

UPPER TRIBUNAL (LANDS CHAMBER)



[2023] UKUT 199 (LC)

UTLC Case Number: LC-2023-256  
Royal Courts of Justice

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

AN APPEAL AGAINST A DECISION OF THE FIRST-TIER TRIBUNAL  
(PROPERTY CHAMBER)

*LANDLORD AND TENANT – RENT DETERMINATION – First-tier Tribunal decision  
made on the papers when the facts about the condition of the property were in issue – appeal  
succeeds*

**BETWEEN:**

**MS ROUPHINA CHINWS ONYILIAGHA**

**Appellant**

**-and-**

**YOU MOVE LETS LTD**

**Respondent**

**Re: 56 Latymer Road,  
Enfield,  
London, N9 9P4**

**Judge Elizabeth Cooke  
Determination by written representations  
Decision Date: 11 August 2023**

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## **Introduction**

1. The appellant, Ms Onyiliagha, appeals the decision of the First-tier Tribunal (“the FTT”) on her landlord’s application for the determination of a market rent under sections 13 and 14 of the Housing Act 1988, for 56 Latymer Road London N9 of which she holds an assured tenancy. Neither party has been legally represented.
2. The landlord’s application to the FTT was dated 12th January 2023. It included a copy of the landlord’s notice, as required by section 13 of the 1988 Act, dated 3rd January 2023 proposing a new rent of £2,145 per month to commence on 1st March 2023; the previous rent had been £1894.79 per month.
3. The FTT decided the application on the papers without a hearing. It first determined that it had jurisdiction because the proper notice had been given to the tenant. Then it summarised the information provided by the landlord about the condition of the property and about comparable properties in the area. It said that in making its decision “the tribunal relied on its own general knowledge of rental levels in the area and evidence supplied by the parties” and determined that the landlord’s proposed rent was the market rent.
4. In her application for permission to appeal Ms Onyiliagha supplied information and photographs about the condition of the property and the facilities in it, and about what was supplied at the beginning of the tenancy; it consists both of photographs and of narrative. It contradicts the landlord’s assessment of the property on a number of points, for example as to whether the property came with white goods and as to whether windows were double-glazed. It is not apparent from the FTT’s decision that she supplied that evidence to the FTT, but in its refusal of permission to appeal the FTT said “There were differences in factual positions submitted by the Applicant and the Respondent. These differences have been taken into account in the decision and the tribunal has made the best it can of the factual evidence, agreed, in conflict or disputed.” So I take it that the factual evidence now before the Tribunal was what Ms Onyiliagha sent to the FTT, and the landlord in written representations made in response to the application for permission to appeal has not suggested otherwise.
5. It is difficult to guess how the FTT could have decided which party’s evidence was true in the absence of an oral hearing with an opportunity for cross-examination, and the FTT has not explained how it did so. Where the facts are contested it will rarely be possible for the FTT to make a decision on the papers. Accordingly, the decision is set aside and remitted to the FTT.
6. Since permission to appeal was granted both parties have offered further factual evidence to the Tribunal in support of their position about the condition of the property, but the Tribunal is not able to hear evidence in an appeal conducted by way of review; it will be for the FTT to assess the evidence at a re-hearing.

**Judge Elizabeth Cooke**

**11 August 2023**

**Right of appeal**

Any party has a right of appeal to the Court of Appeal on any point of law arising from this decision. The right of appeal may be exercised only with permission. An application for permission to appeal to the Court of Appeal must be sent or delivered to the Tribunal so that it is received within 1 month after the date on which this decision is sent to the parties (unless an application for costs is made within 14 days of the decision being sent to the parties, in which case an application for permission to appeal must be made within 1 month of the date on which the Tribunal's decision on costs is sent to the parties). An application for permission to appeal must identify the decision of the Tribunal to which it relates, identify the alleged error or errors of law in the decision, and state the result the party making the application is seeking. If the Tribunal refuses permission to appeal a further application may then be made to the Court of Appeal for permission.