



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

**Case Reference** : CHI/18UC/MNR/2019/0032

**Property** : 1 Lyncombe Close, Exeter, Devon EX4 5EJ

**Type of Application** : Decision in relation to Housing Act 1988

**Date of Decision** : 5 June 2019

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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 £901.00 per month in place of the existing rent of £858.33 per month to take effect from 1 June 2019.
2. On 8 April 2019 the Tribunal received an application from the Tenant under Section 13(4) (a) of the Housing Act 1988.
3. On 17 April 2019 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 his objection.
4. The Tribunal office informed the parties that the Tribunal intended to determine the rent based on an inspection of the property and written representations subject to the parties requesting an oral hearing. The tenants requested an oral hearing.

## **Inspection**

5. The Tribunal inspected the property as arranged in the company of Dr Hammad. The accommodation is fully described in the Tribunal's determination dated 26 September 2018 under reference CHI/18UC/MNR/2018/0050.
6. We noted the area of black mould at a low level in the dining room, the plaster cracks in several rooms and the original and now worn fittings in the bathroom and kitchen.
7. The tenants provide their own curtains and white goods.

## **Tenants' Obligations**

8. Clause 7 of the tenancy agreement requires the tenants to keep the interior of the premises in good and clean condition and decorate all the internal parts of the property as frequently as necessary to keep them in a good state of decoration.

## **The parties' representations**

9. In a letter dated 18 April 2019 the tenants said that rents in the area were between £750 - £850 per month for similar properties and that there had been no improvements made to the house since the Tribunal's last visit.
10. In a letter dated 25 April 2019 Allsop on behalf of the landlord said that unfurnished properties in the immediate vicinity were achieving between £11,904 and £11,400 per annum depending upon condition and location and that the subject property could be let for £10,821 per annum after taking the standard of fixtures and fittings into account.
11. Comparables of 3-bedroom houses with kitchen and bathroom were provided;

(1) 22 Lyncombe Close	£11,904pa
(2) 13 Lebanon Close	£11,700pa
(3) 32 Lyncombe Close	£11,580pa
(4) Baker Street	£11,700pa
(5) Edinburgh Drive	£11,400pa

12. In conclusion it was said that the rent proposed offers an attractive discount from the market rent and the tenant enjoys the security of tenure offered by an Assured Tenancy and not afforded by an Assured Shorthold Tenancy.

## Hearing

13. The hearing was attended by Dr Hammad, the landlord's representative having previously advised that they would not be in attendance.
14. Dr Hammad said that nothing had changed since the Tribunal's visit in September 2018. He provided Rightmove printouts of a selection of three bedroomed properties at asking rents of between £800 and £850 per month. Asked about the landlord's comparables at Nos 22 and 32 Lyncombe Close he said he could not provide any information as to their condition. He did however refer to No 3, the adjoining house which had been let at £975 following the full refurbishment that he had personally witnessed. He also said that No. 1, a 2-bedroomed house was let at £750 pm.

## The law

### 15. 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 valuation**

16. 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.
17. Both parties have provided details of lettings within the same road as the subject property the passing rents of which range from £965 to £995 per month. In the absence of any details of the condition of Nos 22 and 32 being provided we must assume that, like most modern lettings, have been refurbished prior to marketing. The adjoining property at No 3, although reported as having been fully refurbished, is externally identical and as such we consider it to be of most assistance and therefore take the reported passing rent of £975 pm as our starting point.
18. The subject property is not however in the same condition as the comparable. It has the original kitchen and bathroom both of which

require replacement. The landlord's carpet is old and worn and there are areas of relatively minor disrepair. In addition, unlike the majority of Assured Shorthold Tenancies the tenants are responsible for internal decoration.

19. A prospective tenant would not expect to pay the same rent for this property as the newly refurbished property adjoining. Doing the best it can the Tribunal makes a deduction of 12 ½% to reflect the discount that would be required to attract a tenant to the property in its current condition and on the terms of its tenancy agreement arriving at a rounded rent of £853.50 per month.

### **Determination**

20. The Tribunal therefore determines that the rent at which the property would be expected to let on the terms of the existing tenancy and in its existing condition is £853.50 per month payable from 1 June 2019 being the date referred to in the Landlord's notice.

Mr D Banfield FRICS (Chairman)  
Mr T Dickinson BSc FRICS IRRV

5 June 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.