



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

<b>Case Reference</b>	:	<b>LON/00AW/MNR/2023/0364</b>
<b>Property</b>	:	<b>Flat 9, 59 Drayton Gardens, London SW10 9RU</b>
<b>Tenant</b>	:	<b>Mr Siegfried Lupo (by his litigation friend, Ms Natalie Loubiere)</b>
<b>Representative</b>	:	<b>Mr Matthew Ahluwalia (counsel)</b> Instructed by Osbornes Solicitors LLP
<b>Landlord</b>	:	<b>Bank Holdings Limited</b>
<b>Representative</b>	:	<b>Mr Richard Granby (counsel)</b> Instructed by Kostick Hanan Herskovic LLP (ref DH/ce/BANK/B192/3)
<b>Type of Application</b>	:	<b>Market Rent</b> Section 13 Housing Act 1988
<b>Tribunal Members</b>	:	<b>Judge N Carr</b> <b>Mrs H Bowers BSc (Econ) MRICS</b> <b>MSc</b>
<b>Date of Hearing</b>	:	<b>18 March 2025</b>
<b>Date of Decision</b>	:	<b>15 April 2025</b>

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**DECISION**

**The Tribunal determines a rent of £3,300 per calendar month with effect from 29 September 2023.**

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**REASONS**

1. On 19 June 2023 the Landlord served on the Tenant two notices under Section 13(2) of the Housing Act 1988 ('the Act'), without prejudice to each other ('the Notices'). Each proposed a new rent of £3,975.00 per month (or £11,425.00 per quarter) in place of the existing rent of £3,000 per month

(or £9,000 per quarter) to take effect from 29 September 2023. Various other notices were served subsequently, but have now been withdrawn, so that we need not trouble ourselves with them further.

2. In those circumstances (and while the other notices were predominantly ‘live’), it appears that the Tribunal initially determined, by decision dated 10 October 2023, that it lacked jurisdiction to decide a new market rent, on grounds that the start date of the tenancy and the period for which the rent increase was proposed (the Notice relied on being the quarterly rent on the usual quarter days) did not appear to meet the statutory requirements.
3. In the Upper Tribunal, by decision dated 6 September 2024 [2024] UKUT 316 (LC)), Judge Elizabeth Cooke set aside that decision, holding that the quarter days were the correct days on which the rent fell due. No resolution of the fact that there are two notices appears to have been come to, and it may be that Judge Cooke was unaware of the second Notice of the same date.
4. In the previous application LON/00AW/MNR/2022/0155 the Tribunal (Mr Naylor MRICS, FIRPM and Ms Bowers BSc (Econ) MRICS MSc) was presented with three section 13 Notices. It determined a monthly rent, observing that *“the Notice dated 23 June 2022 is accepted as valid by both parties and... the matter is to proceed on the basis that the tenancy is now monthly and that a monthly rent is to be assessed”*.
5. It might therefore be observed that, before any further rent increase is proposed (as it appears it inevitably will be), the parties would be well advised to resolve the position between them as to the period of the tenancy for which rent is to be demanded, and to the form the Notice should take in consequence, in order to avoid any future confusion.
6. At the hearing, the parties were in agreement that at least one of the Notices was correct. We therefore proceed on that basis. For consistency, we adopt the position that the Tribunal adopted in LON/00AW/MNR/2022/0155, and therefore determine the market rent on a monthly basis. We trust this is inoffensive to the parties’ positions.

### The Tenant’s case

7. It should be said at the outset, for the most part neither party’s primary position had substantially changed from what the Tribunal in the previous application considered.
8. By his written submissions supplied with the application and expanded on by Mr Alhuwalia at the hearing, the Tenant states that the proposed rental valuation of £3,975 per month is too high and does not represent market rent for the property.
9. A table of proposed comparables was provided for market rent of nearby properties in good condition. The Tenant set out that it was clear from *R (on the application of Ghani) v The London Rent Assessment Committee*

[2002] EWHC 1167 (Admin) that condition is relevant to the assessment of the market rent. The Tenant continued to rely on the report of Ms Claire De Vos (26 January 2023), and relied on the further report of Mr Lea Morland, Surveyor, of Housing Disrepair Surveys Ltd (14 November 2024). Each report sets out observations regarding items of disrepair, including cracking across ceilings, poorly fitting balcony doors, and an area of black mould.

10. This, the Tenant submitted, demonstrated that, to the extent that the repairing covenant had value for the purpose of valuation of the market rent, the covenant here had less value than elsewhere. Mr Alhuwalia invited us to engage in valuation of the repairing covenant with knowledge of the particular Landlord's adherence to it, and submitted that it was therefore of lower value than a Landlord willing to comply with its covenant.
11. The Tenant continued to rely on the email of Mr Tavinor of White Estates stating the market rent to be expected on or around 22 June 2021 was £550 per week, together with an updating letter from him dated 5 November 2024 stating the recommended marketing sum as £635 per week which he considered to reflect "*considerable unmodernised condition to account for the age of the kitchen and bathroom and general decoration and state [of] repair*". Mr Tavinor is the origin of the proposed comparables table mentioned above.
12. The Tenant stated that Mr Tavinor is to be considered more reliable than Foxtons (relied on by the Landlord), on the basis that Foxtons had not visited the property (though in the hearing it was agreed that someone from Foxtons had visited the property at some point), and that they would "*still recommend putting new carpets down and a fresh coat of paint*". No comparables were provided by Foxtons, and its valuation did not take account of the continuing state of disrepair at the property, in contrast with Mr Tavinor.
13. The Tenant disputed that the Landlord's comparables (filed late, and for which we therefore gave permission for a second reply) were suitable. Both properties were advertised to let by Dexters. They were extremely modern and had apparently been renovated to a high-end specification. One of the properties was considerably larger. Flat 9 has £12,240 (VAT inc) of works required to it, according to Mr Morland.
14. The Tenant also put forward the Tenant's vulnerability and the potential for DWP to refuse a Housing Benefit ('HB') backdate, were the Tribunal to direct that the new rent will be payable from the date on the Notice, as grounds for the Tribunal's exercise of its discretion under section 14(7) of the Act (as, it appears, he had done in the previous proceedings). Neither Mr Alhuwalia nor his instructing solicitor could tell us whether the Tenant had received an HB backdate on the previous occasion.

### The Landlord's case

15. The Landlord's statement of case by its reply form was largely in agreement with the Tenant's reply form. It noted that a new Vaillant boiler had been installed in the property on 30 June 2022 at a cost of £2,821.10 (invoice provided). It further noted that Flat 9 is in a sought-after area and has high service charges (a submission that was made in the previous application and which it appears was conceded as irrelevant at that time). The Landlord continued to rely on a Foxtons valuation, obtained by email on 8 January 2025, of £1,000 per week in current condition (notably, exactly the same as the previous Foxtons valuation in the previous application two years ago).
16. Late in the process, the Landlord also provided the two comparables from Dexters mentioned above.
17. The areas of dispute are therefore largely to be found in Mr Granby's skeleton argument.
18. Mr Granby conceded that the setting of a market rent is a two-stage process as highlighted in *Ghani*, and that condition is relevant at stage 2. He submitted that there was a distinction between 'condition' and 'disrepair', as highlighted in *Sturolson & Co v Mauroux* [1998] 20 HLR 332 (CA) (albeit in a fair rents context).
19. Mr Granby also submitted that there was value in the repairing covenant on the open market. The Tribunal must not assume that any disrepair (as opposed to condition) will continue indefinitely. Nor could it, as proposed by Mr Alhuwalia, value the covenant on the subjective basis of what is known about this Landlord (i.e. that the matters complained of have been present since at least 2021, demonstrating that the covenant is not worth less on the open market than in a case in which the Landlord carries out repairs timeously and in accordance with its covenant).
20. Mr Granby accepted that rents offered 'to let' in 2025 were likely to be of less assistance to us in the valuation exercise than let rates at or around the date of the Notices. Nevertheless on the previous occasion the Tribunal had effectively upheld the Foxtons valuation as the market rent starting point, before considering condition.
21. Finally, Mr Granby submitted that insofar as the section 14(7) submission went, the Tribunal must start from three propositions: (1) that the question of undue hardship needs to be established on twin fronts – 'undue' and 'hardship'; (2) that public bodies and other authorities will behave lawfully; and (3) a tenant has no right to expect that a rent will be set at a rate they can afford – that would not be a 'market' rent – and had no obligation to stay in the property if the rent was not affordable.
22. The Landlord submitted that the Tenant had established neither 'hardship' nor 'undue hardship'. Neither the Tenant nor his brother (who lives with him) had disclosed their income. Nor was there any evidence that the DWP would not backdate. It was inherent in the nature of the property (being a 1,600sq foot four/five bedroomed flat in a mansion block in Chelsea) that

it would be unaffordable for most, and as a successor from a regulated tenancy it must be an expectation to the Tenant that the low rent previously charged to his parents was no longer the measure by which the market rent is to be established.

### Inspection

23. The Tribunal inspected the subject flat on 18 March 2025, after the hearing. Mr Joe Lupo, the tenant's brother, provided access to the flat and the tenant was also present.
24. The flat is situated in a brick and slate constructed, purpose-built, mansion block. There was access to the subject block by a side entrance, with an entry phone system, on Roland Gardens. The common parts are neatly presented but it was noted that there were some outstanding decorative works to the stairwell walls. There is small (3-person lift) giving access to the third floor, where the subject flat is situated.
25. The subject flat is accessed by an attractive front door into a roomy hallway. The accommodation comprises of two large living rooms, each with two sets of French windows, and those doors gave access to a small balcony; there are three, large double bedrooms, each room has a French windows with access to a balcony; there is a small bedroom/study room which is used as a laundry room - this has a window into an internal lightwell; there is a sizeable kitchen with a number of large storage cupboards – this is dated with exposed pipework and a mix of very dated, mismatched units; there is a dated bathroom with WC, wash-hand basin and bath, there is a step up to the WC and the window is into the inner lightwell and there is a separate, additional WC that is dated and again with a window onto the inner lightwell.
26. The flat was full serviced with a central heating system. There were minor cracks to the plasterwork and the internal decorations were dated. Overall the timber casements/French windows were in a poor condition and were ill-fitting, with significant gaps around the frames observed and some deterioration to the wooden cills. The carpets, curtains and white goods have been provided by the Tenant.

### Law

27. So far as relevant to this dispute, section 14 of the Act requires us to determine the rent at which we 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 for the same periods and on the same terms as the present tenancy, disregarding any reduction in value attributable to the tenant's failure to comply with any terms of the tenancy. The relevant date is the date specified in the notice for the commencement of the proposed new rent.

### Determination and valuation

28. It is unlikely to come as a surprise to the parties, we think, that this Tribunal takes similar views as those expressed in the decision on the last occasion, there being little that was new introduced by way or argument and evidence.
29. Firstly, attractive though Mr Alhuwalia's submission is in the context of a flat in which clearly there are matters of condition and/or disrepair that have been outstanding for a long period, we consider it would not be appropriate to make an assessment of the value of the covenant of repair on a subjective basis. We must have in mind that if the property was to let on the open market, the potential tenants of it would not be provided with a record of the Landlord's history of compliance with its covenant. Though condition might be observed, a Landlord's compliance with its covenant is likely only to be visible through that condition, and an astute landlord puts a property in good condition before offering it to let. We therefore find that we cannot take into account this Landlord's performance (or otherwise) of the covenant to repair when it comes to our assessment of what the market rent would be.
30. The assessment we must conduct is a two stage process. The first stage is to establish, in accordance with section 14 of the Act, what the rent for the property in good condition would be if it was let on the open market with a willing Landlord and willing Tenant. The second stage is to analyse what the condition of the property is, in terms of its departure from that 'good' standard, and what the consequence on the figurative willing Landlord and willing Tenant's realise expectation/offer for rent would be.
31. There is not always a bright line between what is 'condition' and what is 'repair'. Elements of repair may also be elements of condition. It is notable that *Sturolson* itself talks about repair and not condition, no doubt because in that case the court was concerned with the fair rent pursuant to section 70 of the Rent Act 1977, which specifically requires that the "*age, character, locality and state of repair*" of the dwelling-house are relevant factors to be taken into account in the valuation. We consider that a state of disrepair that affects the condition of the dwelling-house is to be taken into account, so for example the cracks in ceiling plasterwork are both potentially items of disrepair, and are condition. There are matters – such as the alleged unfitness for human habitation as cited in the reports – that are not always (or are not totally) about condition.
32. In any event, as *Sturolson* sets out in the decision, disrepair is not 'wholly taken into account' by the deductions from an assessment of rent – there is still something left *because* the assessment takes into account the value of the repairing covenant. We are not entering into any kind of assessment on a quasi-damages basis for loss of amenity.
33. We take into account below what we consider to be the relevant matters impacting condition, in the assessment of this rent.
34. The schedule of comparables from the Tenant show achieved rents but they are limitations to this evidence. All of these comparables are presented in a

good tenantable manner with carpets, curtains and white goods. The comparables of achieved rents are summarised below:

- The ground and lower ground Floor flat at 110 Sinclair Road has a large kitchen/dining room and one further reception and three bedrooms, one of which appears to be a small single room. This has two bathrooms, some storage cupboards and seems to have private external areas. The GFA is 1,744 ft<sup>2</sup> and the rent achieved was £3,987 per month in January 2024. Whilst this is an attractively presented flat with two bathrooms and some external areas, it has fewer useable rooms than the subject flat and is in a less desirable position being on the ground and lower ground floor.
- 607, Marshall Street is a three-bedroom flat on the sixth floor. This achieved a rent of £3,878 per month in January 2024. There is no floor plan for this flat in the letting particulars, but it appears to have an open plan kitchen and living room and three bedrooms. It is well presented and is described as having an en-suite bathroom and a shower room. The schedule states that it has 1,812 sq ft of accommodation, but the details state that it has over 1,000 sq ft. The flat has a balcony. Certainly, the list of accommodation suggests that this is much smaller than the subject flat.
- The particulars for 25 Church Close describe this as a fourth floor flat that achieved £3,900 per month in May 2024. The total useable floor area on the fourth floor is 1,536 sq ft. The layout is such that there are two bedrooms, both of which have en-suites and the master bedroom has a large dressing room area that can only be accessed through that bedroom. This is well presented but is a top floor flat that has some restricted floor areas, though that appears to be excluded from the 1,536 sq ft.
- Flat 1, 53 Drayton Gardens is a lower ground floor flat that achieved £3,683 per month in September 2024. It has a floor area of 1,800. It is well presented but the floor plan shows a large reception hall, a living room and separate kitchen and four bedrooms there is a family bathroom without a WC and two separate WCs. Two of the four bedrooms are very small (9'9" x 9'11" and 9'9" x 6'5" respectively).
- Flat 1, 22 Cornwall Gardens is a lower ground floor flat that achieved a rent of £3,012 per month in December 2023. This is a two-bedroom flat with a floor area of 1,311 per sq ft. The letting particulars provided do not include a floor plan and has minimal details, although it is stated that there is a patio and it appears that there is a single open plan kitchen with dining area and living room.
- 199, The Colonnades is a three bedroom flat on the 6<sup>th</sup> and 7<sup>th</sup> floors. It achieved a rent of £3,467 per calendar month in July 2024. The letting details states that the floor area is 1,443 sq ft but that includes a sunroom area. There is a large terrace and a balcony and the accommodation provides a dining room with a sun room element, a kitchen, a reception room, three bedrooms, one of which has an ensuite and a family bathroom.
- Flat 1, 56, Westbourne Terrace is a lower ground floor flat that achieved a rent of £3,449 per month in July 2024. This is a three-

bedroom flat with a floor area of 1,614 sq ft. The letting particulars show a well presented flat, but slightly dated fittings. The floor plan shows a narrow galley kitchen a reception room a large hallway and three bedrooms, one of which is an awkward shape. There is a family bathroom and a shower room with WC and storage cupboards. There is an internal courtyard garden.


- 4, Prince Albert House is a one bedroom, first floor flat and the letting particulars state that it has 807 sq ft. The rent achieved was £3,098 per month in August 2024. The photographs show that this is an attractive flat with quirky features.

35. The landlord has not provided any evidence of achieved rents but has provided details of two flats available to rent. The first is a three bedroom flat in Drayton Gardens with two bathrooms. There is no floor plan and no indication of the floor areas but the photographs show a spacious property that has been presented in stylish manner. The asking rent is £7,497 per month. The second comparable, also in Drayton Gardens is a five-bedroom flat. Two of the bedrooms have en-suites plus there is a family bathroom. There is no floor plan, but the description adds that there is a separate study area that gives access to a balcony. The photographs show a very well-presented property with luxury fittings. The asking rent is £13,000.

36. The evidence provided by the landlord is of very limited value as it is of asking rents and one of the flats appears to be significantly larger than the subject flat. Also, both of these flats are presented with what appears to be luxury decorations, furnishings and fittings. Whilst the evidence provided by the tenant is of achieved rather than asking rents, which is desirable, all these flats seem to be quite a bit smaller than the subject flat. The best comparable would seem to be Flat 1, 53, Drayton Gardens. This is a four-bedroom flat but is a lower ground floor flat in contrast to the subject flat that is on the third floor, a more desirable position. Also, this flat provides four-bedrooms, but two of these could be deemed to be single rooms, whereas the subject flat has four very sizeable bedrooms plus an additional study/laundry room.

37. Using the evidence presented by the parties and the Tribunal's own expert, general knowledge of rental values in the area, we consider that the open market rent for the property in good tenantable condition, rather than in a luxurious condition would be in the region of £5,500 per calendar month. From this level of rent we have made adjustments in relation to the dated condition of the kitchen and bathroom fittings, the lack of carpets, curtains, white goods and furnishings, the condition of the external French windows giving access to the patios, and the general condition of the flat.

38. The full valuation is shown below:

Market Rent	per calendar month £5,500
Less	
Lack of carpets, curtains, furnishings and white goods and	



Dated kitchen and bathroom fittings	}	40%
Condition of patio doors and general condition		
		<u>2,200</u>
		<b>£3,300</b>

39. The Tenant's argument regarding section 14(7) is, as observed, the same as that argued in the previous application. The Tenant was given, by that finding, a strong indication of what he would need to provide in order to make out a case of undue hardship. It remains the case that the matters relied on do not make a sufficient case for the reasons outlined by Mr Granby, and there is therefore no reason for the Tribunal to depart from the new start date as specified in the Notices – 29 September 2023.

### **Conclusion**

40. The Tribunal determines a rent of £3,300 per calendar month, commencing from 29 September 2023.

**Tribunal Judge:** N Carr

**Date:** 15 April 2025

### **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 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. Any appeal in respect of the Housing Act 1988 should 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).