FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BE/MDR/2021/0017**
Property	**:**	**58A Elm Grove , London, SE15 5DE**
Applicant	**:**	**Ms Anna Foxabbott and Mr Rhys Timson**
Representative	**:**	**In Person**
Respondent	**:**	**Portico Properties Ltd.**
Representative	**:**	**In person**
Type of application	**:**	**Market Rent under s22 of the Housing Act 1988**
Tribunal member(s)	**:**	**Mr Richard Waterhouse MA LLM FRICS**
Date and venue of hearing	**:**	**23rd November 2021 Remote Hearing on Papers**
Date of decision	**:**	**23rd November 2021**

DECISION

Background

1. By Application received by the tribunal on 13th August 2021 the Tenant of the above property made an application under section 22(1) of the Housing Act 1988.

2. The tenancy commenced on 17th March 2021 at a rent of £1199.88 per month.

3. The tribunal were provided with a copy of the tenancy agreement with the application.

4. On the 9th September 1999 the tribunal made Directions informing the parties that in view of the Government's advice with respect to Covid 19 outbreak an inspection would not take place. The parties were given the opportunity to provide supporting photographs or other material of the property and if desired make representations.

5. The Directions required the tenant to send a reply form to the tribunal with a copy to the landlord. The landlord was also required to send a completed reply form to the tenant with copy to the tribunal. The tenant had the opportunity to comment on the landlords reply form copied to the landlord and the tribunal.

6. Neither party requested a hearing.

7. The tribunal met on 23rd November 2021 to consider the application.

The Property

8. The property is an apartment located in the basement comprising; one bedroom, one living room with kitchen and bathroom in London SE15.

The Evidence

Appellants Evidence

9. In support of the Applicants case , they rely on the application form and a copy of the tenancy agreement.

10. The tribunal has reviewed and noted the contents of the application form and the tenancy agreement. The accompanying e mail dated 13th August 2021 states;

11. "Our basement flat has been affected by flooding on 25th July 2021 due to a disconnected pipe outside our property. It is currently uninhabitable. Due to

this and ongoing maintenance issues since the start of our tenancy on 17th March 2021, we have been advised to complete this application."

The Respondents Case

12. The respondent has made no submissions.

The Law

13. In accordance with the terms of section 22 of the Housing Act 1988 (The Act) the tribunal proceeded 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 shorthold tenancy exclusive of water rates and/or council tax.

14. The tribunal cites the relevant section below:

22 Reference of excessive rents to appropriate tribunal.

(1)Subject to section 23 and subsection (2) below, the tenant under an assured shorthold tenancy may make an application in the prescribed form to the appropriate tribunal for a determination of the rent which, in the appropriate tribunal's opinion, the landlord might reasonably be expected to obtain under the assured shorthold tenancy.

(2) No application may be made under this section if—

(a)the rent payable under the tenancy is a rent previously determined under this section;

(aa)the tenancy is one to which section 19A above applies and more than six months have elapsed since the beginning of the tenancy or, in the case of a replacement tenancy, since the beginning of the original tenancy; or

(b)the tenancy is an assured shorthold tenancy falling within subsection (4) of section 20 above (and, accordingly, is one in respect of which notice need not have been served as mentioned in subsection (2) of that section).

(3)Where an application is made to the appropriate tribunal under subsection (1) above with respect to the rent under an assured shorthold tenancy, the appropriate tribunal shall not make such a determination as is referred to in that subsection unless they consider—

(a)that there is a sufficient number of similar dwelling-houses in the locality let on assured tenancies (whether shorthold or not); and

(b)that the rent payable under the assured shorthold tenancy in question is significantly higher than the rent which the landlord might reasonably be expected to be able to obtain under the tenancy, having regard to the level of rents payable under the tenancies referred to in paragraph (a) above.

(4)Where, on an application under this section, the appropriate tribunal make a determination of a rent for an assured shorthold tenancy—

(a)the determination shall have effect from such date as the appropriate tribunal may direct, not being earlier than the date of the application;

(b)if, at any time on or after the determination takes effect, the rent which, apart from this paragraph, would be payable under the tenancy exceeds the rent so determined, the excess shall be irrecoverable from the tenant; and

(c)no notice may be served under section 13(2) above with respect to a tenancy of the dwelling-house in question until after the first anniversary of the date on which the determination takes effect.

(5) Subsections (4), (5) and (8) of section 14 above apply in relation to a determination of rent under this section as they apply in relation to a determination under that section and, accordingly, where subsection (5) of that section applies, any reference in subsection (4)(b) above to rent is a reference to rent exclusive of the amount attributable to rates.

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

Consideration

16. The first consideration to be addressed by the tribunal was Section 22(3)(a) of the Act. The tribunal must find there to be a sufficient number of similar dwelling houses in the locality. Law does not define "sufficient". Similarly, there is no definition of "similar" or "locality" , but there is considerable case law to give the tribunal guidance.

17. The second consideration to be considered is whether the rent is " considerably higher than the rent which the landlord might reasonably be expected to be able to obtain under the tenancy, having regard to the level of rents payable under the tenancies in the locality".

18. The tribunal using the evidence supplied by the parties and the tribunals own expertise.

The Decision

19. The tribunal is satisfied that there are sufficient similar properties in the locality to make a determination. It has considered the comparable evidence and used its own expertise.

20. The tribunal notes that at paragraph 28 of the tenancy agreement it states ;

21. " If the Premises are destroyed or made uninhabitable by fire or any other risk against which the Landlord has insured, Rent will cease to be payable unless the insurance monies are not recoverable (whether in whole or in part) because of anything done or not done by the Tenant, the Tenant's family or invitees until: the Premises are reinstated and rendered habitable; or the insurer pays the costs of re-housing the Tenant. To avoid doubt between the parties the Landlord has no obligation to re-house the Tenant. ... If the Premises are not made habitable within one month of the damage referred to in Clause 28.1 or the insurer does not pay the costs of re-housing the Tenant, either party may terminate this Agreement by giving immediate written notice to the other party

22. The Applicant tenants have stated the property is not habitable. The Respondent Landlords have made no submissions.

23. The tribunal, must consider whether the rent is "considerably higher than the rent which the landlord might reasonably be expected to be able to obtain under the tenancy, having regard to the level of rents payable under the tenancies in the locality".

24. The tribunal takes the rental market and physical circumstances of the dwelling at the date of the commencement of the rent. Subsequent change in the physical circumstances in this case the flooding of the flat are not matters to take into account.

25. On the evidence before it, and using its own knowledge the tribunal finds the rent not "considerably higher than the rent which the landlord might reasonably be expected to be able to obtain under the tenancy". So the current level of rent remains unaltered.

R. Waterhouse

Name: Tribunal Judge Waterhouse **Date: 23rd November 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.

]

(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.

[

(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.
[
(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.