



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

Case Reference : **CHI/29UN/MNR/2019/0014**

Property : **21 Davids Close, Broadstairs, Kent CT10
1RD**

Applicant : **Mr N & Mrs M Hilton - Tenants**

Representative : **Ms V Gambling, Kent Law Clinic**

Respondent : **Mrs V Kirkham - Landlord**

Representative : **Mr A Kirkham (son)**

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 : **28th May 2019**

Date of Decision : **28th May 2019**

DECISION

Background

1. On 5th March 2019 the tenants 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 £1,200.00 per month, is dated 20th October 2018.
3. The tenancy commenced on 7th April 2016 at a rent of £700.00 per month and is a statutory periodic tenancy. The current rent payable is £1,000.00 per month with effect from 7th May 2017.
4. The Tribunal were provided with a copy of the tenancy agreement with the application.

Inspection

5. The inspection and hearing had been due to have taken place on 29th April, but Mrs Kirkham made an application to vary Directions as the matter was now to be dealt with by a Hearing, rather than just by inspection and paper determination. She had not had sufficient time to appoint a solicitor to act on her behalf. The Tribunal agreed to this on 25th April and a new date was set for the inspection and Hearing.
6. The Tribunal inspected the property at 10:00 a.m. on 28th May 2019 in the presence of Mr and Mrs Hilton and Ms Gambling, and it appeared to be in fair condition for its age and character. The Landlord and her son were on the pavement at the front of the property at the end of the inspection; they understood the inspection was to take place at 10:30. When the Tribunal explained the timing, they were happy not to inspect.
7. It is a semi-detached bungalow situated in a quiet cul-de-sac, just a little distance back from the seafront and Viking Bay. The town centre is close by with shops, railway station and all other amenities.
8. The accommodation comprises porch, entrance hall, living room, 2 bedrooms, bathroom/WC and kitchen/breakfast room. Outside is a garden room, integral garage, small gardens and parking for two cars. The rear garden is on several levels. Windows and doors are uPVC double glazed units. There is gas fired central heating.
9. All main services are connected.
10. The tenant has provided all of the white goods in the kitchen as well as curtains.

Statements & Evidence

11. The Tribunal issued Standard Directions on 14th March. 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.

12. The Tribunal received written representations from both parties, and both also included comparable rental evidence.

The Hearing

13. Ms Gambling, on behalf of the tenants requested a hearing at which oral representations could be made.

The Applicants' Case

14. From the commencement of the tenancy they have carried out a large amount of works; a schedule is at page 93 of the bundle. It lists 33 items that they have done both internally and externally. In their statement of case they stated they did this as they expected to be in the property for the rest of their lives. When they reported problems to the landlord there was no indication that she would carry out repairs. They are of the opinion that the works have greatly improved the appearance of the property and its value and marketability. As such these improvements should be discounted when setting the rent.
15. The landlord was a frequent visitor from the outset of the tenancy and was on friendly terms. They discussed the proposed works and these were verbally agreed.
16. At the beginning of the tenancy the property was in poor condition and was dirty. Work was required to bring the property back into a good state of repair, and these are included in the schedule at page 93. Invoices for much of the work were included in the applicants' submissions.
17. The statement of case set out the works undertaken in detail.
18. Because of the defects, the property should not be valued at the top end of the market. There were dilapidations before the start of the tenancy which the tenants have had repaired. Currently there are no dilapidations except, perhaps, for the defective chimney, as reported by one of the tenants' contractors.
19. Ms Gambling referred to a previous Tribunal decision on a rent review on Flat 1 22 Gladstone Road. She felt this property's condition was similar to the subject property in that it was "not to the highest standard" and so the rent should be reduced to take this into account.
20. Even though some works had been carried out without the landlord's consent, it has made the property more attractive and this should not be taken into account when assessing the value.

21. The tenants are of the opinion the rental value is between £700 and £850 per month. 4 bungalows in Ramsgate were given as evidence of the correct market rent.

The Respondent's Case

22. Mr Kirkham spoke on behalf of his mother.
23. He had lived in the bungalow from 2005 until 2012. During that time he had ensured the property was kept in good repair. Subsequently there have been two tenancies of the property, the last being asked to leave to enable the current tenants to take on the property. When the last tenant vacated it was left in immaculate condition.
24. The original tenancy with Mr & Mrs Hilton had verbally been agreed at £1,000 per month, but under duress the landlord agreed to reduce the rent to £700 for the first 13 months to allow the tenants to replace the corner shower and bath with a large walk-in shower, overhaul the garden room and upgrade the flooring to the garage,. These works were agreed as Mr Hilton suffered from certain disabilities which resulted in him having difficulty in accessing the shower that was in place at the start of the tenancy.
25. What has happened during the tenancy is not how the tenants have explained. They did not seek consent to undertake much of the works, neither did they report the defects they claim to have repaired. This has prevented the landlord from having the opportunity to carry out the works with a contractor of her choice. She has been prevented from complying with her obligations under the terms of the tenancy agreement. As a result, these works should not be considered as repairs or improvements by the tenants and disallowed when assessing the rent.
26. The landlord has contacted several of the companies whose invoices are in the tenants' bundle, but many of them deny carrying out works for the tenants. Where they have carried out works the invoices differ from the actual sum paid by the tenants.
27. Much of the work is sub-standard. For example, the front garden brick wall has been painted, when all of the other walls in the street are natural brick. The paint has fallen off the brickwork and now looks shabby.
28. Whilst consent was given to replace the shower and bath, no consent was sought to replace the rest of the bathroom fittings, which were all in good condition at the start of the tenancy.
29. Some electrical works have been undertaken but no Electrical Certificate has been issued as legally required.
30. The rental value of the bungalow has been the subject of much research. 6 agents have written giving their opinion of the rental value. Three of these

have carried out internal inspections (Mann & Co, Your Move and Oakwood). They have valued the bungalow at between £1,200 and £1,350 per month. 5 comparable properties were also given, all within the CT10 postcode area.

31. The tenants' rental evidence was based on properties in Ramsgate which is a much less attractive area and consequently, the rental values are considerably lower.
32. As a result, the landlord considers the rental value to be at least £1,200 hence this is set out in the Notice of increase.

The Law

33. 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.

34. 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:

35. *“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,.....”*

36. 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

37. 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.
38. 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.
39. The rental comparables evidence of the tenants was not considered to be of value to the Tribunal as they were not in the locality, and so the rents would be different to the subject property.
40. The landlord's evidence was well researched and gave comparables which helped the Tribunal form its decision. The Tribunal considered the arguments put forward by both parties in respect of the "List of Tenant's Improvements".
41. 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 £1,250.00 per month.
42. 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 hypothetical rent of £1,250.00 per month to allow for the differences between the condition considered usual for such a letting and the condition of the actual property.
43. The Tribunal takes into account several items to arrive at the rent that it decides is the market rent.
44. In a tenancy of this nature the tenant is not liable for internal decorations, but should keep the flat in a tenant like manner.
45. Under Section 14(2)(f) of the Act, where improvements are made by the tenant, the Tribunal must disregard these unless they are carried out under an obligation to the landlord.

46. The tenants claim the work carried out are, in the main, improvements. However, the Tribunal has formed a different opinion on this matter. Most of the works were undertaken without the landlord's knowledge or seeking her consent. Clause 2.8 of the tenancy agreement prohibits the tenants from authorising or carrying out repairs themselves, except in the case of emergencies. From the evidence given, the tenants made no formal attempt to notify the landlord, preferring to contact a contractor of their own choosing to undertake the repairs, and failing to notify the landlord of this. The tenants accepted this to be the case in several instances.
47. Clause 2.15 states the tenants may not "alter the appearance, decoration or structure of the building... without first obtaining the prior consent of the landlord." There are differing statements on this element from both parties, but the Tribunal forms an opinion that consent was not sought in a sufficiently clear form.
48. The Tribunal decides that all works carried out by the tenants are repairs and not improvements. The tenants failed to prove to the Tribunal these repairs increased the rental value.
49. The tenants carried out some works which might have been the subject of an insurance claim, but these were not referred to the landlord, therefore preventing her from making a claim and recovering some of the cost.
50. The Tribunal allows some discount on the rent to account for the tenants supplying the curtains and white goods in the kitchen. This they assess at 5% of the rental value. This then reduces the rent to £1,187.50 per month

The Decision

51. The Tribunal's decision is the rent at which the property might reasonably be expected to be let on the open market is £1,187.50 per month.
52. This rent will take effect from 7th March 2019 being the date specified by the landlord in the notice of increase.

R T Athow FRICS MIRPM
Chairman

Dated 28th May 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.