

IN THE UPPER TRIBUNAL (LANDS CHAMBER)



**Neutral Citation Number: [2018] UKUT 166 (LC)
Case No: RAP/20/2017**

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

LANDLORD AND TENANT – Rent Act 1977 – assessment of fair rent – statutory tenancy imposing full repairing and insuring obligations upon the tenant – F-TT assessing the fair rent on the basis that the landlord is responsible for all repairs and decorations – appeal allowed and matter remitted to F-TT

**IN THE MATTER OF AN APPEAL AGAINST A DECISION OF
THE FIRST TIER TRIBUNAL (PROPERTY CHAMBER)**

BY

JOHN MICHAEL HARRIS

Appellant

**Re: 23 Gloucester Place Mews,
London. W1U 8BF**

Before: His Honour Judge Huskinson

Royal Courts of Justice, Strand, London WC2A 2LL

**on
10 May 2018**

The Appellant Mr Harris in person
The Respondent landlords (namely The Portman Estate Nominees (One) Ltd and The Portman Estate Nominees (Two) Ltd), did not participate in the appeal.

There are no cases referred to in this Decision:

© CROWN COPYRIGHT 2018

DECISION

1. The appellant holds 23 Gloucester Place Mews, London W1U 8BF (the property) from The Portman Estate Nominees (One) Ltd and The Portman Estate Nominees (Two) Ltd (the landlords) upon a statutory tenancy under the Rent Act 1977.

2. On 27 January 2017 the landlords applied for the registration of a fair rent in respect of the property. Box 11 of the form stated that the tenancy began pre-1989. There was then a question asking what repairs were the responsibility of the landlords and the tenant. The landlords filled in this form making it clear that the landlords did not have responsibility for repairs and that the tenant did have responsibility for repairs and (so it seems) insurance.

3. The valuation office agency determined the fair rent and made an entry in the rent register showing the fair rent as being £19,246 per year. The copy of the entry in the rent register which is before the Upper Tribunal records in the box headed adjustments: Tenants repair/decoration liability.

4. The appellant objected to this registered rent and the rent officer referred this objection to the First-Tier Tribunal (F-TT).

5. The appellant set out his representations to the F-TT in a letter dated 19 April 2017 which included the following passage: “The lease that I have is a full repairing and insuring lease and as such I am fully responsible for every aspect of maintaining & repairing everything both inside and outside of the property.”

6. By its decision (apparently dated 30 June 2017 but with the written reasons given on 1 August 2017) the F-TT concluded that the fair rent should be £19,200 per year.

7. In its decision the F-TT stated in paragraph 5: “The landlord is responsible for all repairs and decorations.”

8. As can be seen from what has already been set out above, the F-TT was in error in proceeding upon the basis that the landlord was responsible for all repairs and decorations. In fact the tenant was responsible for these matters.

9. The appellant sought permission to appeal to the Upper Tribunal against the F-TT’s decision. Permission was refused by the F-TT but was granted by the Upper Tribunal by a decision of the Deputy Chamber President dated 18 December 2017 which stated (inter-alia):

“There is a realistic prospect of a successful appeal in this case on the grounds that the first-tier tribunal either overlooked the evidence and submissions of the applicant (in his letter of

19 April 2017 objecting to the rent registered by the VOA) that he was responsible for all repairs and redecorations, or failed to give reasons for not accepting it.....”

Attention was also drawn in the decision to further arguable points regarding whether the F-TT had misunderstood the appellant’s evidence about the extent to which he had been responsible for the condition of the kitchen and regarding whether the F-TT had properly addressed (or given sufficient reasons in respect of) the other points raised by the appellant in his letter of 19 April 2017.

10. The landlords were invited, in accordance with the normal procedure of the Upper Tribunal, to participate in the appellant’s appeal as respondents if the landlords wished to do so. However the landlords have not participated in the present appeal and do not seek to resist the appellant’s appeal.

11. In my view it is clear that the F-TT’s decision cannot stand. It proceeds upon an error regarding an important matter of fact, namely as to who is responsible for the repairs and insurance of the property.

12. I also find substance in the concerns raised by the Deputy Chamber President in the grant of permission to appeal as to whether adequate reasons were given by the F-TT regarding other matters raised by the appellant in his letter of 19 April 2017.

13. It was made clear in the decision granting permission to appeal that the appeal would be by way of a review of the F-TT’s decision and that, if the appeal was to be allowed, then the issue of the rent to be registered for the appellant’s property would be returned to the F-TT for reconsideration.

14. I therefore allow the appellant’s appeal. I quash the decision of the F-TT as contained in the document dated 1 August 2017. I remit the matter to the F-TT for reconsideration by a differently constituted tribunal.

A handwritten signature in black ink, appearing to read 'Nicholas Huskinson', with a long horizontal flourish extending to the right.

His Honour Judge Huskinson

10 May 2018

