



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

Case Reference : **CHI/45UF/MNR/2019/0026**

Property : **47 Steyning Crescent
Storrington
West Sussex
RH20 4QF**

Tenant : **Mr Joseph R J Beacher**

Landlord : **Hyde Housing Association Ltd**

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 18 February 2019 the Landlord served a notice under Section 13(2) of the Housing Act 1988 ('the Act') which proposed a new rent of £149.91 per week in place of the existing rent of £112.66 per week to take effect from 01 April 2019.
2. On 28 March 2019 the Tribunal received an application from the Tenant under Section 13(4) (a) of the Act referring the notice to a Tribunal.
3. Initially the copy of the Landlord's notice provided by the Tenant was defective in that no guidance notes were apparent. This defect was corrected and the Tribunal issued Directions dated 25 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 Mr Breacher, the Tenant. The Landlord had been informed of the inspection but did not attend or send a representative.
5. The property is a first floor purpose built flat in a block of four, built of brick and tile on a modern residential development. The accommodation is approached by a common entrance, staircase and landing and comprises: Hall; Living Room; Kitchen with sink, worktops and cupboards; 1 Bedroom; Bathroom with W.C. There are shared gardens and an allocated parking space.
6. The property has modern double glazed windows, gas-fired central heating and is in satisfactory order for its age. The kitchen and bathroom fittings are satisfactory. The Tenant has supplied white goods, floor coverings, curtains and curtain poles.

The Tenancy

7. The Tribunal was provided with a photocopy of a Tenancy Agreement dated 05 December 2001 for a weekly term from 10 December 2001 at a rent quoted of £59.00 per week.
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 be responsible for small repairs in the property including, amongst other things, interior decorations, fuses and light bulbs, window glass, curtain rails, locks and batteries in smoke detectors.
9. The Landlord has to keep the structure and exterior in repair, to maintain, the common areas 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').

The Parties' Representations

10. 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.
11. Mr Beacher included a statement with the application form and explained that he thought the rent increase excessive and the new charge is nearly as much as his weekly pension. In response to Directions he explained that he thought the service charge element in the rent was way out of line. From what his Landlord told him he expected that the changes in arrangements would make the service charges fairer. This is not the case. The Tenant quotes specific examples where costs have substantially increased.
12. The Landlord made a written statement dated 08 May and explained that the rental element of the total charge has in fact reduced by 1%. The increase entirely relates to the services element and a detailed service charge estimate is provided. The actual costs for 17/18 show a deficit of £788.60 and the appropriate proportion of this is included in the estimate for 17/18 on which the proposed charge is based.

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

13. 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.
14. There has been reference throughout this case to the increase in service charge costs. The Tribunal has jurisdiction to determine a rent in the market. Although the total charge made to the Tenant includes a services element the Tribunal does not have jurisdiction to interfere with this element of the rent.
15. 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. Neither party provided details of other lettings on which a market rent assessment could be based so we relied on our own knowledge of general rent levels for this type of property in the area.

16. The rentals for other assured tenancies would also include the benefit of the services included with the subject property so no further adjustment is required for this. Having regard to this we determined that the starting point for a purpose built flat should be £167.00 per week.
17. 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 decorations, and the landlord supplies white goods, carpets and curtains and other usual fittings.
18. In this case the Tenant supplies his own white goods floor coverings and curtains.
19. The Tribunal has therefore made the following deductions of £17.00 from the starting point of £167.00 per week. 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) Lack of floor coverings, white goods and fittings	£12.00
b) Increased tenant's decorating liability	£5.00
Adjusted rent	
	£150.00 per week

Determination

20. The Tribunal therefore decided that a rent of £150.00 per week 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. The rent proposed by the Landlord of £149.91 per week is sufficiently close to our determination not to require adjustment.
21. 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.
22. The Tribunal is unable to make any finding of hardship and confirms that the new rent of **£149.91 per week** is to take effect on 01 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.