

Notice of the Tribunal Decision and Register of Rents under Assured Periodic Tenancies (Section 14 Determination)

Housing Act 1988 Section 14

Address of Premises

First Floor Flat, 24 Drayton Green,
London, W13 0JF

The Tribunal members were

Mr D Jagger MRICS
Mr A Ring

Landlord

Area Estates Ltd

Address

c/o Hamways, Hamways House, 104 Station Road East,
Oxted, Surrey, RH8 0QB

Tenant

Mr J Preston

1. The rent is: £

1000

Per

Calendar
Month

(excluding water rates and council
tax but including any amounts in
paras 3)

2. The date the decision takes effect is:

1st June 2018

*3. The amount included for services is/is
negligible/not applicable

481.02

Per

Annum

*4. Service charges are variable and are not included

5. Date assured tenancy commenced

01 February 2018

6. Length of the term or rental period

Monthly

7. Allocation of liability for repairs

S11 applies

8. Furniture provided by landlord or superior landlord

None

9. Description of premises

For details see reasons document attached.

Chairman

Mr D Jagger

Date of Decision

19th October
2021



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

Case reference : **Lon/00AJ/MNR/2018/0068**

Property : **First floor flat 24 Drayton Green,
London W13 0JF**

Applicant : **John Nigel Preston**

Respondent : **Area Estates Ltd**

Representative : **Hamways Managing Agents**

Type of application : **Section 13(4) Housing Act 1988**

Tribunal member(s) : **D I Jagger MRICS
Mr A Ring**

Date and venue of hearing : **15th October 2021
10 Alfred Place
London WC1E 7LR**

Date of reasons : **19 October 2021**

REASONS (HOUSING ACT 1988)

Decision of the tribunal

- (1) The Tribunal determines that the rent that the property in its current condition as at 1st June 2018 might reasonably be expected to achieve in the open market under an assured tenancy is **£1000 per month**

Background

1. The tenant has lived in the property as an assured periodic tenant since 1st February 1995. At that time the flat was in a dilapidated condition due to the previous landlord's lack of finances. The applicant undertook significant works of repair and improvement to the property with the then landlord's consent and a new roof covering was provided to the building. On 11th April 2018 the landlord served a notice pursuant to section 13 of the Housing Act 1988 seeking to increase the rent from £1105 to £1138 per month effective from 1st June 2018.
2. By an application dated 23rd May 2018, together with a comprehensive schedule of improvements and refurbishment carried out by the tenant running to five pages, the tenant referred that notice to the tribunal for a determination of the market rent.
3. This case was originally determined on 23rd July 2018. This decision was made on the basis of written submissions by both parties and without a hearing. The Tribunal came to a decision that the proposed rent should be £1138 per month. That decision was successfully appealed by the tenant to the Upper Tribunal, who remitted the case back to this Tribunal for a redetermination of the rent.
4. The Tribunal issued Directions for the conduct of the matter on 5th January 2020. However, due to the Covid pandemic this case was stayed. There had been a request for a face to face hearing and unfortunately it has not been possible to provide that forum until now. Accordingly, revised Directions were prepared on the 17 May 2021.
5. In the meantime, a further decision (Lon/ooAJ/MNR/2019/0072) was made by the Tribunal on the 5th August 2019 in respect of the rent for the subsequent year. That decision determined the rent with effect from 1st June 2019 at £1000 pcm. The Upper Tribunal rejected an appeal from the tenant to the 2019 rent decision.

The Evidence

6. The hearing in this matter took place on 15th October 2021. The respondent landlord and their agent chose not to participate in the hearing and presumably relied on their original written evidence which we will come to below.
7. Written representations were received from Yvette Webb of Hamways dated 5th July 2018 on behalf of the landlord. The proposed rent relied on four

comparable lettings without precise addresses, detailed information, or the rental value each property was actually let at. The first was a 'recently refurbished' first floor two bedroom converted flat in Drayton Green on the market at £1495 pcm. The second was a two bedroom flat in Sutherland Road being marketed at £1325pcm. The third comparable was a first floor converted two bedroom flat in Cavendish Avenue marketed at £1350 pcm. Finally, a two bedroom converted flat in Argyle Road on the market at £1350pcm. The evidence then makes a deduction of 10% for tenant's improvements and a further 10% deduction for the condition of the property. What, however, is not clear to the Tribunal is which figure has she calculated to be the 'starting point' rent. Bearing in mind, the proposed new rent is £1138 per month, if we take the figure of £345 per week less 20% this nets down to £1,196 per month. Conversely, if the weekly figure of £300 is taken, less the 20% deduction, this results in a figure of £1040 pcm. It was confirmed that the rental figure should include water rates in the current annual sum of £481.02 (£40.09pm)

8. The applicant provided a revised detailed bundle of evidence dated 24th January 2020 which included a background to the case, previous determinations and appeals, previous cases, comparable evidence together with comment from local agents and documents relating to repair and improvements undertaken by the applicant.
9. Firstly the Tribunal considered the comparable evidence provided by the applicant. Six comparables were provided: (1) Green Man Gardens, a purpose built two bedroom flat located in a nearby road being marketed at £1250 pcm; (2) Ground floor two bedroom flat at 24 Drayton Green, rent set in at £1060 pcm; (3) A penthouse in Sutherland House Sutherland Road, a second floor purpose built flat marketed at £1325 pcm; (4) 30 Argyle Road, a split level two bedroom flat marketed at £1350 pcm; (5) 20 Hastings Road, a two bedroom converted flat with parking marketed at £1296 pcm; (6) 24 Argyle Road, a first floor converted flat, on the market at £1350pcm. Equally, to a slightly lesser degree this evidence did not provide information in connection with the rental value each property was actually let at. In addition to the comparable evidence, a summary of market conditions was provided by the local letting agents.
10. Next, the applicant took us to the detailed schedule of improvements and repairs undertaken by him. He confirmed that when he first occupied the flat in 1995 it was in a 'dilapidated and ruinous' condition with a leaking roof, severe damp, significant defective plaster, rot infestation to window units, dated kitchen and bathroom fittings and no central heating (this was subsequently installed by the landlord in 2012). In order to place a value on these tenant's improvements, the applicant provided two FTT decisions where extensive tenants improvements/dilapidation was apparent and an allowance of 45% and 40% was made in those cases respectively. Hence, the applicant has produced a short schedule in Document 6.1 of his closing statement whereby he concludes that a reasonable deduction would be 45%. The Tribunal must determine which items fall within tenants improvements that have an effect on rental value and those which form part of the landlord's liability for repairs under Schedule 11. The applicant disputes the findings of

the 2014 case which states the original works undertaken by him were subsequently refurbished by the Landlord in 2012. The applicant further stated that the building is suffering from subsidence and a photograph (not included in the bundle) was handed to the Tribunal showing vertical tapering cracking to plastered walls on the landing and a bedroom ceiling collapse.

Inspection

11. Due to the current restrictions the Tribunal did not inspect the property and relied on the detailed information provided by the parties and its expert knowledge. The property is a converted first floor flat with loft conversion (bedroom 2) which forms part of an Edwardian semi detached building. Accommodation comprises two bedrooms, living room, kitchen, bathroom, and shared rear garden. The property is located in an established residential area amongst dwellings of a comparable age and type and convenient to local amenities.

The Law

12. The rules governing a determination are set out in section 14 of the Housing Act 1988. In particular, the Tribunal is to determine the rent for each flat 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 improvements or failure to comply with the terms of the tenancy. In the absence of any evidence to the contrary, the Tribunal has proceeded on the basis that the landlord is responsible for repairs to the structure, exterior and any installations pursuant to section 11 of the Landlord and Tenant Act 1985 and the tenant for interior decoration.

The valuation

13. Having carefully considered all of the evidence the Tribunal considers that the rent that would be achieved in good condition with refurbished kitchen and bathroom fittings, modern services, central heating, carpets, curtains, white goods supplied by the landlord and possibly double glazing. would be £1350 per month. The Tribunal did its very best to analyse each of the parties’ comparable evidence, in which it had to make certain assumptions regarding specification, location, floor area, actual achieved rent value and any market movement compared with the date of valuation. The respondent’s evidence ranged from £1325-£1350 if we take out the first comparable. When we look at the applicant’s evidence, this provides a range of £1250-£1350. This excludes the ground floor flat where the Tribunal gave this less weight as this

was a rent set in 2011. Therefore, there is a common theme in both parties' evidence and the Tribunal determined the figure of £1350 falls within the range of the parties' evidence with no single compelling comparable.

14. That however is the rent that would be achieved if the property was let in good condition with all modern amenities. The Tribunal must disregard any increase in rental value attributable to the tenant's improvements, unless they are carried out under an obligation to the landlord. The Tribunal has not been provided with a copy of the tenancy agreement, but the tenant provided a written summary of the verbal tenancy agreement with the previous landlord.
15. The Tribunal considers that if the tenant made decorations better than they were, he has arguably, improved the property, when not required to do so and this is something that could be allowed for as a deduction for 'tenants improvements' and we are satisfied on the evidence before us, that the decorations have been improved to the extent that the rental value has been increased.- ie it is not a deduction for tenant liability, but is a deduction for the fact that the property would achieve a lower rent if let in the decorative condition in which it was provided by the landlord. Equally, the Tribunal is satisfied that the applicant has carried out extensive repairs and improvements and that he has installed a new kitchen and bathroom at his own cost.
16. The Tribunal has analysed the comprehensive schedule of works provided by the tenant in order to 'strip out' those items which are seen as the landlord's obligations under the agreement. In addition, it must be borne in mind, such improvements do become dated and what was added in previous years may well have less value today.
17. Using our expert knowledge of the levels of deductions appropriate, the Tribunal has valued the rental value of the flat in a stepped process as follows:

Market rent	£1,350 PCM
Less	
No carpets, curtains, blinds or white goods.	10%
Kitchen fittings, tiling electrics and appliances	5%
Sanitary fittings and tiling	3%
General decorative improvements	2%
Terms and conditions inc Water Rates	5%
	<u>25% = £1,012.50</u>

(Rounded to £1000 per month)

- 16 Therefore, the Tribunal calculates the rental figure to be **£1000.00** per month

Name: Duncan Jagger

Date: 19th October 2021

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).

Appendix

11 Repair obligations in short leases

(1) In a lease to which this section applies (as to which, see sections 13 and 14) there is implied a covenant by the lessor— (a) to keep in repair the structure and exterior of the dwelling-house (including drains, gutters and external pipes), (b) to keep in repair and proper working order the installations in the dwelling-house for the supply of water, gas and electricity and for sanitation (including basins, sinks, baths and sanitary conveniences, but not other fixtures, fittings and appliances for making use of the supply of water, gas or electricity), and (c) to keep in repair and proper working order the installations in the dwelling-house for space heating and heating water. [(1A) If a lease to which this section applies is a lease of a dwelling-house which forms part only of a building, then, subject to subsection (1B), the covenant

implied by subsection (1) shall have effect as if— (a) the reference in paragraph (a) of that subsection to the dwelling-house included a reference to any part of the building in which the lessor has an estate or interest; and (b) any reference in paragraphs (b) and (c) of that subsection to an installation in the dwelling-house included a reference to an installation which, directly or indirectly, serves the dwelling-house and which either— (i) forms part of any part of a building in which the lessor has an estate or interest; or (ii) is owned by the lessor or under his control. (1B) Nothing in subsection (1A) shall be construed as requiring the lessor to carry out any works or repairs unless the disrepair (or failure to maintain in working order) is such as to affect the lessee's enjoyment of the dwellinghouse or of any common parts, as defined in section 60(1) of the Landlord and Tenant Act 1987, which the lessee, as such, is entitled to use.] (2) The covenant implied by subsection (1) ("the lessor's repairing covenant") shall not be construed as requiring the lessor— (a) to carry out works or repairs for which the lessee is liable by virtue of his duty to use the premises in a tenant-like manner, or would be so liable but for an express covenant on his part, (b) to rebuild or reinstate the premises in the case of destruction or damage by fire, or by tempest, flood or other inevitable accident, or (c) to keep in repair or maintain anything which the lessee is entitled to remove from the dwelling-house. 9 (3) In determining the standard of repair required by the lessor's repairing covenant, regard shall be had to the age, character and prospective life of the dwelling-house and the locality in which it is situated. [(3A) In any case where— (a) the lessor's repairing covenant has effect as mentioned in subsection (1A), and (b) in order to comply with the covenant the lessor needs to carry out works or repairs otherwise than in, or to an installation in, the dwelling-house, and (c) the lessor does not have a sufficient right in the part of the building or the installation concerned to enable him to carry out the required works or repairs, then, in any proceedings relating to a failure to comply with the lessor's repairing covenant, so far as it requires the lessor to carry out the works or repairs in question, it shall be a defence for the lessor to prove that he used all reasonable endeavours to obtain, but was unable to obtain, such rights as would be adequate to enable him to carry out the works or repairs.] (4) A covenant by the lessee for the repair of the premises is of no effect so far as it relates to the matters mentioned in subsection (1)(a) to (c), except so far as it imposes on the lessee any of the requirements mentioned in subsection (2)(a) or (c). (5) The reference in subsection (4) to a covenant by the lessee for the repair of the premises includes a covenant— (a) to put in repair or deliver up in repair, (b) to paint, point or render, (c) to pay money in lieu of repairs by the lessee, or (d) to pay money on account of repairs by the lessor. (6) In a case in which the lessor's repairing covenant is implied there is also implied a covenant by the lessee that the lessor, or any person authorised by him in writing, may at reasonable times of the day and on giving 24 hours' notice in writing to the occupier, enter the premises comprised in the lease for the purpose of viewing their condition and state of repair.

Housing Act 1988

14 Determination of rent by rent assessment committee. (1) Where, under subsection (4) (a) of section 13, a tenant refers to a rent assessment committee a notice under subsection (2) of that section, the committee shall determine the rent at which, subject to subsections (2) and (4) below, the committee 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— 10 (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. (3) For the purposes of subsection (2)(b) above, in relation to a notice which is referred to by a tenant as mentioned in subsection (1) above, an improvement is a relevant improvement if either it was carried out during the tenancy to which the notice relates or the following conditions are satisfied, namely— (a) that it was carried out not more than twenty-one years before the date of service of the notice; and (b) that, at all times during the period beginning when the improvement was carried out and ending on the date of service of the notice, the dwelling-house has been let under an assured tenancy; and (c) that, on the coming to an end of an assured tenancy at any time during that period, the tenant (or, in the case of joint tenants, at least one of them) did not quit. 11 (4) In this section “rent” does not include any service charge, within the meaning of section 18 of the Landlord and Tenant Act 1985, but, subject to that, includes any sums payable by the tenant to the landlord on account of the use of furniture or for any of the matters referred to in subsection (1) (a) of that section, whether or not those sums are separate from the sums payable for the occupation of the dwelling-house concerned or are payable under separate agreements....