



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

Case Reference : CHI/00MW/MNR/2019/0033

Property : Tideways, Bluett Avenue, Seaview, Isle of Wight PO34 5HE

Type of Application : Decision in relation to Housing Act 1988

Date of Decision : 18 June 2019

Reasons for the decision

Background

1. The Landlord served a notice under Section 13(2) of the Housing Act 1988 (the Act) which proposed a new rent of £1,200.00 per month in place of the existing rent of £800.00 per month to take effect from 1 May 2019.
2. On 16 April 2019 the Tribunal received an application from the Tenant under Section 13(4) (a) of the Act.
3. On 23 April 2019 the Tribunal made Directions requiring the landlord to send a statement to the tenant and to the Tribunal supporting the application for an increase in rent. The Tenant was 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. An oral hearing was requested.

Inspection

5. The Tribunal inspected the property as arranged in the company of Mr E D'Ray, Ms J Harris, Mr & Mrs N Gedling and Mr George Gedling. The property comprises a detached house situated on a plot with direct access to the beach and with views out to sea.
6. The accommodation comprises a covered porch with door to a reception hall off which is a shower room, a door to a store with covered corridor beyond, a kitchen with small utility area off, a rear living room with door to a flat roofed sun room with sliding door leading to the garden and beach beyond.
7. On the first floor are three double bedrooms, a single bedroom, a box room and bathroom. Each of the bedrooms has a wash hand basin, the first-floor bathroom has a panelled bath, corner basin and high-level WC with concealed cistern. The ground floor shower room has a walk-in shower, low level WC and glass wash hand basin.
8. Heating and hot water are provided by a recently installed Worcester boiler situated in the kitchen with adjoining partly built cupboard with unlagged copper tanks within.
9. The kitchen units and first floor bathroom fittings are of some age and would benefit from replacement.
10. The windows are a mixture of original single glazed casements with opening lights over and Upvc double glazed replacements.
11. We noted the redundant fitted gas fires, areas of rot to the timber window frames and cills together with signs of damp/water penetration throughout.
12. Externally we noted that the elevation facing Bluett Avenue needed renovation as did some of the rainwater goods.

The parties' representations

13. Only those matters relevant to the determination of the rent are recorded below.
14. Both parties submitted written representations giving details of how the tenancy arose and of the subsequent areas of disagreement between them. Also submitted was a letter from Seafields valuing the property at £1,200 per month in its existing condition, a letter from Wootton estate agents recommending a rental of £950 in existing condition and £1,100 in improved condition and from Tim Smart FRICS indicating a rent of

£1,500 when improved and that £1,200 was excessive in its existing condition.

Hearing

15. The hearing was attended by all of those present at the inspection. Mr D' Ray explained that he had carried out works at the property the materials for which had been funded by his landlords. He had redecorated the hallway, carried out replastering, painted the south facing windows and recovered the pool table. Mr D'Ray said the whole property is damp and in its current condition is unmarketable.
16. Mr D' Ray confirmed that his tenancy did not make him responsible for carrying out repairs but that he "wished to make himself comfortable". He also said that the property was "pretty fully furnished" when he entered into the tenancy.
17. Mr D'Ray said that the landlords should not benefit from work carried out by him to improve the property.
18. Mr George Gedling handed up a full copy of a tenancy Agreement dated 1 October 2013, plan of Seaview indicating the layout of the property when let together with letting details of a large property nearby at an asking rent of £1,395 per month and a small bungalow at £775 per month.
19. Mr Gedling confirmed that the valuation from Seafields was based on current values and an inspection made prior to the current letting. He explained that Tideways had been the family home and was a "serviceable house- far from perfect" He referred to work being required to address damp and that the front of the house needed work. It was a "lived in family home". He said that the white goods were the landlords but that the tenant Mr D'Ray had replaced the cooker. He disagreed with the valuation by Wootton who he said were not familiar with the local market.

The law

20.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) (i) 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

21. 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.
22. Section 14(2)(b) of the Act requires the Tribunal to disregard any improvements carried out by the tenant and the Tribunal is therefore assisted by the layout plan showing the configuration of the ground floor bathroom prior to its conversion to a shower room.
23. 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. In doing so it was assisted by the independent reports submitted by both parties. On behalf of the tenant the rent of the property if in improved condition is said to be either £1,100 or £1,500 per month and in existing condition either £950 or “excessive”. For the landlord Seafield’s letter states the rent to be £1,200 in its existing condition.
24. In support of the landlords’ position are the details of a small 2-bedroom bungalow nearby available at £775 per month and a large house in good condition but without sea views available at £1,395 per month.
25. Based on the evidence referred to above the Tribunal takes as a starting point a rent of £1,400 per month. This is however on the basis of a property in good condition with double glazing modern fitted kitchen and modern bathroom fittings, good carpets and curtains and free from damp and other defects. In arriving at the starting rent the Tribunal took account of the property’s prime position, having wide views out to sea and direct access to the beach.
26. The subject property is not however in the condition described. As readily acknowledged by the landlords and apparent at the inspection the property as let is largely unmodernised, retains some of the original single glazed and no doubt draughty windows. suffers from damp and a general lack of maintenance all of which are the landlord’s liability under the tenancy agreement.
27. A prospective tenant would not expect to pay the same rent for this property as a property in the modern letting condition described in paragraph 25 above. Doing the best it can the Tribunal makes a deduction of 25% 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 rent of £1,050 per month.

Determination

28. 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 £1,050.00 per month payable from 1 May 2019 being the date referred to in the Landlord's notice.

Mr D Banfield FRICS (Chairman)
Judge Tildesley O.B.E.

19 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.