



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

Case Reference : **CHI/21UC/MNR/2019/0029**

Property : **3 Fastnet Close
Eastbourne
East Sussex
BN23 6UW**

Tenant : **Ms Emily Walsh & Mr Gareth Morgan**

Landlord : **Mrs Joan S Todd**

Type of Application : **Determination of market rent:
Housing Act 1988**

Date of Decision : **03 June 2019**

Tribunal Members : **Mr B H R Simms FRICS (chairman)
Mr K Ridgeway MRICS (Valuer Member)**

REASONS FOR THE DECISION

Background

1. On 15 February 2019 the Landlord served a notice under Section 13(2) of the Housing Act 1988 ('the Act') which proposed a new rent of £800.00 per calendar month ("pcm") in place of the existing rent of £750.00 per month to take effect from 21 April 2019.
2. On 02 April 2019 the Tribunal received an application from the Tenant under Section 13(4) (a) of the Act referring the notice to a Tribunal.
3. The Tribunal issued Directions dated 09 April 2019 and 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. The Statements requested were delivered and circulated.

Inspection

4. On 03 June 2019 the Tribunal members inspected the property accompanied by Ms Walsh, one of the Tenants and Mrs Todd, the Landlord.
5. The property is a Semi-detached bungalow located on a private residential estate. The access ways are narrow and there is limited parking. The building is constructed of brick with timber framed infill panels under a pitched, tile-covered roof. The Accommodation comprises: Hall, Living Room leading to Kitchen, 2 Bedrooms, Bathroom with W.C., gardens to front and rear.
6. The property has modern double glazed windows and is in satisfactory order for its age. There is no central heating but electric convector heaters are provided in some rooms. The kitchen and bathroom fittings are satisfactory but now rather dated. The Landlord supplied floor coverings and curtains, but these are now worn. The Tenant has supplied white goods.

The Tenancy

7. The Tribunal was provided with a photocopy of a Tenancy Agreement dated 09 May 2016 for a term of six months from 21 May 2016 at a rent quoted of £750.00 pcm which remains as the current rent. The tenant is holding over under the terms of this agreement.
8. The Agreement contains the usual Tenant obligations to occupy the property in a tenant-like manner and to pay the rent. Of particular relevance to the level of rent payable the Tenant also covenants to keep the interior of the property in a good state of repair and condition.
9. The Landlord has to keep the structure and exterior in repair and to keep the services installations in repair and working order. This obligation is now set out in S.11 Landlord & Tenant Act 1985 ('the '85 Act').

10. Subsequently an additional handwritten page signed by both parties was provided and not challenged. This provides for a shared use, with 5 Fastnet, of a shed. The Tenants are responsible for water and sewerage charges.

The parties' representations

11. Both parties made detailed representations in response to the Directions and these are briefly summarised here. The Tribunal has taken account of all the representations in making its determination.
12. The Landlord considers the proposed rent of £800.00 to be fair and, in support, provides particulars of properties being offered to let and information from the tenant of 34 Viking Way, a similar property, that they are paying £800.00 per month. The particulars show: A semi-detached bungalow to rent in Shannon Way with two bedrooms offered at £795.00 per month; a 2 bedroom bungalow with garage in Burton Road offered at £795.00 per month; a 2 Bedroom end-of-terrace house in Lydd Close offered at £850.00 per month and a 2 bedroom terrace house in Percival Road offered at £800.00 per month.
13. Mrs Todd takes issue with the Tenants statement that she does not provide services to the property and lists the services for which she is charged by the private estate.
14. There is also reference to various notices to quit which are outside the jurisdiction of this Tribunal and have not been considered.
15. Ms Walsh, on behalf of the Tenants considers the proposed increase to be excessive.
16. She points out that bungalows on the Kings Park Estate are let at a lower figure than those elsewhere in Eastbourne. The properties were originally constructed as holiday bungalows and are poorly insulated. The heating bills are excessive.
17. The information from the tenant at Viking Way is not proved.
18. The Tenant supplies property details showing that the bungalow in Shannon Way, quoted by the Landlord at £795.00, has gas fired central heating and is in a better condition than the subject property. She also supplies details of a 2 bedroom semi-detached bungalow in Hebrides Walk offered in July 2018 at £750.00 per month
19. The Tenant accepts that Mrs Todd pays a service charge but this must apply to all properties on the estate and is irrelevant when considering rental value.
20. In response with permission of the Tribunal, the Landlord rebuts the Tenant's assertion that the bungalow has poor insulation as there is 10 inch insulation across the whole roof and cavity wall insulation. She subsequently supplies evidence in support but made an error in that the roof insulation thickness is 4 inch. She mentions the large garden but a lack of redecoration by the Tenant and damage to a window by installing a cat flap. She also explains the history of the heating. Mrs Todd adds particulars of another bungalow in Viking Way, apparently identical, offered at £825.00 per month. The particulars describe it as part-furnished with new double glazing, newly fitted kitchen, electric heating with solar panels and off-road parking.

21. In response with permission of the Tribunal, the Tenant rebuts the Landlord's assertion regarding insulation. The cavity walls may be insulated but the rear wall is not cavity construction and is only 140 mm thick and of plasterboard and timber cladding. Ms Walsh adds that the large garden is not for the Tenant's exclusive use as they have to allow unhindered access to a shared shed.
22. The decorations internally were not in good order at the start of the tenancy and subsequently the removal, by the Landlord, of storage heaters has left areas of undecorated walls.
23. Ms Walsh also supplies an EPC showing a current rating at the lower end of the range for Band D at 55.

The law

S14 of the Act 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-

(i) was carried out otherwise than in pursuance of an obligation to his immediate landlord, or

(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

(c) 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.

(7) ...the rent determined ... shall be the rent under the tenancy with effect from the beginning of the new period specified in the notice or, if it appears to the appropriate tribunal that that would cause undue hardship to the tenant, with effect from such later date ... [that the Tribunal determines] not later than the date of the determination.

Consideration and Valuation

24. 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 an assured tenancy. The personal circumstances of the Tenant are not relevant to this issue.
25. There has been reference throughout to the insulation at the property. It is clear from our inspection that the construction is below modern standards and this is reflected in: The form of construction with some walls of timber, plasterboard & cladding; the type of heating and the minimal roof insulation. The Estate itself is below standard with narrow, un-adopted roads with tight corners and little off-street parking.
26. There is a misunderstanding regarding services. The Tenants correctly stated that there are no services provided by the Landlord to them. The service charges paid by the Landlord are to the Estate owner for maintenance of roadways etc. and are not services to be taken into account under the Act.
27. Thus in the first instance 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 the terms and in the condition that is considered usual for such an open market letting. The Tribunal was assisted by the information submitted by both the Tenant and the Landlord but we also relied on our own knowledge of general rent levels for this type of property in the area.

28. Much has been made of the rent being paid or requested for the other properties on the Estate but these need adjustment to reflect the specific circumstances of the subject property. The other comparables also need adjustment.
29. Having regard to these matters we determined that the starting point for a semi-detached bungalow on this Estate should be £800.00 per calendar month.
30. However, the rent referred to in the above paragraph is on the basis of a modern open market letting where the tenant has no liability to carry out internal repair or redecorations, and the landlord supplies white goods and modern carpets and curtains.
31. In this case the Tenant supplies their own white goods and the floor coverings are in poor order. The kitchen and bathroom fittings are tired.
32. The Tribunal has therefore made the following deductions of £40.00 from the starting point of £800.00 pcm. As the parties did not supply any evidence of allowances that they might make these are based on our estimate of the lower rental bid that might be made by a hypothetical tenant to allow for the differences when compared to a modern market letting.

a) Floor coverings & white goods	£30.00
b) Older kitchen and bathroom fittings	£10.00

Adjusted rent £760.00 per calendar month

Determination

33. The Tribunal therefore decided that a rent of £760.00 per calendar month is the figure at which the subject property might reasonably be expected to be let in the open market by a willing Landlord under the terms of this assured tenancy.
34. The Tribunal then considered the starting date for the new rent but the Tenant made no submission that they will suffer hardship as provided for in S. 14 (17) of the Act.
35. The Tribunal is unable to make any finding of hardship and determines that the new rent of **£760.00 per calendar month** is to take effect on 21 April 2019 the date specified in the Landlord's notice.

Chairman: B H R Simms FRICS

Date: 03 June 2019

PERMISSION TO APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) on a point of law 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.