FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AZ/MNR/2021/0051**
Property	**:**	**17A Tressillian Road, London, SE4 1YG**
Applicant	**:**	**Ms Clara Popoola**
Representative	**:**	
Respondent	**:**	**London & Quadrant Group**
Representative	**:**	
Type of application	**:**	**Market Rent under s13 & 14 of the Housing Act 1988**
Tribunal member(s)	**:**	**Judge D Brandler** **Marina Krisko FRICS**
Date and venue of hearing	**:**	**13th October 2021** **Remotely from 10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**13th October 2021**
Date of reasons for the decision	**:**	**29th October 2021**

DECISION

Decision of the tribunal

(1) The tribunal determines that the market rent is £810.00 per calendar month, including services of £55.21 pcm.

(2) The tribunal makes the determinations as set out under the various headings in this decision.

The application

1. The applicant seeks a determination pursuant to section 13 & 14 of the Housing Act 1988 following the service of a notice dated 1/2/2021 by the landlord proposing a rent increase to £614.77 per month from 1/4/2021. That is to include services of £55.21 per month. The current rent is £559.56 per month.

2. The Tribunal received an application under section 13 of the Housing Act 1988. The landlord's notice of rent increase was included with the application.

3. On 5/5/2021 the Tribunal issued directions.

4. Neither party requested an oral hearing.

5. The Applicant tenant made written submissions. The Landlord made none.

Background

6. The applicant has lived at 17A Tressillian Road, London SE4 1YG ("The property") since 1999 originally under a tenancy with Beaver Housing. A tenancy agreement dated 17/10/2002 was provided to the Tribunal. L & Q Housing Association have since taken over the management of the flat.

7. The Tribunal did not physically inspect the property but had the benefit of the submissions from the tenant who described the flat as being a two-bedroom flat on the ground floor with the benefit of a garden. The tenant describes one of the bedrooms as being very small. The tenancy agreement states that the property is suitable for not more than three people.

8. Neither party requested a hearing of the matter. The application was considered on the papers without a hearing. No inspection took place because of the current COVID-19 restrictions.

The submissions

The tenant's submissions

9. In the application form, the tenant states that one of the bedrooms in the flat is very small

10. The tenancy agreement submitted by the tenant confirms that the flat is a two-bedroom flat suitable for a maximum of three persons.

The Landlord's submissions

11. None were made

The Law

12. We must first determine that the landlord's notice under section 13(2) satisfied the requirements of that section and was validly served.

13. The Housing Act 1988, section 14 requires us to determine the rent at which it considered that the subject property might reasonably be expected to be let on the open market by a willing landlord under an assured tenancy.

14. In so doing we are required by section 14(1), to ignore the effect on the rental value of the property of any relevant tenant's improvements as defined in section 14(2) of that Act.

Valuation

15. In coming to its decision, the tribunal had regard to the representations made by the tenant applicant. We are not entitled to have regard to the financial position of the landlord or of the tenant. The matters we are required to take into account are set out in section 14 of the Act which we have summarised above.

16. In assessing the valuation, the tribunal considered the property on the internet and found that it is located in a nice tree lined residential road, in an end of terrace 4 storey brick-built house with a pitched roof. The photographs available on the internet showed that there is a lower ground floor, a raised ground floor and two upper floors. There is a small front garden with six large bins and a good size rear garden. The property has convenient to access shops.

17. The tribunal determined a starting market rent, at a level between 1–2-bedroom flats so as to reflect the small second bedroom, to be worth £900 per month in the open market in fully modernised condition.

However, taking into account the terms and conditions, the tenant's own carpets, curtains, white goods and the small bedroom, a deduction of 10% was applied and the reduced market rent to be determined for this property is £810.00 per month which includes services of £55.21 per month.

18. Further to the Tribunal's determination, the tenant contacted the Tribunal by email dated 19/10/2021 to express her unhappiness with the decision. The Tribunal accepted her email as a request for full reasons for the decision, which are set out above.

19. The Tribunal can only set a market rent. This is the maximum rent that is payable for the property which may be more than the amount than the amount that the Housing Association Landlord is actually charging or proposing to charge.

20. The tenant may wish to discuss this matter with her landlord.

Effective date

21. Under s14 (7) of the Housing Act 1988 the effective date of the decision would normally be the date shown on the application unless there is hardship to the tenant.

22. The tenant made no submission in relation to hardship. The effective date is therefore the date shown on the application, that is 1st April 2021.

D. Brandler

Name: Tribunal Judge Brandler **Date: 29th 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).

THE LEGISLATION

Housing Act 1988

s.13.— Increases of rent under assured periodic tenancies.

(1) This section applies to—

(a) a statutory periodic tenancy other than one which, by virtue of paragraph 11 or paragraph 12 in Part I of Schedule 1 to this Act, cannot for the time being be an assured tenancy; and

(b) any other periodic tenancy which is an assured tenancy, other than one in relation to which there is a provision, for the time being binding on the tenant, under which the rent for a particular period of the tenancy will or may be greater than the rent for an earlier period.

(2) For the purpose of securing an increase in the rent under a tenancy to which this section applies, the landlord may serve on the tenant a notice in the prescribed form proposing a new rent to take effect at the beginning of a new period of the tenancy specified in the notice, being a period beginning not earlier than—

(a) the minimum period after the date of the service of the notice; and

(b) except in the case of a statutory periodic [tenancy—]

[

(i) in the case of an assured agricultural occupancy, the first anniversary of the date on which the first period of the tenancy began;

(ii) in any other case, on the date that falls 52 weeks after the date on which the first period of the tenancy began; and

]

(c) if the rent under the tenancy has previously been increased by virtue of a notice under this subsection or a determination under section 14[below—]

[

(i) in the case of an assured agricultural occupancy, the first anniversary of the date on which the increased rent took effect;

(ii) in any other case, the appropriate date.

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(3) The minimum period referred to in subsection (2) above is—

(a) in the case of a yearly tenancy, six months;

(b) in the case of a tenancy where the period is less than a month, one month; and

(c) in any other case, a period equal to the period of the tenancy.

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(3A) The appropriate date referred to in subsection (2)(c)(ii) above is—

(a) in a case to which subsection (3B) below applies, the date that falls 53 weeks after the date on which the increased rent took effect;

(b) in any other case, the date that falls 52 weeks after the date on which the increased rent took effect.

(3B) This subsection applies where—

(a) the rent under the tenancy has been increased by virtue of a notice under this section or a determination under section 14 below on at least one occasion after the coming into force of the Regulatory Reform (Assured Periodic Tenancies) (Rent Increases) Order 2003; and

(b) the fifty-third week after the date on which the last such increase took effect begins more than six days before the anniversary of the date on which the first such increase took effect.
]
(4) Where a notice is served under subsection (2) above, a new rent specified in the notice shall take effect as mentioned in the notice unless, before the beginning of the new period specified in the notice,—
(a) the tenant by an application in the prescribed form refers the notice to [the appropriate tribunal] ; or
(b) the landlord and the tenant agree on a variation of the rent which is different from that proposed in the notice or agree that the rent should not be varied.
(5) Nothing in this section (or in section 14 below) affects the right of the landlord and the tenant under an assured tenancy to vary by agreement any term of the tenancy (including a term relating to rent).

s.14.— Determination of rent by [tribunal] .

(1) Where, under subsection (4)(a) of section 13 above, a tenant refers to [the appropriate tribunal] a notice under subsection (2) of that section, the [appropriate tribunal][3] shall determine the rent at which, subject to subsections (2) and (4) below, the [appropriate tribunal][3] consider that the dwelling-house concerned might reasonably be expected to be let in the open market by a willing landlord under an assured tenancy—
(a) which is a periodic tenancy having the same periods as those of the tenancy to which the notice relates;
(b) which begins at the beginning of the new period specified in the notice;
(c) the terms of which (other than relating to the amount of the rent) are the same as those of the tenancy to which the notice relates; and
(d) in respect of which the same notices, if any, have been given under any of Grounds 1 to 5 of Schedule 2 to this Act, as have been given (or have effect as if given) in relation to the tenancy to which the notice relates.
(2) In making a determination under this section, there shall be disregarded—
(a) any effect on the rent attributable to the granting of a tenancy to a sitting tenant;
(b) any increase in the value of the dwelling-house attributable to a relevant improvement carried out by a person who at the time it was carried out was the tenant, if the improvement—
(i) was carried out otherwise than in pursuance of an obligation to his immediate landlord, or
(ii) was carried out pursuant to an obligation to his immediate landlord being an obligation which did not relate to the specific improvement concerned but arose by reference to consent given to the carrying out of that improvement; and
(c) any reduction in the value of the dwelling-house attributable to a failure by the tenant to comply with any terms of the tenancy.
(3) For the purposes of subsection (2)(b) above, in relation to a notice which is referred 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.
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(3A) In making a determination under this section in any case where under Part I of the Local Government Finance Act 1992 the landlord or a superior landlord is
liable to pay council tax in respect of a hereditament ("the relevant hereditament") of which the dwelling-house forms part, the [appropriate tribunal] shall have regard to the amount of council tax which, as at the date on which the notice under section 13(2) above was served, was set by the billing authority—
(a) for the financial year in which that notice was served, and
(b) for the category of dwellings within which the relevant hereditament fell on that date,
but any discount or other reduction affecting the amount of council tax payable shall be disregarded.
(3B) In subsection (3A) above—
(a) *"hereditament"* means a dwelling within the meaning of Part I of the Local Government Finance Act 1992,
(b) *"billing authority"* has the same meaning as in that Part of that Act, and
(c) *"category of dwellings"* has the same meaning as in section 30(1) and (2) of that Act.
(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 [, in respect of council tax] 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.
(5) Where any rates in respect of the dwelling-house concerned are borne by the landlord or a superior landlord, the [appropriate tribunal] shall make their determination under this section as if the rates were not so borne.
(6) In any case where—
(a) [the appropriate tribunal] have before them at the same time the reference of a notice under section 6(2) above relating to a tenancy (in this subsection referred to as "the section 6 reference") and the reference of a notice under section 13(2) above relating to the same tenancy (in this subsection referred to as "the section 13 reference"), and
(b) the date specified in the notice under section 6(2) above is not later than the first day of the new period specified in the notice under section 13(2) above, and
(c) the [appropriate tribunal][9] propose to hear the two references together,
the [appropriate tribunal] shall make a determination in relation to the section 6 reference before making their determination in relation to the section 13 reference and, accordingly, in such a case the reference in subsection (1)(c) above to the terms of the tenancy to which the notice relates shall be construed

as a reference to those terms as varied by virtue of the determination made in relation to the section 6 reference.
(7) Where a notice under section 13(2) above has been referred to [the appropriate tribunal] , then, unless the landlord and the tenant otherwise agree, the rent determined by [the appropriate tribunal] (subject, in a case where subsection (5) above applies, to the addition of the appropriate amount in respect of rates) shall be the rent under the tenancy with effect from the beginning of the new period specified in the notice or, if it appears to [the appropriate tribunal] that that would cause undue hardship to the tenant, that that would cause undue hardship to the tenant, with effect from such later date (not being later than the date the rent is determined) as the committee may direct.
(8) Nothing in this section requires [the appropriate tribunal] to continue with their determination of a rent for a dwelling-house if the landlord and tenant give notice in writing that they no longer require such a determination or if the tenancy has come to an end.
(9) This section shall apply in relation to an assured shorthold tenancy as if in subsection (1) the reference to an assured tenancy were a reference to an assured shorthold tenancy.