



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

Case reference	:	GB/LON/00BK/MDR/2024/0009
Property	:	Ground Floor, 41 Alma Square, London, NW8 9PY
Tenant	:	Ms Fariba Amiri
Representative	:	In person
Landlord	:	Mr Jeffery Russel
Representative	:	Ms Caser of Foxtons
Type of Application	:	Determination of a rent under an Assured Shorthold Tenancy Section 22 Housing Act 1988 (“1988Act”)
Tribunal Member(s)	:	Judge Tueje Alison Flynn MA MRICS
Date and venue of the Hearing	:	10 Alfred Place London WC1E 7LR 28th February 2025
Date of Decision	:	1st April 2025

DETERMINATION

Statutory references relate to the Housing Act 1988 unless otherwise stated.

1. By an Application dated 20th May 2024, the Tenant applied to the Tribunal for a determination of rent pursuant to section 22 of the Housing Act 1988.

2. By a letter dated 16th August 2024, the Tribunal acknowledged receipt of the Application, enclosing its Service Standards, which include:

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user-friendly guidance is available on our procedures and jurisdictions; these are available on the Justice website (www.justice.gov.uk); please note that HMCTS staff can only offer information, not legal advice, about your case;

3. The Tenant is the assured shorthold tenant of the property known as Ground Floor Flat, 41 Alma Square, London, NW8 9PY (the “Property”). The Property is a one-bedroom converted flat within a former terrace house, comprising sitting room, bedroom, kitchen, and combined shower room and toilet. According to the managing agent’s marketing material, its floor area measures 57.42m². It is located in a quiet residential square, equidistant to St John’s Wood and Maida Vale stations.
4. The rent payable under the tenancy is £1,800.00 per calendar month. By clause 2.4 of the agreement, the Tenant is liable for gas, electricity, and water.
5. At the Tenant’s request, the tenancy was granted for a 5-year fixed term tenancy, which commenced on 21st November 2023, and expires on 20th November 2028.
6. The repairing covenants reflect section 11 of the Landlord and Tenant Act 1985.
7. It is understood that the Landlord owns some or all of the other flats in the building, including an upstairs flat which he occasionally occupies as one of his residences.

The Tenant’s Claim

8. The Tenant has set out various complaints regarding the tenancy and the Property.
9. Firstly, she states the tenancy agreement is void due to the Landlord’s non-disclosure and failure to obtain her consent regarding certain aspects of the tenancy. These include the following:
 - 9.1 There was a water pump within the Property using her gas, electricity, and water supply, but which provided warm water to the flat occupied by the Landlord.
 - 9.2 The landlord frequently came to the Property to turn up the pump which unbeknown to her, was increasing her utility bills.
 - 9.3 The electricity for the communal and outside lighting was sourced from her supply.

- 9.4 She says this lighting and the water pump increase her utility bills.
 - 9.5 She complained the Property was given an EPC rating of C when she believes it is probably an E rating, as there is no heat insulation.
 - 9.6 The Tenant has supplied copies of various energy bills to support her claim that the energy costs are excessive, and communications with her energy provider regarding these costs.
 - 9.7 There were also various defects which took the Landlord six months to remedy including damp affecting the kitchen and bedroom walls, defective internal doors, the shower was old and inadequate. The Tenant says she would shower at a friend's place because of this.
 - 9.8 She considers the Landlord should update the plumbing so that a water meter can be installed as prior to the tenancy commencing she made clear she required a water meter.
 - 9.9 The Landlord arranged for works to be carried out in the building, some of which interfered with the Tenant's quiet enjoyment, such as renovating his kitchen, removing the pump from the Property and installing a new boiler. The Tenant has provided an audio file lasting 7 minutes and 15 seconds, which records the sound of building works being carried out, with intermittent commentary from the Tenant, followed by her conversation with the Landlord's contractor trying to arrange a more convenient time to complete works.
 - 9.10 She says that defects to the kitchen windows and sitting room door still have not been fixed.
10. As a result of the above, and because there is no break clause, the Tenant states she should be released from the tenancy without being subject to fees and/or penalties if she terminates the tenancy before the fixed term expires. Alternatively, she argues a reduction of her rent would mitigate this injustice. She also seeks compensation of £1,900, plus certain removal costs amounting to £500.
11. Secondly, she says she requested the flat is let unfurnished, and that she was reassured that although the Landlord intended to provide a sofa, the Property would otherwise be unfurnished. She therefore disposed of her own sofa. However, she states the Landlord subsequently changed his mind about providing a sofa, leaving her without a sofa to use when she moved in. She also alleges that he failed to remove other furniture from the property, so she had to dispose of some of her own furniture to avoid the Property being congested.
12. She states she had been misinformed the Property is south-facing, when in fact it is north-facing, and her plants have perished due to the unsuitable conditions.
13. She also complains the Property's soundproofing is inadequate.

14. As to the rent, in the Tribunal's standard Reply Form, the Tenant states:

- “- Whilst the rent looks reasonable for the size of flat but the tenancy agreement was lacking an accurate EPC report, a lack over disclosure on two major bills being forced on the tenant with no prior agreement.*
- Ground / tenant floor is still Main part of this old Single- family house with original pipes and utility cables. The ground/ tenant floor still feeds the common area outlets and lights and whilst on the paper is a self- content apartment and suitable for rent, in reality is not and the landlord took many years of advantage by renting the flat when his Pump still attached to tenant boiler.*
- Common area, outside lights and outlets should also have been separated from tenants' bill before it was rented.”*

The Landlord's Response

15. Regarding the pump and utility costs, the Landlord dealt with this in an email sent to the Tenant on 14th February 2024, before she brought her Tribunal Application. In his e-mail, the Landlord stated each dwelling within the building had its own boiler, gas and electricity supply, but acknowledges the pump in the Property and the communal electricity use the Property's supply. He offered to reimburse this cost and arrange for works to be carried out to rectify this.

16. Then in an e-mail sent to the Tribunal on 2nd January 2025, the Landlord denies the Tenant's other allegations, stating:

- 16.1 He has arranged for various works at the Property, including drying out damp walls, blocking off the chimney, installing a new shower, new blinds, new locks to some internal doors, and removing the booster pump.
- 16.2 He denies the EPC rating is inaccurate.
- 16.3 He contends the Property is cold because the Tenant doesn't use the central heating.
- 16.4 He objects to the allegations of wrongdoing, deception, and deliberate delay.

17. As to the furniture at the Property, Ms Caser argued at the hearing that the tenancy agreement expressly states the Property would be let semi-furnished, and that is why some items of furniture were in the Property.

The Tribunal Proceedings

18. As stated, the Application is dated 20th May 2024, and it was received the same day by the Tribunal.

19. The Tribunal's directions are dated 16th August 2024, notifying the parties that unless a hearing and/or inspection were requested, the Application would be determined in the two-week window commencing 7th October 2024.
20. In the event, the Tenant requested a hearing and inspection, which were originally due to take place on 20th November 2024, but were postponed.
21. The postponed hearing and inspection were re-listed on 28th February 2025.
22. At the hearing, the Tenant was accompanied by her friend, Mr. Johnson.
23. The Landlord did not attend the hearing; he was represented by Ms. Caser of Foxtons, who was accompanied by Mr. Zbigniew Szymczyk, the Landlord's builder.
24. At the start of the hearing, the Tribunal reminded the parties that the issue for determination was whether the rent under the tenancy is significantly higher than the rent which the Landlord might reasonably be expected to be able to obtain having regard to the rents payable under assured tenancies of similar properties in the locality.
25. We clarified we did not have the power to declare the tenancy agreement void, and the extent to which we could determine a rent different to that originally agreed between the parties was subject to section 22.
26. The Tenant expressed some dissatisfaction with this, asking why the Tribunal had not informed her about this before. We explained that until that point the parties had been communicating with the case officer, and as stated in the Service Standards sent to all parties, case officers do not give legal advice.

The Inspection

27. Immediately after the hearing, the Tribunal visited the Property to carry out a pre-arranged inspection; the Tenant and Ms. Caser were present during the inspection.
28. During the inspection, we found the Property's front entrance door opened into the hallway, which led to a spacious sitting room where there was a large marble fireplace. The Property has a galley-style kitchen with kitchen units that are somewhat dated but serviceable, a kitchen with double aspect windows which did not open perfectly, next to the kitchen was a storage area, plus a combined shower room and toilet. Except for the shower room and kitchen, the Property is carpeted; the carpet is tired and sections of the sitting room and bedroom carpets are visibly worn.

Evidence of Comparable Properties

29. The Tenant did not provide any comparables, and we note in the written evidence she acknowledges that the rent is reasonable. In her oral evidence, she stated that if anything, the rent was lower because having entered into a 5-year

fixed term tenancy, she successfully negotiated a reduction on the original asking price of £496 per week.

30. The Respondent provided its marketing material for the following comparables:

30.1 A top-floor one-bedroom flat in Alma Square currently advertised to let at £500 per week, with one picture showing a modernised open-plan kitchen sitting area, and a total floor area measuring 43m².

30.2 A one-bedroom flat in Boundary Road with a private roof terrace, currently advertised to let at £450 per week, with one picture showing a modernised open-plan kitchen sitting area, and a total floor area measuring 37.7m². This comparable is almost 1 mile from the Property.

31. The above rents are the advertised rents, and Ms. Caser was not aware whether these were the actual rents at which the properties were let.

The Legal Framework

32. The rent reference machinery for an ordinary assured tenancy is dependent on the landlord serving notice proposing an increase under section 13. 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.

33. 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).

34. 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.

35. 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.

The Tribunal's Approach

36. The Tribunal reached its determinations in this case after considering the evidence and arguments presented at the hearing, the documents provided, and

our inspection of the Property. We took these into account when reaching our decision.

37. However, this determination does not refer to every matter raised by the parties, or every document the Tribunal reviewed or took into account in reaching its decision. This doesn't imply that any points raised, or documents not specifically mentioned, were disregarded. If a point or document was referred to in the evidence that was relevant to a specific issue, it was considered by the Tribunal.
38. We reminded ourselves that the jurisdiction conferred at section 22 is discrete, and where that statutory criteria is satisfied, our power is limited to making a determination. We do not have the power to declare a tenancy agreement is void, deal with alleged misrepresentations, or to award any compensation, including compensation for alleged misrepresentation, inconvenience or financial loss.

The Tribunal's Findings

39. The Tribunal need to determine what is the rent, which in its opinion, the Landlord might reasonably be expected to obtain under the assured shorthold tenancy?
40. 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 21st November 2023 for a fixed term of 5 years, expiring on 20th November 2028. The Tribunal considers that the 21st November 2023 is the appropriate date of valuation.
41. In order to assess the reasonable rent, the Tribunal considered the open market rent for the property in good condition. The Tribunal considered whether there is a sufficient number of similar tenancies in the locality let on assured tenancies (whether shorthold or not) to make that assessment. Although the Tribunal was only provided with two comparable properties, those being provided by the Landlord, the Tribunal is satisfied that there is a sufficient number of similar tenancies let on assured tenancies. We reach that conclusion based on our general knowledge of rental properties in Central London. We also note the Landlord did not argue that there was an insufficient number of similar properties in the locality let on assured tenancies.
42. Instead, the Landlord focused on whether the rent for the Property was significantly higher than what he could reasonably be expected to obtain for the Property having regard to rents payable for similar properties in the locality let on assured tenancies. Relying on these comparables, Ms. Caser submitted typical rents for similar properties are around £2,000 to £2,100 per month, thus arguing the Tenant's got a good deal on the rent she pays. Ms. Caser also

states the Property was originally advertised at £2,149 per month, with the Tenant negotiating the monthly rent down to £1,800.

43. The Boundary Road property, at almost 1 mile from the Property, is of limited assistance.
44. The other comparable, like the subject Property, is located in Alma Square. From the photograph, it appears to be more modern, but it also has an open-plan kitchen sitting area, whereas the Property has a spacious sitting room and a separate kitchen. The respective positives and negatives of the Property and the comparable property balance each other out to some extent.
45. In our judgment, the open market rent for the Property in good condition would be £2,000 per calendar month based on the following factors:
 - 45.1 The initial asking price for the Property was £2,149 per month;
 - 45.2 The eventual price agreed at £1,800 per month reflected the benefit to the Landlord of agreeing to a 5-year fixed term tenancy;
 - 45.3 The Alma Square comparable property is more modern but smaller and is currently being advertised at £2,000 per month whereas the relevant date in this case is 21st November 2023;
 - 45.4 Taking into account our general knowledge and expertise of the area.
46. To the extent that the Property required some works to be carried out within the first few months as set out at paragraph 16.1 above, we are satisfied that the property was not in good condition when it was let in November 2023. The Tribunal considers that these defects justified a reduction of £200 (or 10%) on the open market rent of £2,000 per calendar month. We have been provided with a 72-page inventory report dated 24th November 2023, providing further information regarding the condition of the Property at the start of the tenancy.
47. As to the dispute regarding utility costs, under the terms of the tenancy agreement these are not included in the rent, and our jurisdiction is in relation to the rent. In any event, we note that the Landlord has carried out works so that the pump within the Property is effectively decommissioned, and he has also offered to reimburse the Tenant's increased utility costs, and to compensate her for the external and communal lighting costs. We hope the parties are able to negotiate a mutually agreeable resolution, but in any event, the Tribunal does not have the power to deal with a dispute of that nature.
48. Therefore, the Tribunal considers £1,800 per calendar month is the amount the Landlord might reasonably be expected to obtain under the assured shorthold tenancy for the Property commencing 21st November 2023.
49. The final question for the Tribunal is whether the rent payable of £1,800 per calendar month for the Property is significantly higher than the rent of £1,800 per calendar month which the landlord might reasonably be expected to be able

to obtain under the tenancy. It is evident that as the amounts are identical, the rent for the Property is not significantly higher than the rent the Landlord might reasonably be expected to obtain for this Property.

50. We note the Tenant concedes that the rent, to use her expression, “*is probably a bit lower*” than for similar properties in the locality. She says she was able to negotiate this because she signed a 5-year agreement. Presumably, that is because the Landlord avoids the risk of having a void period. However, we remind ourselves that the test is what it is reasonable to pay for the Property, not what it is reasonable for the tenant to pay.

Determination

51. The Tribunal concludes that the rent of £1,800 per calendar month for the subject property is not significantly higher than that of the rent of £1,800 per calendar month which the landlord might reasonably be expected to obtain under the Tenancy.

52. In accordance with section 22(3)(a) and 22(3)(b), the Tribunal shall not make a determination in this case.

Name: Judge Tueje

Date: 1st April 2025

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 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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).