



Neutral Citation Number: [2024] UKUT 182 (LC)

Case No: LC-2023-863

IN THE UPPER TRIBUNAL (LANDS CHAMBER)

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

FTT REF: LON/00AB/MNR/2023/0089

21 June 2024

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

*LANDLORD AND TENANT – RENT DETERMINATION – absence of findings on contested matters of fact*

BETWEEN:

ELIZABETH AND ZROUGE ALEXANDER

Appellant

-and-

MARK MIDDLETON

Respondent

2, Boulton Road  
Dagenham  
Essex

Upper Tribunal Judge Elizabeth Cooke  
Determination on written representations

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## Introduction

1. This is an appeal from a determination by the First-tier Tribunal of the market rent for 2 Boulton Road, Dagenham, RM8 3DD. It has been decided under the Tribunal's written representations appeal; neither party has been legally represented.

## Background

2. The property is a two-storey end of terrace house; the appellants live there under an assured shorthold tenancy, granted for twelve months from 31 July 2019 and continuing after that from month to month.

3. In these circumstances section 13 of the Housing Act 1988 provides that:

“(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...”

4. Section 13(4) says that where such a notice is served the new rent takes effect as stated in the notice unless, before the date of the new period of the tenancy, the tenant refers the notice to the FTT. Section 14 says that if the tenant does so, the FTT:

“(1) ... shall determine the rent at which, subject to subsections (2) and (4) below, the [FTT considers] 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.”

5. On 1 March 2023 the appellants referred to the FTT a notice of increase of rent served by the respondent. It was dated 28 February 2023 and proposed a rent of £1,400 per month with effect from 31 March 2023 in place of the existing rent of £1,100 per month. The appellants made an application to the FTT for a determination of the market rent for the property pursuant to section 14 of the 1988 Act.

### **The FTT’s decision**

6. The FTT received written submissions from both parties and conducted a hearing on 16 August 2023 and visited the property on the same day. The parties agreed that if the house were modernised and in good condition the open market rent would be £1,400 per month. Equally, both accepted that it was in poor condition; the appellants gave evidence of a range of defects including defective plumbing, leaking gutters, damp and mould.
7. The landlord’s position was that he had agreed a schedule of works with the Environmental Health Officer but had not been able to complete the requisite repairs because the tenant had “offered limited access” to the property.
8. The FTT said that in reaching its decision it took into account the lack of modernisation of the house but disregarded the need for remedial work required by the Environmental Health Officer because the tenants had not afforded the necessary access to enable the work to be done. It determined that the open market rent of the property from 31 March 2023 was £1,200 per month.

### **The appeal**

9. The tenant has permission to appeal, granted by this Tribunal, on the basis that any difficulties with access arose after the date on which the new rent was supposed to take effect.
10. As is usual for determinations of market rent the FTT’s reasons for its decision were brief, and given at the request of the tenant. The difficulty with the decision is that the FTT made no findings of fact about when access was requested and refused.
11. Material supplied by both parties in the appeal indicates that the respondent visited the property on 15 March 2023 and that the Environmental Health Officer, Ms Kingsnorth, inspected the property on 21 March 2023. Any schedule of works must have been agreed after that date. Ms Kingsnorth wrote to the appellants on 27 March 2023 setting out a schedule of works that the respondent had agreed to carry out and requesting dates for access; the appellants on 28 March offered access on a range of dates in April, and there was then further discussion because a continuous period of access was needed.
12. Anything that happened after 31 March 2023, the date from which the new rent was to take effect and therefore the valuation date, could not affect the rent at which the property would be expected to let on that date. Any unreasonable refusal of a request for access made after that date was therefore irrelevant and ought not to have been taken into consideration.

13. The respondent in his statement of case in the appeal said that some work was done in early 2023, that Ms Kingsnorth visited on 21 March 2023, and that he agreed to do the work needed at the property but that “due to the tenant cancelling and stopping the works this is why the work could not be completed before the end of March.” Copies of emails provided by the respondent, going back many months, show that the parties’ relationship has been a difficult one, and that the causes of disrepair in the property are in dispute.
14. It is difficult to see how the extensive work needed could have been completed between Ms Kingsnorth’s inspection on 21 March and the end of the month even if the respondent had had access during that short period. The correspondence between Ms Kingsnorth and the applicants does not suggest that anything like that was planned and does not suggest that the appellants “cancelled” anything between 21 and 31 March.
15. This Tribunal of course can make no findings of fact in the appeal; but what is important is that the FTT made no findings of fact that there was any refusal of access before the end of March. If the FTT regarded refusals to give access after the end of March 2023 as relevant to the rent on 31 March 2023 then it made an error of law. If its decision was indeed based on anything that happened before that date to prevent the works required by the Environmental Health Officer being done then it is not possible to see how that was justified on the evidence in the absence of findings of fact.
16. Either way, the FTT’s decision is set aside, and the matter is remitted to the FTT to be re-determined.

Upper Tribunal Judge Elizabeth Cooke

21 June 2024

### **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.