



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

**Case Reference** : **CHI/29UH/MNR/2019/0018**

**Property** : **Flat 8, 7 Bazalgette Rise, Maidstone,  
Kent ME16 8FJ**

**Applicant** : **Emma Mitchell and James  
Harrison - Tenants**

**Representative** : **None**

**Respondent** : **Places for People Homes - Landlord**

**Representative** : **None**

**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** : **15<sup>th</sup> May 2019**

**Date of Decision** : **15<sup>th</sup> May 2019**

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**DECISION**

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## **Background**

1. On 5<sup>th</sup> March 2019 the tenants of the above property referred a notice of increase of rent served by the landlord under section 13 of the Housing Act 1988 to the Tribunal.
2. The landlord's notice, which proposed a rent of £739.00 per month inclusive of £116.06 Fixed Service Charge with effect from 1<sup>st</sup> April 2019, is dated 18<sup>th</sup> February 2019.
3. The tenancy commenced on 19<sup>th</sup> January 2017 at a rent of £680.35 inclusive of £89.10 Fixed Service Charge per month and is a statutory periodic tenancy. The current rent payable is £736.11 per month inclusive of £106.88 Fixed Service Charge with effect from 1<sup>st</sup> April 2018.
4. The Tribunal were provided with a copy of the tenancy agreement with the application.

## **Inspection**

5. The Tribunal inspected the property on 15<sup>th</sup> May 2019 in the presence of Ms Mitchell and it appeared to be in good condition for its age and character.
6. It is a self-contained purpose built second floor flat situated in a secondary residential area of Maidstone within easy reach of the town centre, trains, schools, etc. The flat forms part of a development of houses and two blocks of flats, a large part of which is let to social housing tenants. It has the benefit of a lift serving the various floors of the building.
7. The accommodation comprises hall, lounge/kitchen, bathroom/WC and 2 bedrooms. There is gas fired central heating.
8. All main services are connected.
9. No tenants' improvements had been made to the property.
10. The tenants have provided the fridge, washing machine, tumble dryer and microwave.
11. During the inspection the Tribunal noted the lift was not working.
12. The Tribunal also noted the main entrance door to the flat from the corridor had recently been attended to, but the work was incomplete.

## **Services**

13. In the letter dated 18<sup>th</sup> February 2019 which accompanied the Notice proposing a new rent, the landlord describes the services as:
  - (a) Administration Charge for Communal Services
  - (b) Communal Cleaning

- (c) Communal Furniture and Equipment
- (d) Responsive Repairs or Servicing Contracts
- (e) Fire
- (f) Repairs to Furniture and Equipment
- (g) Grounds Maintenance Compliance
- (h) Grounds Maintenance/Landscaping
- (i) Lift Breakdown Cover
- (j) Landscape Improvements
- (k) Communal Light and Power
- (l) Salt Provision
- (m) Tree Surveys and Associated Costs
- (n) Water Testing
- (o) Window Cleaning

the value of which they assess at £116.06 per month. This sum is included within their requested £739.00 per month.

### **Statements & Evidence**

14. The Tribunal issued Standard Directions on 26th March 2019. 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, include comparable evidence, and list any improvements they had made to the property.
15. The Tribunal received written representations from the tenants dated 15<sup>th</sup> April 2019 and these were copied to the Landlord.
16. No written representations were received from the landlord.
17. Neither party requested a Hearing.

### **The Applicants' Case**

18. The applicants were let the property on the understanding that the rent was "affordable", as advertised by Places for Peoples internet web site. On the web site it states "Our affordable rents are set at 80% of the market rent. They are regulated by the Government and will reduce by 1% per year. If there are any chargeable services provided, they are included within the overall rent".
19. They have already carried out some redecoration at their own expense.
20. They believe the current level of Service Charge does not reflect value for money as they are aware the Service Charge was set at £35 in 2002 and asked for this be considered in line with a rent reduction.
21. They gave comparable evidence of three flats they felt were similar which are on the market at the time of their submissions. The first was a 2 bed roomed flat overlooking the river Medway. It had night storage heating

and double glazing. It was on the market at £625 per month. The second was in Queens Road, Barming and was 2 bedrooms, bathroom/WC, kitchen and lounge. It had off road car parking facilities and was available at £725 per month. The third was a two bedroomed flat in Claire House currently available at £750 per month. All of these are in similar locations to their flat and the landlords pay the service charge.

## **The Respondent's Case**

22. The landlord made no representations.

## **The Law**

23. 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.

24. In so doing the Tribunal, as required by section 14(1), ignored the effect on the rental value of the property of any relevant tenants' improvements as defined in section 14(2) of that Act. The Tribunal cites the relevant section below:

25. *"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,....."*

26. On 1<sup>st</sup> 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

27. 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.
28. 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 the rent is found to be correspondingly lower.
29. The comparable evidence submitted by the tenants was of help to the Tribunal in assessing the market rent, but they were not evidence of actual lettings or rent reviews that had taken place.
30. The Tribunal is an expert Tribunal and has extensive general knowledge of market rents in the area. We concluded that an appropriate open market rent for the property with lift service, 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 £800.00 per month inclusive of fixed service charge.
31. However, the Tribunal noted at its inspection 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 £800.00 per month to allow for the differences between the condition considered usual for such a letting and the condition of the actual property.
32. The Tribunal takes into account several items to arrive at the rent that it decides is the market rent.
33. **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. In the absence of any agreement or evidence as to decorating liability, there is no implied obligation as to decorating on either landlord or tenant, although the tenant has a duty to use the premises in a tenant-like manner. This means that any decoration undertaken by the tenant is done because the tenant wants the property to look better.
34. Where the tenancy agreement is seen by the Tribunal and there is an obligation to keep the interior in good decorative condition without any

exception for fair wear and tear, this may make the terms of the tenancy more onerous and the Tribunal will consider whether this would have the effect of reducing the rental value. If the obligation includes the exception for fair wear and tear the Tribunal will not make any deduction.

35. Some Assured Tenancies impose on the tenants a greater responsibility for repairs and decorations. A prospective tenant faced with the additional cost of this increased responsibility would, from the Tribunal's knowledge and experience, make a reduced rental bid in the open market.

36. This tenancy agreement imposes such a burden at paragraph 3.14.

37. **Disrepair** - The landlord has a duty to keep the property in repair in accordance with Sections 11 to 16 of the Landlord & Tenant Act 1985. This is set out in Schedule 2 of the Tenancy Agreement along with other responsibilities.

38. The architraves around the entrance door to the flat had recently been attended to, but the repair was of a poor standard and the work has not been completed.

### 39. **Adjustments to the Valuation**

40. Whilst there is no laid down formula for arriving at deductions to be made towards these items, the Tribunal has used its own knowledge and experience and decided to make a deduction from the market rent of 5% for the tenants' obligations under paragraph 3.14 of the tenancy agreement and disrepair.

41. We therefore determine that the open market Rent is £760.00 per month inclusive of services but exclusive of council tax and water rates.

### **Services**

42. It is usual in the current rental market for rents to include services but to exclude council tax and utility bills. The tribunal's determination of the starting rent referred to in paragraph 31 is on this basis and the deductions referred to in paragraph 41 have been made to reflect the current condition of the property including any services provided.

43. Whilst the Tribunal is required to provide a sum for "services", as it is included in the overall rent assessed and therefore not payable in addition to that rent, its level may be considered somewhat academic. The services said to be provided are set out at paragraph 13 above. Whilst the reliability of the lift has been criticised clearly a range of services is provided. The Tribunal assesses the value of the fixed service charge to be £40.00 per month although it is again emphasised that this has no effect on the Fair Rent assessed.

## **The Decision**

44. The Tribunal's decision is the rent at which the property might reasonably be expected to be let on the open market is £760.00 per month inclusive of Fixed Service Charge.
45. This determination makes no allowance for the landlord's undertaking referred to in paragraph 18 above.
46. This rent will take effect from 1<sup>st</sup> April 2019 being the date specified by the landlord in the notice of increase.

R T Athow FRICS MIRPM  
Chairman

Dated 15<sup>th</sup> May 2019

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### 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.