



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case reference** : **FL/LON/00BJ/MNR/2019/0156**

**HMTCS Code** : **CVP : CVPREMOTE**

**Property** : **Flat 1 Marius mansions, Marius road, London SW17 7QG**

**Applicant** : **Mr Keith Burstein**

**Representative** : **In person**

**Respondents** : **Bankway Properties Ltd**

**Representative** : **Hamways Ltd**

**Type of application** : **Sections 13 and 14, Housing Act 1988**

**Tribunal members** : **Mr Charles Norman FRICS  
Mr John Francis QPM**

**Date and Venue of hearing** : **5 August 2021  
10 Alfred Place London WC1**

**Date of Decision** : **5 August 2021**

**Date of Reasons** : **21 September 2021**

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**REASONS**

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## **Covid-19 pandemic: description of determination**

This has been a remote determination. The form of remote determination was CVP: CVPREMOTE. A face-to-face hearing was not held because it was not practicable, no-one requested the same, and all matters could be determined by a video hearing. The members sat together in an Alfred Place hearing room. The documents that the Tribunal were referred to are in a bundles totalling approximately 125 pages, the contents of which the Tribunal has noted.

### **Background**

1. On 4 February 2021 the tenant of the above property referred to the Tribunal a notice of increase of rent served by the landlord under section 13 of the Housing Act 1988 (“the Act”).
2. The landlord’s notice, which proposed a rent of £556.67 per month is dated 13 January 2021. The notice proposed a starting date for the new rent of 1 March 2021. The rent passing was stated as being £480 per month which was the rent set by the Tribunal in a decision dated 18 February 2020.
3. The tenancy is an assured periodic tenancy. From the tenant’s application, the assured tenancy was commenced on 10<sup>th</sup> May 1989.

### **Hearing**

4. The applicant requested an oral hearing, and this took place on 5 August 2021 via videoconferencing. The Tribunal members sat together in a hearing room at Alfred Place, so this was a “hybrid” hearing. The landlord did not attend and was not represented. The Tribunal did not inspect the property owing to the Coronavirus restrictions.

### **The landlord’s Case**

5. The Landlord’s stated that the new increase was still below market value rent, having regard to the tenant’s improvements, conditions and security provided by the statutory tenancy. The landlord submitted that the current rent of £566.67 is fair and reasonable. The property was situated in SW17 with good transport links and in a sought after location. The landlord did not refer to any comparables.

## The Tenant's Case

6. Mr Burstein submitted a bundle of 115 pages. The gist of his evidence was as follows. The property was a self-contained ground floor flat in a block dating from 1891 and comprising three rooms, kitchen, bathroom/WC. He had lived at the property for 32 years. The condition of the flat was very poor and there was a complete lack of modernisation. The rent was last set at the Tribunal in 2020 since when the condition of the flat had worsened. Since the last Tribunal Decision, the market has slumped by 10% as evidenced by press reports. The property continued to further deteriorate. The landlord's proposed rent increase was therefore without justification. Over 25 years of consecutive Tribunal determinations of the rent, there had often been no increase, a lower rent set, or rises of only 1% or 2%. Recent Tribunal decisions on properties in the area and in the same condition as the subject property resulted in rents that were lower. From local research, well-appointed two-bedroom flats in SW17 show an average rent of £1332 pcm.
7. The deduction for condition in 2020 was 71% having increased from 40% in the mid-1990s. This is an average deduction increase of about 1% a year. Consequently, the deduction now should be at least 72%. Based on a starting point of £1332 pcm this gives £370 pcm.
8. Other flats in the building have been refurbished at least seven times since 1989 whereas the subject property was in poor condition in 1989 when the tenancy commenced, and has never been modernised. Mr Burstein carried out some decoration/repairs in the bathroom and kitchen at his own expense. The kitchen remains totally unmodernised. He was obliged to repair the bathroom ceiling in 2006 at his own expense after it collapsed.
9. There is no central heating and the only heater supplied by the landlord is an old two bar electric heater in the front room. An old Sadia hot water heater in the bathroom supplies the bathroom and kitchen. There is no heating in the bathroom. In the front room the fireplace is inadequately boarded off allowing detritus to fall through from the chimney, together with air drafts. There is a lot of damp particularly in the bathroom. The windows were sealed shut when the outside was painted in 1998 so most cannot be opened. Window frames are rotting and crumbling. The bathroom floor structure is dangerous with loose rotting joists. In 2006 Mr Burstein was obliged to repair or replace the plasterwork of the ceiling in the bathroom when it disintegrated. The effect of this should be disregarded. There is a chronic problem of water leaking through the ceiling from the flat above. The toilet area is constantly saturated with seepage from the water cistern. There is a recurring mice infestation problem evidenced by the rodent boxes around the block. There has been a problem with sewage under the flat caused by heavy rain. Mr Burstein obtained a new oven at his own expense. He paid for small sockets to be repaired. A major leak came through the kitchen ceiling the year before last. The backdoor has no proper lock, only bolts. There is damp in various locations in the flat. Externally there is visible subsidence to the exterior of the back room in Rowfant Road.

10. Mr Burstein referred to several other lettings in the area and enclosed agents details of those properties.
11. The Tribunal did not inspect (see above) but notes and accepts the description from the 2020 decision as follows:

“The property comprises a two bedroom flat in a detached brick built mansion block on ground and three upper floors. The property is at the junction with Rowfant Road and relatively close to Balham High Road (A24) which is a busy road. Marius Road itself is a pleasant tree-lined street of mainly residential property but also with some commercial uses.

The subject flat comprises a living room, hallway, two bedrooms, bathroom/WC and a kitchen. The condition throughout is very poor. In the bathroom the fittings are very old with a high-level WC. There is no floor covering only floorboards. There is evidence of severe damp penetration to plaster. The kitchen is poorly equipped with a single drainer stainless steel sink and no floor covering only floorboards. The white goods belong to the tenant. In the hallway, there is clear evidence of ceiling plaster damage. In both bedrooms, there are large wall cracks. The sliding sash timber windows are in poor condition with peeling paint and rot. There is visible structural subsidence. There is also evidence of damp to wallpaper. In the living room large plaster cracks are visible at ceiling level and damp plaster.”

## **The law**

12. The law as to the Tribunal’s approach is given at section 14 of the Act which insofar as relevant is as follows:

*(1)Where, under subsection (4)(a) of section 13 above, a tenant refers to a Tribunal a notice under subsection (2) of that section, the Tribunal shall determine the rent at which, subject to subsections (2) and (4) below, the Tribunal 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;*

*[...].*

## **Findings**

13. This is an assured tenancy under the Housing Act 1988. The Tribunal considered the comparables put forward by the applicant. The Tribunal placed weight on the comparable in Cecil Mansions put forward by the tenant, as a starting point. This was a 2 bedroom flat in Cecil Mansions Marius Road, and the property is very similar. This was marketed for £1551 pcm. The Tribunal also placed weight on the asking terms of £1650 pcm for a 2 bedroom flat on Boundaries Road SW17 which is also very close to the subject property. The Tribunal, having noted these comparable rents, were of the view that the monthly rent for this flat in good condition would be £1600 pcm, prior to adjustment for condition.
14. The Tribunal then made adjustments for the following significant and highly material matters: very poor bathroom, ancient water heating system, lack of central heating, damp penetration, severe cracks in walls and ceilings, very poor kitchen and very poor windows. The Tribunal noted that one year after the previous Tribunal determination nothing had been improved and in fact there had been some further deterioration in the condition of this flat. The Tribunal therefore considered that these factors required an adjustment of 72% or £1152 per month, leaving an adjusted rent to reflect the actual condition of the property of £448 pcm. The Tribunal determined that this should take effect from 1 March 2021, being the date specified in the landlord's notice of increase.

Mr Charles Norman FRICS  
Valuer Chairman

21 September 2021

#### **ANNEX - RIGHTS OF APPEAL**

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and these are set out below.
- If a party wishes to appeal against 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.

