assess whether the decision involved the making of an error on a point of law. These fundamental principles apply to the tribunals as well as to the courts (paragraph 5).
3. Providing adequate reasons does not usually require the First-tier Tribunal to identify all of the evidence relied upon in reaching its findings of fact, to elaborate at length its conclusions on any issue of law, or to express every step of its reasoning. The reasons provided for any decision should be proportionate, not only to the resources of the Tribunal, but to the significance and complexity of the issues that have to be decided. Reasons need refer only to the main issues and evidence in dispute and explain how those issues essential to the Tribunal's conclusion have been resolved (paragraph 6).
4. Stating reasons at any greater length than is necessary in the particular case is not in the interests of justice. To do so is an inefficient use of judicial time, does not assist either the parties or an appellate court or tribunal, and is therefore inconsistent with the overriding objective. Providing concise reasons is to be encouraged. Adequate reasons for a substantive decision may often be short. In some cases, a few succinct paragraphs will suffice. For a procedural decision the reasons required will usually be shorter (Paragraph 7).

The Proceedings

5. On 5 July 2024 the Tenant applied to the Tribunal for a determination of the rent which, in the Tribunal's opinion, the Landlord might reasonably be expected to obtain under the assured

shorthold tenancy in accordance with section 22 of the Housing Act 1988.

6. The Tenant holds an assured shorthold tenancy in respect of a two-bedroom basement flat at Flat A, 30 Gloucester Terrace, London W2 3DA. The tenancy was for a period of 12 months commencing on 10 January 2024 and ending on 9 January 2025. The rent payable under the Tenancy was £2,708.00 per calendar month.
7. On 24 September 2024 the Tribunal directed that the Application would be heard during the 14-day period commencing 18 November 2024 on written submissions unless a party requested a hearing. The Tribunal also required the parties to exchange written submissions in support of their respective cases and to file those submissions with the Tribunal.
8. On 15 November 2024 the Tribunal notified the parties that the application would be heard on 25 November 2024 which would be preceded by an inspection of the property by the Tribunal.
9. On 25 November 2024 the Tribunal inspected the property in the presence of the Tenant and the Landlord's representative, Mr McCandlish of Dexters Property Management.
10. At the hearing following the inspection Mr McCandlish indicated that the Landlord was willing to reach a settlement and that he had the authority to settle the matter. Mr Morgan represented the Tenant at the hearing.
11. The Tribunal granted a short adjournment for the parties' representatives to discuss whether a settlement was possible. On resumption of the hearing the parties indicated that they were willing to settle. The Tribunal urged the parties to reach agreement to avoid costly court proceedings. The Tribunal adjourned the application until 20 December 2024 at 10.00am at 10 Alfred Place, London.
12. On 17 December 2024 the Tenant contacted the Tribunal stating that no settlement had been reached and that he had changed his legal representative and appointed Mr Souei, his lawyer in France. The Tenant requested the hearing on the 20 December 2024 to go ahead.
13. On 19 December 2024 Judge Tildesley instructed the case officer to send the following to the Tenant's representative:

“Judge Tildesley wishes to amplify on the email sent on 18 December 2024 informing the parties there will be no hearing of the contested matter on the 20 December 2024.

When the matter came before the Tribunal on 25 November 2024 Judge Tildesley OBE opened the proceedings by referring the tenant's representative to the relief sought by his client which was:

1. Undertake Necessary Repairs: Compel the landlord to carry out all necessary repairs to ensure the property meets legal standards, including but not limited to addressing the mould, dampness, and fire safety issues.
2. Compensation: Award compensation for the physical and mental distress caused by the property's condition, as well as for the duration of time these issues have persisted without resolution. To be defined by the court.
3. Rent Reimbursement: Order the reimbursement of 60% of rent paid to date for a property that should not have been let in its current condition, along with a suspension of rent payments until the property is brought up to standard or suitable alternative accommodation is provided.
4. Alternative Accommodation: If the repairs cannot be completed promptly, require the landlord to provide alternative accommodation at their expense, comparable in size, location, and numbers of rooms to the current apartment.

Judge Tildesley explained to the representative that the Tribunal does not have the power to grant such relief. These are issues for the County Court. The Tribunal did not pursue this point because the landlord's representative indicated that the landlord was prepared to settle the matter, and the Tribunal did not wish to prejudice the possibility of a settlement which was in the interests of both parties. The Tribunal granted a short adjournment on 25 November 2024 to explore whether a settlement was possible. On their return to the Tribunal the parties indicated that they were willing to come to an agreement to resolve the dispute. The Tribunal fixed the date of 20 December 2024 to ensure that a settlement was reached. The Tribunal did not envisage that the hearing would go ahead on that date.

Judge Tildesley now understands that the tenant wishes a hearing and that he has changed his representative. Judge Tildesley suggests that the Representative may wish to look at the wording of section 22 of the Housing Act 1988 and advise his client whether the Tribunal is the correct forum for his dispute.

The Tribunal will fix a date in February 2025 to hear the application under section 22 if the tenant wishes to pursue it. Please can the parties provide dates to avoid in February 2025 to the case officer by no later than the 6 January 2025”.

14. On 5 January 2025 the Tenant's representative informed the Tribunal:

“Further to your communication dated December 19th, I regret to inform you that despite the landlord's expressed interest in an amicable negotiation during the hearing on November 26th, no follow-up has been initiated by the landlord. Nevertheless, Mr. Skander Bayahi has independently attempted to bridge the gap for the benefit of all parties involved, but these efforts have unfortunately been in vain. I understand that the requests made by Mr. Skander Bayahi fall

outside the material jurisdiction of your tribunal and would more appropriately be addressed by the County Court. However, we can maintain our request under the Housing Act 1988, Section 22, concerning the determination of a reasonable rent considering the property's degraded condition. In this case, the request seeks a rent reimbursement of approximately 60% of the total amounts received by the landlord for the duration of the tenancy. Should this be acceptable, we wish to proceed with this request and would like to schedule a hearing, ideally on a Friday afternoon from the end of February onwards, to accommodate professional and travel difficulties from Paris. Subsequently, other requests by Mr. Skander Bayahi, beyond rent determination, will be addressed in a separate application to the County Court, which holds the material jurisdiction”.

15. On 16 January 2025 the Tribunal directed that the Application would be heard at 12 midday on 21 February 2025 at the Tribunal Centre 10 Alfred Place London WC1E 7LR. The Tribunal indicated that if the Tenant failed to attend the Tribunal would proceed in his absence and determine the Application on the papers. The Tribunal observed that the Landlord had failed to submit representations in respect of the Application. The Tribunal gave the Landlord an opportunity to submit representations in writing to be received by the Tribunal and the Tenant by 30 January 2025. The Landlord was also required to inform the Tribunal by 30 January 2025 whether he or his representative would attend the hearing on 21 February 2025. The Tribunal warned the Landlord that failure to comply with directions may result in the Tribunal barring him from taking part in the hearing.
16. On the 3 February 2025 the Landlord’s representative emailed the Tribunal stating that “As the tenant had vacated the premises I believe this hearing is unnecessary and any discussion with the tenant and landlord for compensation will be dealt with privately unless an agreement can be made”.
17. The Tribunal advised the Landlord’s representative that the hearing would go ahead on 21 February 2025 when the Tribunal would determine the rent for the property. The Tribunal further advised that the parties were at liberty to agree a settlement provided it was made before the 21 February 2025. Finally the Tribunal observed that the Landlord had not submitted a case in respect of the Application and had not complied with the direction issued on 16 January 2025. The Tribunal gave notice that it was minded to bar the Landlord from participating in the proceedings which it would consider at the outset of the hearing on the 21 February 2025.
18. On 4 February 2025 the Tenant’s representative applied to adjourn the hearing to a date in the last fortnight of April 2025 because he had another commitment at the proposed time of the hearing. The Tribunal refused the Application and gave the following reasons:
 - a) On 19 December 2024 the Tribunal asked the parties to give their dates to avoid in February 2025 for a hearing. The Applicant supplied no dates to avoid.

- b) On 16 January 2025 the Tribunal gave a clear indication that it would determine the application on 21 February 2025.
 - c) The proceedings have been ongoing since 25 November 2024. A further delay in the hearing of this matter was contrary to the overriding objective.
 - d) The Representative had not explained why he waited two weeks to inform the Tribunal of the other commitment of which he has given no details. The Tribunal expects the parties to give priority to a hearing date which has been fixed after consulting with the parties
 - e) The Tenant would not be unduly prejudiced by the non-attendance of his chosen representative. The Tenant had already submitted his statement of case, which he prepared. The case was not complex involving a determination of a rent that the landlord might reasonably be expected to obtain under the assured shorthold tenancy. The Tenant is entitled to choose another representative.
19. The Tenant did not attend the hearing on 21 February 2025. The Tribunal enquired of the case officer whether there had been any communication from the Tenant for his non-attendance and was informed there had been no communication. Mr McCandlish appeared for the Landlord. Mr McCandlish accepted that the Landlord had not co-operated with the Tribunal and put forward no reason for why the Landlord should be barred from the proceedings.
20. The Tribunal decided to proceed in the absence of the Tenant and determine the case on the basis of the Tenant's written submissions and the Tribunal's inspection of the property. The Tribunal considered it was in the interests of justice to proceed in the absence of the Tenant for the reasons given in paragraph 18 above together with his failure to provide an explanation for his non-attendance. The Tribunal barred the Landlord from taking part in the proceedings.
21. At 7.15pm on 21 February 2025 the Tenant sent an email to the Tribunal to apologise for his non-attendance stating that he had missed his flight. The Tenant asked for the case to be rescheduled or if not to be determined on the papers. The Tribunal informed him that the hearing had gone ahead and that he would receive the Tribunal's determination in due course.

Consideration

22. The rent reference machinery for an ordinary assured tenancy is dependent on the landlord serving notice proposing an increase under section 13 of the 1988 Act. The tenant cannot initiate a reference unless the landlord proposes an increase. The tenant accordingly cannot refer the rent of an agreement under a new letting because of disrepair or other change of circumstances. Section 22 provides an exception to this rule by permitting an assured shorthold tenant to refer a rent to the Tribunal. The tenant, however, may only make one such reference and that such reference must be during the initial shorthold, and cannot be made

once there has been a new tenancy agreed or a statutory periodic tenancy arising under section 20(4) of the 1988 Act.

23. Under section 22 (1) a tenant under an assured shorthold tenancy may apply to the Tribunal for a determination of the rent, which in the Tribunal's opinion, the landlord might reasonably be expected to obtain under the assured shorthold tenancy.
24. Section 22(3) provides that the Tribunal should not make a determination under section 22(1) unless it is satisfied that (a) there is a sufficient number of similar tenancies in the locality let on assured tenancies (whether shorthold or not); and (b) 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 (a) above.
25. The subject property is a converted two bedroom basement flat with a living room, kitchen and bathroom and access to an outside patio at the rear. The property is let furnished which included a television and white goods, and is located in Gloucester Terrace in Central London in the vicinity of Paddington and Bayswater. Gloucester Terrace was developed in the early Victorian era and consisted of white stucco terraces arranged over five floors.
26. The Tribunal inspected the property and found it to be a modern, well equipped flat with reasonably sized living and bedroom areas. The Tenant identified areas of damp throughout the flat.
27. The Tenant exhibited a draft improvement notice dated 4 July 2024 issued by the City of Westminster. The draft notice identified a Category 1 hazard of "Fire Safety" and a Category 2 Hazard of "Damp and Mould". The Council found that the property had inadequate means of detection and escape in the case of a fire and had elevated moisture levels to the right wall of the property (from the front street perspective) both in the living room and in the second bedroom. The Council required the Landlord to upgrade the existing automatic fire detection system and to install a proprietary misting system in respect of the Category 1 Hazard. In respect of the "Damp and Mould" the Council required the Landlord to employ a suitably qualified damp specialist company to carry out investigations as to the cause of the damp and to provide effective damp proofing to the walls. Mr McCandlish indicated at the inspection that the Landlord was prepared to carry out the necessary works as required by the Council.
28. The Tenant also stated that the sewer pipe located in the patio emitted a persistent and unbearable odour, which was not present when the Tribunal inspected the property. The Tribunal

understands from the Tenant the odour was caused by a failure to carry out routine maintenance of the sewer pipe.

29. The Tenant supplied details of rents for 12 two bedroom properties with a postcode of W2 which he had obtained from the Zoopla website on 15 October 2024. The list contained two duplications. This left details of rents for ten properties which are summarised below:

- Two bedroom ground floor flat in Gloucester Gardens, Bayswater, W2. The asking rent as at 15 October 2024 was £2,383 per calendar month. The property was originally listed at £2,999 per calendar month in August 2024.
- Two bedroom third floor flat in a purpose built block of flats in Hatherley Grove W2 with an asking rent of £2,349 per calendar month. The property was first listed in October 2024.
- Two bedroom flat in Hereford Road W2 with an asking rent of £2,400 per calendar month. The property was originally listed at £2,600 per calendar month in September 2024.
- Two bedroom flat recently refurbished in a converted terraced building in Linden Gardens W2 with an asking rent of £2,350 per calendar month. The property was originally listed at £2,925 per calendar month in August 2024.
- Two bedroom flat in a purpose built block of flats in Porchester Road W2 with an asking rent of £2,400 per calendar month. The property was first listed in October 2024.
- Two bedroom flat in a purpose built block of flats in Porchester Road W2 with an asking rent of £2,400 per calendar month. The property was originally listed at £2,500 per calendar month in September 2024.
- Two bedroom third floor flat in a purpose built block of flats in Park West, Edgware Road W2 at an asking rent of £2,300 per calendar month. The details provided no indication of when the property was first listed.
- Two bedroom third floor flat in Gloucester Terrace W2 with an asking rent of £2,492. This property was added to the Zoopla Website on 12 August 2024.
- Two bedroom Flat in a converted building in St Stephens Gardens W2 with an asking rent of £2,249. The asking rent was reduced in September 2024.

- Two bedroom maisonette in a converted building in Linden Gardens W2 with an asking rent of £2,500 per calendar month. The property was first listed in October 2024.
30. The first question for the Tribunal is what is the rent, which in its opinion, the Landlord might reasonably be expected to obtain under the assured shorthold tenancy?
 31. The question raises two issues of interpretation. The first concerns “what is a reasonable rent”? Reasonable rent was defined by The House of Lords in *Ponsford v HMS Aerosols Ltd* [1978] 2 All E.R. 837 as that which was reasonable for the subject premises and not what would be reasonable for the tenant to pay. The second concerns the date for the valuation of the reasonable rent. In this case the assured shorthold tenancy commenced on 10 January 2024 for a period of 12 months. The Tribunal considers that the 10 January 2024 is the appropriate date of valuation.
 32. In order to assess the reasonable rent the Tribunal considers first the open market rent for the property in good condition. The Tenant supplied a list of asking rents for ten two bedroom flats in the W2 postal district. The Tenant did not suggest a proposed rent for the subject property based on his list of ten properties. The Tribunal notes that the average of the ten asking rents was £2,132 per calendar month. The Tribunal relying on its general knowledge and expertise decides a rent of £2,132 is significantly below the market rent for two bedroom flats in Gloucester Terrace.
 33. The Tribunal finds that the Tenant had been selective in his choice of rents for two bedroom properties. The Tenant had included flats in purpose block flats which were not comparable to flats in a prestigious converted Victorian terrace. Further the Tenant had restricted his enquiry of asking rents to a specific date of the 15 October 2024. The Tribunal formed the view that rents for two bedroom flats in Gloucester Terrace were generally higher than that for two bedroom flats in other parts of the W2 postal area for Central London.
 34. The Tribunal decides that best evidence for the open market rent of the subject property is the rents of the two properties in Gloucester Terrace included in the Tenant’s list, and the actual rent agreed for the subject property which the Tenant was content to pay when he entered into the Tenancy. The asking rents of the two properties in the Tenants list as at October 2024 were £2,383 and £2,492 per calendar month. In respect of the first property the asking rent had been reduced from the initial asking rent of £2,999 in August 2024, which gives an indication of the rental market for properties in Gloucester Terrace. The Tenant agreed a rent of £2,708 for the subject property in January 2024. The Tribunal having regard to the basket of rental evidence for two bedroom properties in

Gloucester Terrace and its general knowledge and expertise decides that the open market rent for the subject property in good condition would be £2,600 per calendar month.

35. The Tribunal, however, is satisfied that the property was not in good condition when it was let in January 2024. The draft improvement notice dated 4 July 2024 identified that the property suffered from a Category 1 hazard (fire safety) and a Category 2 hazard (Damp and Mould). The Tribunal considers that these defects justified a reduction of £260 (10 per cent) in the open market rent of £2,600 per calendar month.
36. The Tribunal, therefore, determines a rent of £2,340 per calendar month, which in its opinion, the landlord might reasonably be expected to obtain under the assured shorthold tenancy for the subject property commencing 10 January 2024.
37. The next question for the Tribunal is whether there is a sufficient number of similar tenancies in the locality let on assured tenancies (whether shorthold or not)? The Tribunal is satisfied on the evidence before it and its general knowledge of rental properties in Central London that there is a sufficient number of similar tenancies let on assured tenancies.
38. The final question for the Tribunal is whether the rent payable of £2,708 per calendar month for the subject property is significantly higher than the rent of £2,340 per calendar month which the landlord might reasonably be expected to be able to obtain under the tenancy. The difference between the two rents is £368 per calendar month or 13.59 per cent.
39. The Queens Bench Division of the High Court in *R. (on the application of Park Lane Properties (Leeds) Ltd) v Northern Rent Assessment Panel* [2003] EWHC 1837 (Admin) confirmed a decision of the Northern Rent Assessment Panel that an excess of more than 10 per cent could be fairly described as significant.

Determination

40. **The Tribunal determines that the rent of £2,708 per calendar month for the subject property is significantly higher than that of the rent of £2,340 per calendar month which the landlord might reasonably be expected to be able to obtain under the Tenancy.**
41. In accordance with section 22(4)(a) the Tribunal may direct that the rent of £2,340 per calendar month shall have effect from a date not earlier than the date of the application, which in this case was 5 July 2024.

42. **The Tribunal directs that the rent of £2,340 per calendar month takes effect from 5 July 2024. Any rent paid by the Tenant in excess of £2,340 per calendar month from the 5 July 2024 is irrecoverable. The Tribunal suggests that the Landlord should repay the excess rent to the Tenant so as to avoid proceedings in the County Court to enforce the Tribunal Order.**

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.