



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

**Case Reference** : **CHI/29UN/MDR/2019/0002**

**Property** : **Flat 4 Marjorie Court, 24 Roxburgh Road, Westgate-on-Sea, Kent CT8 8RZ**

**Applicant** : **Mr L & Mrs M McGowan - Tenants**

**Representative** : **None**

**Respondent** : **Mr L Cappuccini - Landlord**

**Representative** : **None**

**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> April 2019**

**Date of Decision** : **8<sup>th</sup> April 2019**

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**DECISION**

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## **Background**

1. On 10<sup>th</sup> February 2019 the tenants of the above property made an application to the Tribunal seeking a determination of the rent payable under an Assured Shorthold Tenancy.
2. The tenancy commenced on 7<sup>th</sup> November 2018 at a rent of £800.00 per month for a fixed term of 12 months, but with break clauses available to both landlord and tenants.
3. The Tribunal were provided with a copy of the tenancy agreement with the application. Some furniture was included in the tenancy and was listed in the inventory.

## **Inspection**

4. The Tribunal inspected the property on 8<sup>th</sup> April 2019 in the presence of the tenants and it appeared to be in good condition for its age and character. No representative from the Landlord attended the inspection.
5. It is a self-contained third floor flat in a building which was converted into 4 self-contained flats many years ago. The building is situated in a good residential area on the outskirts of Margate with local amenities including the sandy beaches. There is a main line railway station and local shops within ¼ mile.
6. The accommodation comprises landing, living room, 2 bedrooms, kitchen, bathroom and separate WC. The kitchen has sink unit, two worktops, built-in 4 ring electric hob with electric oven underneath, washing machine, tumble dryer, fridge/freezer. Windows are single glazed sliding sash style.
7. The following furniture is included in the tenancy; double sofa/bed, matching armchair and stool, 3 cushions, TV stand, side table, chest of drawers, bedside table, carpets and curtains.
8. All main services are connected. The flat has an Energy Performance Rating of D.
9. No tenants' improvements had been made to the property.

## **Statements & Evidence**

10. The Tribunal issued Standard Directions on 19<sup>th</sup> February 2019. These gave 14 days for the Landlord to make a formal statement setting out the landlord's case and include comparable evidence. Within 28 days of the Directions the tenants were required to state what they felt the rent should be, and include comparable evidence, and list any improvements they had made to the property.

11. The Tribunal received written representations from the landlord with comparable rental evidence. This was copied to the tenants.
12. An application to Vary Directions was made by the tenants, dated 1st April 2019 giving details of the reasons for the application.
13. On 2<sup>nd</sup> April 2019 the tenants made submissions in a 23-page written statement. Also included were 59 pages of documentary evidence. The Tribunal has considered these papers, in particular the rental value comparable evidence. The remainder, whilst giving an insight into the current situation, was submitted too late for the landlord to make representations. The Tribunal has inspected the property and noted the construction and condition of the building and flat.

### **The Law**

14. 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.
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 tenants' improvements as defined in section 14(2) of that Act. The Tribunal cites the relevant section below:
16. *“14.—(1) Where, under subsection (4)(a) of section 13 above, a tenants 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 tenants, .....*”

17. 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**

18. 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 Tenancy in the condition that is considered usual for such an open market letting exclusive of water rates and council tax.
19. 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.
20. The Tribunal also noted the furniture included in the letting.
21. The Tribunal took note of the comparable evidence supplied by the landlord and the tenants when considering the rental value of the flat, together with its location and condition, in particular the lack of double glazing.
22. We concluded that an appropriate open market rent for the property would be £775.00 per month unfurnished, and £800 per month to include the furniture supplied.
23. However, the Tribunal noted at its inspection 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 £800 per month to allow for the differences between the condition considered usual for such a letting and the condition of the actual property.
24. The windows are of the original style and are single glazed. This will have an adverse effect on the ability to retain heat within the flat and is borne out by the EPC rating. This will have an adverse effect on the rental value of the flat.
25. Whilst there is no laid down formula for arriving at deductions to be made towards this item, the Tribunal has used its own knowledge and experience and decided to make a deduction of 5% from the market rent to taking this into account when arriving at its Decision.

## **The Decision**

26. The Tribunal's decision is the rent at which the property might reasonably be expected to be let on the open market is £760.00 per month.

27. The Tribunal decides the rent will take effect from 7<sup>th</sup> April.

R T Athow FRICS MIRPM  
Chairman

Dated 9<sup>th</sup> April 2019

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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.