



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

Case Reference : **CHI/29UB/MNR/2019/0009**

Property : **Flat 9A Wellesley Villas, Wellesley Road, Ashford, Kent, TN24 8EL**

Applicant : **Ms E Adams - Tenant**

Representative : **None**

Respondent : **Mrs M Jefferson - Landlord**

Representative : **Mr A Jefferson & Ms A Marsh**

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 : **29th April 2019**

Date of Decision : **29th April 2019**

DECISION

Background

1. On 27th February 2019 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.
2. The landlord's notice, which proposed a rent of £1105.00 per month with effect from 2nd April 2019, is dated 20th February 2019.
3. The tenant first took occupancy in October 1996. From an unknown date in 2010 the rent was agreed at £400 per month inclusive of £155.00 fixed charges for Council Tax, water and drainage rates.
4. From an early date the landlord had appointed the tenant as managing agent for the whole building, including the ground floor flat. In exchange for that responsibility the landlord had effectively returned £200 per month to the tenant so that she could carry out any repairs and maintenance to both of the flats and the structure of the building.
5. The current tenancy is a statutory periodic tenancy. The Tribunal were provided with a copy of the current tenancy agreement with the application. It commenced on 1st October 2016 at a rent of £400.00 per month. It included terms which are referred to above.
6. This form of management ceased in November 2017. At the beginning of 2108 the landlord appointed Filberts as managing agent. From that time onwards the rent of £400 continued to be the passing rent, inclusive of council tax and water and drainage rates. The £200 per month was no longer returned to the tenant as she was no longer responsible for the maintenance of the whole building, just responsible for the internal decorations of her own maisonette.
7. Ms Adams stated that Filberts had informed her that she was an Assured Tenant.

Inspection

8. The Tribunal inspected the property on 29th April 2019 in the presence of the tenant and Mr A Jefferson, and it appeared to be in fair condition for its age and character.
9. It is an Edwardian terraced house situated in the town centre. It was converted into two self-contained flats many years ago. There is a good range of shops within a few minutes' walk as well as schools and the Main Line Railway Station.
10. The accommodation of the flat comprises communal entrance hall with door to staircase leading to the First Floor. On the first floor are two rooms, kitchen, bathroom and separate WC. On the mezzanine floor above is a single bedroom, and on the attic Floor is a double bedroom.

11. All main services are connected.
12. Whilst until 2017 the tenant had been responsible for the upkeep of the building and the two flats, she has not made any improvements which might have significantly affected the rental value since she was relieved of the maintenance responsibility discussed above.
13. The tenant has provided all the white goods in the kitchen as well as carpets and curtains.

Hearing

14. The Tribunal received written representations from both parties. The tenant's submissions were received late as she was being assisted by Citizens Advice, but the person helping her was on annual leave. She could not complete her submissions without assistance as she was not aware of what the Tribunal required from her. Mr Jefferson accepted the situation and her submissions were accepted late.
15. It became clear that the changes in the terms of the tenancy and the brevity of the 2016 agreement was causing confusion between the landlord and tenant. Before the Tribunal could commence hearing the evidence it was necessary for the parties to agree these issues.
16. It was mutually agreed:
 - (a) the tenant was only responsible for the internal decorations of the flat.
 - (b) The tenant has the right to shared use of the rear garden.
 - (c) The tenant has a right of access over the rear garden to enable her to have access to the parking space allocated to her at the far end of the rear garden.
 - (d) The landlord is liable for the structure of the building and the fixtures and fittings within the flat.
 - (e) The list of works carried out by the tenant had all been undertaken whilst she was managing the building prior to November 2017, and thus she had been paid £200 per month in recompense for these works.
17. Additionally, there were other issues which were outside the remit of the Tribunal.

The Tenant's case

18. Ms Adams felt the rent to be excessive and she had spoken with Martin & Co estate agents who gave her a list of comparables indicating the rental value of a 2 bedroomed flat to be £725 or less. They had not been able to give her evidence of 3 bedroomed flats.
19. These flats were modernised and in good condition.

20. The landlord's list of comparables were similarly modernised and in good condition.
21. Her flat was not modernised. The windows were the original sliding sash windows which were cold and draughty. The kitchen and bathroom were out of date.
22. She felt that this was the highest rent she could afford to pay.

The Landlord's case

23. Mr Jefferson felt that the rent proposed was fair and reasonable considering the setting of the flat and the size of the accommodation. He felt that there were few 3 bedroomed flats in the town centre and, thus, would be at a premium, which would increase its rental value.
24. The nearest comparables with 3 bedrooms were all houses and were not as well situated close to the town centre. Rents for this type of accommodation started at about £950 and went up from there.
25. From this he concluded the rental value of the maisonette was £950, to which should be added the amount they pay for Council Tax, water and drainage rates. This amounts to £155.002 per month. Adding these makes a rent of £1,105 per month.

The law

26. 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.
27. 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:
28. *“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,*

29. On 1st 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

30. 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.

31. The letting market has grown substantially in recent years and there is now ample evidence of open market rents for Assured 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.

32. The Tribunal considered the evidence provided by the parties but acknowledges that at this moment in time there are no truly comparable properties on the market. Rents attained for 3 bedrooomed houses have always been higher than that of 3 bedrooomed flats, no matter what location and so we discounted any evidence submitted of this nature.

33. In reaching its decision the Tribunal relied upon the comparable evidence supplied by the parties and, because of the lack of truly comparable current evidence, its members have also relied on their own general knowledge and experience of rent levels for this type of property in the area.

34. We concluded that an appropriate open market rent for the 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 £770 per month.

35. 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 market rent to take into account the following issues:
36. **Tenant's Improvements** – At the hearing it was explained that the works undertaken were not improvements under Section 14(2)(f) of the Act, as the landlord had effectively paid her £200 per month towards maintaining the building. Consequently, there are no tenant's improvements as defined under the Act.
37. **Repairing and Decorating Liabilities** – Under the Act there is no repairing and decorating liability placed on the tenant. Under Section 11 of the Landlord and Tenant Act 1985 the landlord has an implied obligation to keep the exterior in repair.
38. In this instance it was agreed at the hearing that the tenant has an obligation to maintain the internal decorations of the flat.
39. **White Goods** – The term “white goods” is a shorthand term which has come into use over a period of years. The housing market has changed in the past decade with private landlords and corporate bodies entering the market and buying property in great numbers. As a result, there has been a substantial increase in numbers of new and refurbished property coming onto the letting market. The older conditioned housing stock has tended to be at a lower standard of finish, and fittings were fewer and of a poorer quality. New and refurbished properties tend to have at least a built-in hob, oven, and fridge, and sometimes has additional items such as a freezer and dishwasher. These items have come together to be known as “white goods”, and in this area have become the norm to be included when new tenancies were entered into, and consequently set the standard for Open Market Value.
40. **Carpets and Curtains** - New and refurbished properties tend to have fitted carpets or laminate flooring included. This means that the new properties were more desirable to new tenants and the older properties are required to raise their standards to compete on an even playing field. If properties do not have these facilities the rental value will naturally be lower and the property more difficult to let.
41. Where these do not exist, the incoming tenant will need to buy any white goods, carpets and curtains that are not supplied by the landlord, hence there is a cost element for the tenants to consider. This will reflect in the rent they would be prepared to pay, and the Tribunal reflects this in its valuation, with deductions made based upon their own knowledge and experience.
42. In this case the white goods, carpets and curtains have been supplied by the tenant.

43. **Double Glazing** – The maisonette has the original sliding sash windows without double glazing. These are draughty and are not energy efficient. Consequently, tenants will have higher heating bills. The tendency is that the rents attainable in such instances is lower than properties which have more modern double-glazed windows.
44. The Kitchen and bathroom are dated and reaching the end of their lives.
45. The Tribunal considered that, together, these various elements will adversely affect the rental value by 10%, giving a net rental value of £693.00, to which the sum of £155.00 is to be added for Council Tax, water and drainage rates. This gives a total of £848.00 per month, rounded to £850.00 per month.

The Decision

46. The Tribunal's decision is the rent at which the property might reasonably be expected to be let on the open market is £850.00 per month.
47. This rent will take effect from 2nd April 2019 being the date specified by the landlord in the notice of increase.

R T Athow FRICS MIRPM
Chairman

Dated 29th April 2019

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.