

IN THE UPPER TRIBUNAL (LANDS CHAMBER)



**Neutral Citation Number: [2019] UKUT 211 (LC)
Case No: RAP/15/2018**

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

***LANDLORD AND TENANT – RENT DETERMINATION - HOUSING ACT 1988 –
CONSIDERATION OF NEW EVIDENCE IN THE ABSENCE OF ONE PARTY – APPEAL
ALLOWED***

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

BETWEEN:

Mr Karol Podkrolewicz

Appellant

- and -

R & S Properties

Respondents

**Re: 15 Navier Court,
5 Longfleet Road,
Poole,
Dorset, BH15 2HN**

Judge Elizabeth Cooke

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Introduction

1. This is an appeal from the decision of the First-tier Tribunal (“the FTT”) on 26 September 2018 confirming the rent of £764.50 payable by the appellant to the respondent, as proposed by the respondent in its notice under section 13(2) of the Housing Act 1988. Permission to appeal the decision was given by the Deputy President on 25 March 2019, and he directed that the appeal be conducted under the tribunal’s written representations procedure.
2. The parties have made their representations, and I have decided to grant the appeal; the matter is remitted to the FTT for a re-hearing.
3. The reasons for the grant of the appeal can be explained quite briefly. The appellant is the tenant of 15 Navier Court. The respondent, R & S Properties, is the landlord. The appellant received a notice from the respondent proposing a new rent and on 26 July 2018 applied to the FTT for a determination of the rent. The FTT told the parties that it would determine the rent on the basis of an inspection of the property and on written representations unless either party requested an oral hearing. The respondent did so, and undertook to make written representations.
4. Neither party made written representations. The FTT conducted a site visit and were shown around the property by the appellant, who said that he did not wish to attend the hearing (according to the FTT, in its reasons for refusing permission to appeal dated 31 October 2018).
5. The respondent’s representatives, Mr Real and Mr Stone,¹ attended the hearing and produced evidence of rents of comparable properties. The FTT asked why these had not been submitted in advance and received no adequate explanation. It said at paragraph 11:

“The Tribunal said [to the respondent at the hearing] that where comparables were to be relied upon it was expected that they would be submitted before the hearing to enable the tenant to investigate and make comment. As such the Tribunal would place less weight upon any evidence given.”
6. The FTT went on to consider the comparables provided by the respondent, namely two flats in the same building and other lettings of one-bedroom flats. It said at paragraph 16 that it had been assisted by them but that they required adjustment to take into account the differences between them and the appellant’s property, and confirmed the respondent’s proposed rent “given the evidence of other lettings and using their own knowledge and experience of properties of this type.”
7. The difficulty with the FTT’s decision is that the respondent’s failure to follow the FTT’s directions meant that the appellant had not had the opportunity to comment on the comparables. No written representations had been made beforehand by the respondent and the appellant was entitled to expect that the FTT would proceed without admitting new

¹ Referred to by the FTT as “the landlords”; I take it that they are trading as “R & S Properties”.

material at the hearing. The respondent should not have been allowed to produce evidence on which the appellant had not been able to comment; either the evidence should have been excluded or the hearing should have been adjourned. In his grounds of appeal the appellant asks for the decision to be set aside on that basis, and argues that the information provided by the respondent is wrong. The respondent has not made any written response to the notice of appeal but has provided information about comparable properties.

8. I take the view that the decision made by the FTT was procedurally unfair and should be set aside. The matter is remitted to the FTT for a re-hearing; no doubt the FTT will give directions about that, and the parties are reminded to ensure that all the evidence they wish to rely upon at that re-hearing is sent to the other party beforehand in accordance with those directions.

Elizabeth Cooke

Judge of the Upper Tribunal

4 July 2019

A handwritten signature in black ink, appearing to read 'Elizabeth Cooke', enclosed in a faint rectangular border.

Elizabeth Cooke
Upper Tribunal Judge

Re-issued, pursuant to Rule 53 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010. on 12 August 2019; corrected wording underlined.