



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

**Case Reference** : **CHI/21UG/MDR/2019/0004**

**Property** : **12 Frederick Thatcher Place, North  
Trade Road, Battle, East Sussex, TN33  
0HW**

**Applicant** : **Elizabeth Queenan - Tenant**

**Representative** : **None**

**Respondent** : **Ms Erica Wilkinson - Landlord**

**Representative** : **None**

**Type of Application** : **Housing Act 1988 – Section 22**

**Tribunal Members** : **R T Athow FRICS MIRPM – Chairman  
P A Gammon MBE BA (Lay Member)**

**Date of Inspection** : **10<sup>th</sup> June 2019**

**Date of Decision** : **10<sup>th</sup> June 2019**

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**DECISION**

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## **Background**

1. On 22<sup>nd</sup> March 2019 the tenant of the above property made an application under section 22 of the Housing Act 1988.
2. The tenancy commenced on 24<sup>th</sup> September 2018 at a rent of £1,400.00 per month and is a statutory periodic tenancy.
3. The Tribunal were provided with a copy of the tenancy agreement with the application.

## **Inspection**

4. The Tribunal inspected the property on 10<sup>th</sup> June 2019 in the presence of Ms Queenan and it appeared to be in fair condition for its age and character. No representative from the Landlord attended the inspection.
5. It is a terraced house situated about 1 mile from the centre of Battle. The property forms part of an attractive complex of dwellings which are listed buildings. It is understood that it was an hospital until it was converted into residential units some years ago. It is set in a courtyard development of about 15 units and there are further units to the rear, beyond which are extensive grounds and woodland which is for the use of all residents.
6. The accommodation is over two floors and comprises master bedroom with bathroom en-suite which has a bath, WC and wash basin. The second bedroom also has an en-suite with a shower, and a store-room off which has no natural light or ventilation. On the ground floor is a living room, a kitchen/diner and a small utility room. There is a small communal garden to the front and a small private garden to the rear accessed from a door in the living room. There is a timber summer house in the rear garden. At the far end of the rear garden is a footpath which leads to the large communal grounds and 2 car parking spaces.
7. All main services are connected. The property has full gas fired central heating, but the windows are single glazed.
8. There were no tenant's improvements to the property.

## **Statements & Evidence**

9. The Tribunal issued Standard Directions on 2<sup>nd</sup> April 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 tenant was required to state what she felt the rent should be, and include comparable evidence, and list any improvements she has made to the property.
10. The Tribunal received written representations from both parties.
11. The landlord requested a Hearing.

## **The Hearing**

The Tribunal notes that considerable distrust developed between the parties from the outset of the tenancy. Many points raised by them are outside the Tribunal's jurisdiction. This Decision only refers to the representations made by both parties which cover matters relevant to the application.

## **The Applicant's Case**

12. Ms Queenan had taken on the 12 month Assured Shorthold Tenancy on 24<sup>th</sup> September 2018. She was urgently in need of a home as she was moving out of her then current accommodation in the next few days. She had seen the property when it was fully furnished.
13. The property was not in a good internal decorative state at the start of the tenancy, so the landlord agreed to redecorate during the first week of occupancy. The kitchen worktop was varnished after about 2 months. Despite further requests, the redecoration has still not been carried out.
14. The interior was dirty, and carpets smelt of stale dog urine. There was mould on the window frames. She had to pay for the interior and the carpets to be professionally cleaned.
15. There was a leak in the bathroom and WC when she moved in and she could not use it until it was fixed 5 days later. She had to pay for alternative accommodation where she could wash and use the toilet for this period.
16. The gas boiler did not have a Gas Safety Certificate. After moving in the tenant felt unwell, and likewise her father when he visited for two weeks. Because of this she arranged, at her own expense, for a Registered Gas Safety Engineer to check the boiler. He found high levels of carbon monoxide in the house, above safe levels. The cause was found to be a broken flue tail pipe. She paid for the pipe to be repaired and the Gas Safety Test and subsequent issue of the Gas Safety Certificate. The engineer advised her to buy carbon monoxide alarms as there were none in the house.
17. The landlord has not provided an Energy Performance Certificate.
18. The landlord has also failed to protect the deposit with a government-backed Tenancy Deposit Scheme.
19. The smoke detectors were not functioning when she started the tenancy, both had been painted over, which was contrary to the instructions on them. Upon checking them, the batteries were in working order, but the detectors did not work. As a result, she has had to buy 2 replacements.
20. One window stay bar in the main bedroom was broken when she moved in. The landlord supplied a replacement one, but the tenant had to pay for it to be fitted. A further two stays have broken since she moved in and these windows cannot be secured open and are consequently unusable.

21. The front and rear doors and the bathroom to the main bedroom stick in the door jambs and are difficult to open and close. The landlord stated she would need planning permission to adjust them.
22. There were tacks on the bathroom floor left over from a previous flooring which has since been removed.
23. At the start of the tenancy there were 10 conifers in the rear garden which were around 40 ft high which made the rear garden dark. (These were removed in the week before the hearing).
24. The landlord had let the property with a timber building in the rear garden which was described as a home office. It was stated to be secure, heated and lockable. The tenant felt this was an asset that she could use as a study area. When she moved in she found the doors would not close properly and were not lockable due to defective hinges. There was no heating facility. The floor is rotting in one area. The step to the doors are rotting and close to collapse. The tenant had been told by a neighbour that the shed was erected without planning consent. The landlord refused to carry out any repairs.
25. The tenancy agreement states there is an inventory, but none had been provided in spite of the tenant requesting one from the landlord. The tenant then prepared her own, but the landlord has not accepted this.
26. The landlord's statement is incorrect. The service charge paid by the landlord to the management company is £100 per month and not £150.
27. Turning to the level of rent being charged, the tenant provided 3 comparables within Frederick Thatcher Place.
  - (a) 30 is similar in size and facilities. It is in good condition and well maintained. It has 2 bedrooms, 2 bathrooms and a private garden, and was let from 20<sup>th</sup> September 2017 at £900.00 per month.
  - (b) Another property in this Close (the tenant requested the Tribunal did not make reference to the full address of the property) has 2 bedrooms, 2 bathrooms and a shared garden (but no private garden). The rent has been increased to £800.00 per month from 5<sup>th</sup> June 2019.
  - (c) 24 is considerably larger with 3 double bedrooms, 3 bathrooms, 2 receptions, and a courtyard garden. It is newly decorated and the current rent is £1,225 per month from August 2018.
  - (d) Additionally, a further comparable was given. It is a house in central Battle which has 2 bedrooms and 2 bathrooms, garage and garden. It is let at £975.00 per month.
28. The tenant concluded that the rental value of the property in its current condition should not exceed £900 per month.

## **The Respondent's Case**

29. Ms Wilkinson joined the hearing by a telephone link and took an active part in the proceedings.
30. Before the letting, it was her home.
31. Some sections of the application were inaccurate. The property has 2 bathrooms. There is a garden studio with a built-in workstation and electricity.
32. The tenancy includes the use of the communal areas which include the meadow at the rear of the houses and the small area of woodland.
33. She stated there were many issues that had arisen from the outset of the tenancy and she has had to employ a solicitor to deal with many of these.
34. She has tried to gain access on 4 occasions, but was refused access, to enable a plumber to deal with items of repair but was not successful.
35. She accepted that she did not have a current Gas Safety Certificate at the start of the tenancy, but her plumber had been unable to gain access.
36. Over the past few years she has spent £45,000 on improvements including a new fitted kitchen and gas boiler at a cost of £31,000, 2 new bathrooms at a cost of £10,000, the studio room at a cost of £4,000 as well as new carpets to a large portion of the property.
37. In considering the comparable evidence submitted by Ms Queenan she felt that they were not similar.
  - (a) Number 12 is one of only three houses in the estate with private gardens.
  - (b) Only 2 have direct access to the communal meadow area.
  - (c) The other properties have not been modernised to the same high standard as the subject house. Some still have the original bathrooms from the conversion 20 years ago.
38. She had let the property between October 2016 and November 2017 through a reputable agent at a rent of £1,100 per month.
39. She did not agree with many of the Applicant's statements. She has tried to work with the tenant, but the tenant has not always been co-operative. For example, soon after moving in the washing machine failed. She offered to replace it with a washer/drier, but the tenant said she liked the original machine and asked if it could be repaired. The engineer found it was not possible to carry out any repairs and so it took 3 weeks from start to finish to replace the broken machine. Much of this time was due to the tenant's actions.
40. She was a good landlord. She has dealt with the shower leak in 2 days.

41. The tenant was happy to commence the tenancy at the rent of £1,400 per month; she did not have to take the property if she did not think it was a suitable property and level of rent.
42. Turning to the legal aspects of the application, she submitted that this property was unique with no other truly comparable properties in the locality. As a result, she felt the application fell at the first of the two points under Section 22(3)(a).
43. The Tribunal were concerned that she may not have been able to actively participate in the hearing, but she confirmed that she was happy with the ease of the process and clarity of the conference call.

### **The Law**

44. In accordance with the terms of section 22 of the 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.
45. The Tribunal cites the relevant section below:

#### ***22 Reference of excessive rents to appropriate tribunal.***

*(1) Subject to section 23 and subsection (2) below, the tenant under an assured shorthold tenancy may make an application in the prescribed form to the appropriate tribunal for a determination of the rent which, in the appropriate tribunal's opinion, the landlord might reasonably be expected to obtain under the assured shorthold tenancy.*

*(2) No application may be made under this section if—*

*(a) the rent payable under the tenancy is a rent previously determined under this section;*

*(aa) the tenancy is one to which section 19A above applies and more than six months have elapsed since the beginning of the tenancy or, in the case of a replacement tenancy, since the beginning of the original tenancy; or*

*(b) the tenancy is an assured shorthold tenancy falling within subsection (4) of section 20 above (and, accordingly, is one in respect of which notice need not have been served as mentioned in subsection (2) of that section).*

*(3) Where an application is made to the appropriate tribunal under subsection (1) above with respect to the rent under an assured shorthold tenancy, the appropriate tribunal shall not make such a determination as is referred to in that subsection unless they consider—*

*(a) that there is a sufficient number of similar dwelling-houses in the locality let on assured tenancies (whether shorthold or not); and*

*(b) that the rent payable under the assured shorthold tenancy in question is significantly higher than the rent which the landlord might*

*reasonably be expected to be able to obtain under the tenancy, having regard to the level of rents payable under the tenancies referred to in paragraph (a) above.*

*(4) Where, on an application under this section, the appropriate tribunal make a determination of a rent for an assured shorthold tenancy—*

*(a) the determination shall have effect from such date as the appropriate tribunal may direct, not being earlier than the date of the application;*

*(b) if, at any time on or after the determination takes effect, the rent which, apart from this paragraph, would be payable under the tenancy exceeds the rent so determined, the excess shall be irrecoverable from the tenant; and*

*(c) no notice may be served under section 13(2) above with respect to a tenancy of the dwelling-house in question until after the first anniversary of the date on which the determination takes effect.*

*(5) Subsections (4), (5) and (8) of section 14 above apply in relation to a determination of rent under this section as they apply in relation to a determination under that section and, accordingly, where subsection (5) of that section applies, any reference in subsection (4)(b) above to rent is a reference to rent exclusive of the amount attributable to rates.*

46. 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.
47. 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.

### **Consideration**

48. The first consideration to be addressed by the Tribunal was Section 22(3)(a) of the Act. The Tribunal must find there to be a sufficient number of similar dwelling houses in the locality. Law does not define “sufficient”. Similarly, there is no definition of “similar” or “locality”, but there is considerable case law to give guidance to the Tribunal.
49. In considering the locality the landlord considered this to be restricted to this development alone. The tenant only gave detailed comparable evidence of three properties on the estate, and one in the town.
50. The Tribunal, being an expert Tribunal finds that this is too restrictive in the general letting market and, because of its semi-rural setting it should consider other properties slightly further afield including the rural town of Battle. The local letting market is very buoyant with many properties available to let. The properties do not need to be identical. There is ample evidence of 2 bedroomed properties of all types, including properties of similar age and character to the subject house. the Tribunal finds this section

of the act to be satisfied and so, has gone on to consider the rental value of the house.

## **Valuation**

51. In the first instance and in accordance with Sections 14 and 22 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.
52. 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.
53. The Tribunal took note of the evidence submitted by both parties and also used its own general knowledge of rent levels in this locality. The Evidence given by Ms Queenan and taking into account the variances accommodation, garden arrangements and age of the rents given, the Tribunal found a pattern of rent levels appeared. The evidence given by Ms Wilkinson of the previous let of the property was also considered, but it did not compare with the evidence from Ms Queenan. It also appears to be higher than the norm, as does the current rent for the property. The Tribunal notes that at present there are several properties available in the area at £1,400 per month, but they all have considerably more living accommodation.
54. The Tribunal 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 £1,000.00 per month.
55. However, the Tribunal noted at the 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 the market rent to allow for the differences between the condition considered usual for such a letting and the condition of the actual property.
56. The Tribunal takes into account several items to arrive at the rent that it decides is the market rent. However, many of these are simple repairs which can be remedied quickly and at little cost to the landlord The Tribunal has therefore placed appropriate weighting to these items when considering the overall effect on the rental value.



- (a) There is no double glazing to the house. This causes condensation and heat loss.
  - (b) The interior decorations are poor with many areas of patched paintwork. Some wallpaper is peeling. Some woodwork is in need of painting.
  - (c) The main front door, the door to the rear garden and the door from the main bedroom to the en-suite bathroom require adjusting to make them close properly.
  - (d) The tenant has had to supply her own smoke detectors.
  - (e) The tenant has had to obtain a gas safety certificate at her own expense. This should have been in place before the property was let.
  - (f) Some kitchen lights are defective.
  - (g) The gas fire does not work.
  - (h) There are some stains on the carpets.
  - (i) The capping to the steps from the back door to the rear garden are loose and dangerous.
57. 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 of 5% from the market rent for these factors to arrive at its Decision.
58. The garden room is no more than that. It is of low quality construction and is in a poor state of repair. There are gaps between the timber walls, as a result it is draughty and not water-tight. The doors are in poor condition and the locking bolts are of low quality. The electricity supply is via an 'indoor extension lead' which feeds from a weatherproof outdoor socket. This type of connection does not appear to comply with the appropriate electrical regulations. There is no lighting point. The step in front of the doors is rotting and unsafe. Consequently, the Tribunal finds the garden room has no effect on the rental value.
59. When considering the date this decision shall take effect under Section 22(4), the Tribunal can backdate this to a time not before the date of the application. The application is dated 22<sup>nd</sup> March 2019. The Tribunal decides the decision will take effect from 24<sup>th</sup> March 2019 being the next rent date following the date of the application.

### **The Decision**

60. The Tribunal confirms that section 22(3)(b) is satisfied because the rent we have determined is substantially lower than the rent at which the property might reasonably be expected to be let on the open market.

61. Its decision is that the rent to be registered is £950.00 per month.

62. This rent will take effect from 24<sup>th</sup> March 2019.

R T Athow FRICS MIRPM  
Chairman

Dated 10<sup>th</sup> June 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.