



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

<b>Case Reference</b>	:	CHI/00HH/MNR/2018/0073
<b>Property</b>	:	18 Horace Road, Torquay, Devon, TQ2 8AS
<b>Type of Application</b>	:	Decision in relation to Housing Act 1988
<b>Landlord</b>		Ian Ronald Stevens Represented by Nicola Tracy Stevens as Attorney
<b>Tenants</b>		Mr E and Mrs K Lennon

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**Reasons for the decision**

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**Background**

1. The Landlord served a notice under Section 13(2) of the Housing Act 1988 which proposed a new rent of £ 800.00 per month in place of the existing rent of £560.00 per month to take effect from 1 December 2018.
2. On 26 October 2018 the Tribunal received an application from the Tenants under Section 13(4) (a) of the Housing Act 1988.
3. On 27 November 2018 the Tribunal made Directions requiring the Landlord to send a statement to the Tenants and to the Tribunal supporting the application for an increase in rent. The Tenants were also required to send a statement to the Landlord and to the Tribunal in support of their objection.
4. The Tribunal office informed the parties that the Tribunal intended to determine the rent on the basis of an inspection of the property and written representations subject to the parties requesting an oral hearing. No request was made by the parties for a hearing and an inspection was arranged.
5. Representations were received from one of the Tenants, Mrs Lennon and Nicola Tracy Stevens, as Attorney for the Landlord, as referred to below.

## **Inspection**

6. The Tribunal inspected the property as arranged in the company of Mrs Lennon. The property is a centre terrace house fronting a narrow road between Barton and Hele about 2 miles from the centre of Torquay.
7. The accommodation comprises, on the Ground Floor an entrance porch, hall, reception room used as a bedroom, a rear reception area leading to a kitchen/ breakfast area partly formed in a rear extension.
8. On the First Floor there is a landing, 3 bedrooms and a bathroom/wc.
9. There is a basement area which, due to the stepped site, is at ground level at the rear. It is approached through a narrow internal staircase or across an external metal staircase and balcony formed at the rear first floor level. The basement has low ceilings and is arranged with a utility area with further general storage.
10. Central heating and hot water are provided by a gas fired boiler with radiators.
11. Outside there is a small forecourt at the front and an enclosed rear garden of good size, stepped down to the rear and only accessible through the house. There is no on-site parking space.
12. The condition of the property is fair to poor. There are a number of defects which would affect the market rent appeal of the house. These include dampness, mould and defective plasterwork in a number of areas, possibly caused by moisture penetration and condensation. There is an indication of leaks in the porch and extension roof which appear to require further attention. The rear external Kitchen door has failed and cannot be locked properly.
13. The Tenants have carried out improvements over the years namely, added laminate flooring in the hall, upgraded gas fires in the reception rooms, added new kitchen fittings c.2014, replaced internal doors on the Ground Floor, installed a shower and tiled the bathroom, landscaped the garden and contributed to cost of adding a balcony area off the rear steps.

## **The parties' representations**

14. The Tribunal has received statements from both parties and considered them in detail, so far as they are relevant to its determination.
15. The Landlord's Attorney sent details of four properties available to let:-
  - (1) A three-bedroom semi-detached house in St Marychurch available at £875 per month
  - (2) A three-bedroom terraced house in Chelston available at £895 per month
  - (3) A three bedroom semi-detached house in Teignmouth Road available at £775 per month.

- (4) A three-bedroom terraced house in Chelston available at £875 per month.
16. Each comparable referred to is to let unfurnished, with the Landlord responsible for repair and decoration.
  17. The Landlords Attorney adds that a search did not reveal any 3-bedroom houses available for rent between £500 and £600 pcm within 10 miles of Torquay.
  18. The Tenant comments that the Landlord's comparables are mostly semi-detached and in upmarket expensive areas whereas the subject property is a very old terraced house in a poorer area.
  19. She comments in detail on the condition of the property, including references to dampness, mould, roof leaks and defective plasterwork. The tribunal's inspection was made with a view to verifying these assertions.
  20. Mrs Lennon has pointed out improvements carried out by the Tenants which are summarised above. She also details repairs and maintenance she paid for ,which would normally be the responsibility of the Landlord.
  21. Both parties referred to personal interfamily arrangements and issues in their submissions. Whilst it is appreciated that these matters are of importance to them, the tribunal can have no regard to these matters in determining the market rent under the Act.

## **The law**

### 22. S14 Determination of Rent by First-tier Tribunal

*(1) Where, under subsection (4) (a) of section 13 above, a Tenant refers to a First-tier 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; 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-  
was carried out otherwise than in pursuance of an obligation to his immediate Landlord, or
- (c) (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
- (d) 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.

(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.

## **Consideration and Determination**

23. The Tribunal is required to determine the rent at which the subject property might reasonably be expected to be let in the open market by a willing Landlord under the terms of the tenancy. The personal circumstances of the Tenant are not relevant to this issue.

24. The Landlord's Attorney has helpfully put forward four properties as comparables. Three, in St Marychurch and Chelston are in superior areas offered at rents between £875-£895. The Teignmouth Road house is

semi-detached yet offered at a lower rent than proposed here - £775 per calendar month.

25. The Tenants have commented on those comparables but provided no specific rental evidence.
26. The Tribunal went on use their own knowledge of general rent levels for this type of property. In doing so it noted the location of the house, on a stepped site, fronting a narrow road with no onsite parking. Any value attributable to Tenants' improvements has been excluded. Accordingly, it considered that a market rent of £725 per calendar month could be achieved.
27. For the property to achieve such a rent however, it would need to be in good condition throughout, free of damp and with a fitted kitchen with integral white goods, modern bathroom and WC. It would also be expected to have good quality floor coverings and curtains in good condition. Furthermore, such a rent would only be achieved with the Landlord responsible for repairs and decoration as is usual.
28. The tenancy agreement, in fact makes the Tenant responsible for internal repair and decoration. There is no specific repair or decoration covenant by the Landlord although it is obliquely referred to e.g. in clause 3.35.
29. The condition of this property, described above, is clearly below the required standard and as such a prospective Tenant would expect a reduction to reflect this and the repair covenant issue.
30. To reflect the lower bid that a prospective Tenant would make the Tribunal makes a deduction of £125 and arrives at a rent of £600 per calendar month.
31. Accordingly, the Tribunal determines that the rent shall be £600 per calendar month with effect from 1 December 2018.

*W Gater*

Mr W Gater FRICS ACI Arb (Chairman)

9 January 2019

## **PERMISSION TO APPEAL**

1. A person wishing to appeal the decision to the Upper Tribunal (Lands Chamber) 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.

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