



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

**Case Reference** : **CHI/29UN/MNR/2018/0058**

**Property** : **Flat 1, 22 Gladstone Road,  
Broadstairs, Kent CT10 2HZ**

**Applicant** : **Mr F Nikpehr - Tenant**

**Representative** : **Mr K Ropkins**

**Respondent** : **Mrs P Rawson - Landlord**

**Representative** : **Rex Cowell - Solicitor**

**Type of Application** : **Housing Act 1988 – Section 13  
Appeal of Notice of Rent increase**

**Tribunal Members** : **R T Athow FRICS MIRPM – Chairman  
P A Gammon MBE BA (Lay Member)**

**Date of Inspection** : **8<sup>th</sup> November 2018**

**Date of Decision** : **19<sup>th</sup> November 2018**

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**DECISION**

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## **Background**

1. 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 with an undated application received on 6<sup>th</sup> September 2018.
2. The landlord's notice, which proposed a rent of £575.00 per month with effect from 9<sup>th</sup> September 2018, is dated 1<sup>st</sup> August 2018.
3. A Notice had been served under cover of a letter dated 10<sup>th</sup> April 2018 from Lovetts, the agents who were managing the property at that time. Rex Cowell, solicitor for the landlord wrote to the tenant on 8<sup>th</sup> May 2018 withdrawing the Notice. Rex Cowell state that the reason why it was withdrawn is due to the Notice being defective on two counts:
  - (a) The Notice is not signed and dated, and
  - (b) The Notice specifies an incorrect starting date for the new rent of 15<sup>th</sup> June 2018.
4. The tenant forwarded a copy of the Notice and covering letter he had received. It was signed and dated. However, the Notice still specified the incorrect starting date for the new rent of 15<sup>th</sup> June 2018.
5. A second Notice of Increase that had been served on 29<sup>th</sup> May 2018 increasing the rent with effect from 15<sup>th</sup> July 2018 was served upon the tenant. The tenant referred this to the Tribunal on 10<sup>th</sup> July 2018 but the Tribunal struck this application out for the following reasons:
  - (a) Details of the first rent increase date is missing
  - (b) It does not appear to take effect at the commencement of a new period of the tenancy. The tenant advises the tenancy started on Thursday 9<sup>th</sup> January 1997 whereas the proposed increase is proposed to take effect on Sunday 15<sup>th</sup> July 2018.
6. Taking this history into account this Tribunal is satisfied that the two previous Notice of Increase have no legal standing and that the Notice of Increase dated 1<sup>st</sup> August 2018 is correct.
7. The current rent payable is £370.00 per month which has been set since before 11<sup>th</sup> February 2003.
8. The tenancy commenced on 9<sup>th</sup> January 1997 at a rent of £370.00 per month. The Tribunal were informed by both parties that there was no tenancy agreement. Because there is no written tenancy agreement and the start date was before 22<sup>nd</sup> February 1997 the tenancy is an assured tenancy in accordance with legislation in place at that date. It was not until 22<sup>nd</sup> February 1997 that all new tenancies were deemed to be Assured Shorthold Tenancies unless written agreement to the contrary was entered into. The tenant informed the Tribunal that this had been confirmed in a County Court Order on 21<sup>st</sup> July 2015.

## **Inspection**

9. The Tribunal inspected the property on 8<sup>th</sup> November 2018 in the presence of the tenant, his representative (Mr Ropkins) and Mr Gooding, the landlord's Managing Agent.
10. The structure of the building appeared to be in good condition for its age and character. However, internally the condition was poor.
11. It is a ground floor flat in a semi-detached building of traditional design and construction that appears to have originally been designed as one house, but subsequently converted into three self-contained flats
12. The accommodation of the subject flat is accessed via the communal front door and entrance hall. From here there is a door into the very small entrance lobby to the flat which has two doors leading off to various parts of the flat. Through one door there is a kitchen/diner. From here is an archway leading to the living area. Also off of the kitchen/diner is another small room which is currently used as part of the kitchen arrangement, which then leads off to a lean-to storage area. The second door in the entrance lobby gives access into the bathroom, and in this room there is a further door which gives access to the bedroom. In the bedroom are French doors leading to the rear garden and a door which leads to the WC. There is a small rear garden.
13. Within the flat the current kitchen/diner area has a stainless steel sink unit with base units, worktops and wall cupboards. There is an electric hob set into a worktop with an electric cooker under and an extractor fan over. The bathroom contains an old bath, a pedestal wash basin, which is fitted into the corner of the room making washing a congested affair. There is an electric shower over the bath, and a large hot water tank with an immersion heater. The W.C. is cramped and has a low level suite. There are electric storage heaters in the living room, dining area and bedroom. There is no heating in the W.C. or the small kitchen annexe.
14. There are uPvc double glazed windows to the bay window in the living room, bedroom and W.C. The kitchen window is of the original sliding sash style and is single glazed.
15. Mains electricity, drainage and water are connected. Gas is available in the street, but not in the flat.

## **EVIDENCE**

16. The Tribunal received written representations from both parties and these were copied to either side.

## **Tenant's submissions**

17. Mr Nikpeher gave a list of improvements which he had carried out during his tenancy. They included tiling the bathroom and WC, replacing the bath and sink, laying laminate flooring to the kitchen/diner and hall, erecting the lean to storage shed, and laying the patio as well as laying out the gardens front and rear. He also maintains both gardens at his own

expense. When the electric storage heaters in the living room and bedroom failed, he asked the landlord to replace them but as this was not done he had to replace them at his own expense to enable him to keep the flat heated.

18. The landlord was unwilling to carry out repairs and improvements to the original scullery until forced to do so by the Local Authority about 10 years ago. This resulted in the kitchen being moved into its current position. The tenant has added more worktops and base units to this area at his own expense.
19. The EPC rating on the flat reflects the lack of adequate heating and insulation as it is currently rated at “F” – below today’s minimum standard for the new letting of flats. Ceiling pitches are high at 9 feet and as a result the rooms take a lot of heating. There is no thermal or sound insulation between this flat and the flat above, consequently there is regularly noise coming from the flat above.
20. Turning to the landlord’s list of comparable properties, the tenant stated that they all had gas fired central heating and have been modernised.
21. The layout of the flat is poor. It is inconvenient for visitors to have to go through the bathroom and bedroom to use the W.C.
22. The carpet is over 20 years old and threadbare. It is the landlord’s responsibility to keep this in good condition.
23. A Notice of Increase had been served on 10<sup>th</sup> April 2018 by Lovett’s, the Agent at that time. It proposed a rent increase to £380 per month, which the tenant felt was the correct rent for the property in its current condition and he was quite happy to pay this increased rent. However, solicitors for the landlord wrote on 8<sup>th</sup> May 2018 to confirm that the Section 13(2) Notice was withdrawn. Subsequently a revised notice was served with the rent proposed at £575 per month, which is the subject of this application.
24. Comparable evidence was supplied;
  - (a) First Floor Flat 18 Granville Road,
  - (b) Top Floor Flat, Chandos Square,
  - (c) Flat 4 Greenwood House, Granville Road,

### **Landlord’s Submissions**

25. Mrs Rawson’s submissions included a valuation report from Bradstowe Chartered Surveyors, dated 22nd May 21018 which cited three properties which had been let as the comparables upon which the valuation was made:
  - (a) Flat 6a St Peters Road,
  - (b) flat over shops at 28 High Street,
  - (c) Flat 1 15 Ramsgate Road, all are close to the subject flat.

26. This valued the flat in its condition in May 2018 as being within the range of £550 - £575 per month.
27. Also included was a reply to the tenant's general comments made on behalf of the landlord by Prospects UK, the managing agent of the flat.
- (a) It was accepted that the flat would not have the same thermal and sound insulation as a newly converted flat as current Building Regulations are more stringent on these fronts.
  - (b) The Dimplex storage heaters are one of the most efficient forms of electric heating possible. There are no plans for gas to be connected to the flat. If the flat were to be re-let with electric storage heaters there would be no less demand for an electric heated flat than one with gas fired central heating.
  - (c) No complaint had been received from Mr Nikpehr regarding noise from the flat over the subject flat, so no comment could be made, nor could action be expected to have been taken. It would not affect the rental value of this flat.
  - (d) It is accepted that wear and tear occurs in a flat, but when they inspected the flat they were of the opinion that the carpets seemed in reasonable condition.
  - (e) The layout of the flat would not deter any future tenants nor reduce its market value.
  - (f) The kitchen and the hallway are suitable for a flat of this size.
28. Prospects UK included two comparables:
- (a) second floor flat in 1 Chandos Square
  - (b) first floor flat in 18 Granville Road. The managing agent felt that ground floor flats commanded a higher rent than upper floor flats. From this the Managing Agent valued the flat at £575 per month.

## **The law**

29. In accordance with the terms of section 14 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 tenancy exclusive of water rates and/or council tax.
30. 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. The Tribunal cites the relevant section below:
31. *“14.—(1) Where, under subsection (4)(a) of section 13 above, a tenant refers to a rent assessment committee a notice under subsection (2) of that section, the committee shall determine the rent at which, subject to subsections (2) and (4) below, the committee 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—*
- (e) *.....*
  - (f) *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,.....”*

32. On 1<sup>st</sup> July 2013 the rent assessment committee became part of the First Tier Tribunal (Property Chamber) and all references in this decision refer to this Tribunal.

### **Valuation**

33. In the first instance and in accordance with Section 14 of the Act (see above), the Tribunal determined what rent the landlord could reasonably be expected to obtain for the property in the open market if it were let today on an Assured Shorthold Tenancy in the condition that is considered usual for such an open market letting exclusive of water rates and council tax.

34. The letting market has grown substantially in recent years and there is now ample evidence of open market rents for Assured Shorthold Tenancies. In the competitive market that now exists, such properties need to be in first class structural and decorative order and be equipped with all amenities such as full modern central heating, double glazing and other energy-saving facilities along with white goods, carpets and curtains to ensure the property attains its full rental income potential. Where such items and facilities are missing the Tribunal has noted that the rent is found to be correspondingly lower.

35. The Tribunal was not presented with evidence of there being any difference in rental values between Assured Tenancies and Assured Shorthold Tenancies. From its own experience it has not seen any difference in rental values between these styles of tenancy.

36. In coming to its decision the Tribunal was assisted by the comparables submitted by the landlord and tenant. However, almost all of these had gas fired central heating and a traditional layout.

37. We concluded that an appropriate open market rent for a conventional 1 bedroomed property let in first class condition as outlined above on a modern open market letting of an Assured Shorthold Tenancy where the tenant has no liability to carry out repairs or decorations and the landlord supplies white goods, carpets and curtains would be £500.00 per month.
38. However, the Tribunal noted at its inspection (and from the representations made) the actual property is not in the condition considered usual for a modern letting at a market rent, and it was necessary to adjust that hypothetical rent of £500.00 per month to allow for the differences between the condition considered usual for such a letting and the condition of the actual property.
39. The Tribunal takes into account several items to arrive at the rent that it decides is the market rent.
40. In a tenancy of this nature the tenant is not liable for internal decorations, but should keep the flat in a tenant like manner.
41. The form of heating to the property is not considered to be adequate for a property of this age and construction. Whilst electric storage heaters may be efficient in a modern purpose-built flat, they are part of the design along with compact design and good thermal insulation. This flat has high ceilings and very little insulation. Whilst the landlord has supplied storage heaters, two have failed and have been replaced by the tenant at his own expense.
42. The Tribunal noted the unusual and inconvenient layout of the property. In particular, visitors wishing to use the toilet facilities are required to go from the living area, through the kitchen, lobby, bathroom and bedroom before gaining access to the WC.
43. The bathroom is most inconveniently laid out, in as much as the wash basin is cramped into one corner with the hot water cylinder above it.
44. The bedroom can only be accessed through the bathroom.
45. The kitchen fittings are old and the tenant had added extra units himself. The kitchen is situated in a main thoroughfare part of the flat, whilst the small annexe which used to be the scullery gives additional storage.
46. The tenant has supplied the white goods.
47. Whilst there is no laid down formula for arriving at deductions to be made towards these items, the Tribunal has used its own knowledge and experience and decided to make a deduction of 20% from the market rent for these factors.

## **The Decision**

48. The Tribunal decides that the rent at which the property might reasonably be expected to be let on the open market is £400.00 per month.
49. This rent will take effect from 9<sup>th</sup> September 2018 being the date specified by the landlord in the notice of increase.

R T Athow FRICS MIRPM  
Chairman

Dated 22nd November 2018

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### Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber), which may be on a point of law only, must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.