



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

Case Reference : **CAM/34UF/MNR/2018/0017**

Property : **1 New Shifford Farm Cottage, New Shifford,
Witney, Oxfordshire OX29 7QP**

Applicant (Tenant) : **Ms Anne Hawkins**

**Respondent (Landlord):
Representatives** : **Mr James William Hook & Mrs Fiona Anne Hook
Adkins**

Type of Application : **Determination of a market rent under
Section 13 of the Housing Act 1988**

Tribunal Members : **Judge JR Morris
Mrs S Redmond BSc (Econ) MRICS**

Date of Decision : **9th July 2019**

DECISION

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DECISION

1. The Tribunal determined a rent of £725.00 per calendar month to take effect from 1st June 2018.

REASONS

THE PROPERTY

2. The Property is a two-storey semi-detached cottage rendered to all elevations under a pitched slate roof. Access is shared with the adjoining cottage. There is hardstanding for two cars to the front and a large garden to the side and rear. There are upvc doors and double-glazed windows. The rainwater goods are aluminium.

Accommodation

The Property comprises an entrance lobby, to one side of which is a modern shower room with wash hand basin and w.c. To the other side of the lobby is a modern fitted kitchen. There are two living rooms. From one living room rise stairs to the first floor where there are two bedrooms. There is a wood burner in one living room fitted by the Landlords replacing that of the Tenant.

Services

Space and water heating are by an oil-fired combi boiler. The Property has mains electricity and water. The foul drainage is shared with the adjoining cottage and is a Klargestep septic tank which is situated in the garden of the Property.

Furnishing

The Property is let unfurnished. There is an integral cooker and hob. All other white goods are provided by the Tenant.

Location

The Property is situated off a main road in a rural area about four miles from the nearest village and approximately 17 miles from Witney where there is a range of amenities.

THE TENANCY

3. On 18th July 2018 a First-tier Tribunal Property Chamber (Residential Property) decided that it did not have jurisdiction to hear the referral of the notice in this Application proposing a new rent of an assured periodic tenancy on the basis that the tenancy was not an assured tenancy. Following an appeal to the Upper Tribunal, on 9th May 2018, His Honour Judge Huskinson determined that the First-tier Tribunal was in error and the tenancy between the Applicant and the Respondent is an assured periodic tenancy which commenced in October 1995.

THE REFERRAL

4. The current rent is £200.00 per calendar month since October 1995. The Landlord by a notice in the prescribed form dated 23rd April 2018 proposed a new rent of £850.00 per calendar from 1st June 2018. On 15th May 2018 the Tenant referred the notice proposing a new rent to the Tribunal.
5. As stated above the Tribunal erroneously decided it did not have jurisdiction to make a determination and following the aforementioned appeal the matter has been remitted to the First-tier Tribunal to make a determination in respect of the referral of the notice proposing a new rent in respect of the assured periodic tenancy.
6. Under section 14(7) of the Housing Act 1988, unless the Landlord and Tenant otherwise agree, the rent determined shall take effect from 1st June 2018. However, if it appears that that would cause undue hardship to the Tenant, with effect from such later date as the Tribunal directs (not being later than the date the rent is determined).
7. On examining the representations submitted by both parties for the hearing on 18th July 2018, the Tribunal finds that they focused almost entirely on the type of tenancy. As the Tribunal's decision will now be exclusively on the issue of rent, the Parties were invited to submit fresh representations including comparables and also addressing the issue of hardship under section 14(7) mentioned above. These representations were to arrive at the Tribunal Office by 5.00 p.m. on 21st June 2019. Both parties made representations which are summarised below.
8. The Tribunal wished to inspect the Property again to refresh the memory of its members which it did on 8th July 2019. The Tribunal made its determination based on written representations alone because neither party requested an oral hearing.

THE LAW

9. By virtue of section 14 (1) Housing Act 1988 the Tribunal is to determine a rent at which the dwelling-house concerned might reasonably be expected to be let in the open market by a willing landlord under an assured periodic tenancy-
 - (a) 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 rent) are the same as those of the subject Tenancy

10. By virtue of section 14 (2) Housing Act 1988 in making a determination the Tribunal shall disregard –
 - (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 (as defined by section 14(3) Housing Act 1988) carried out by a tenant otherwise than as an obligation; and
 - (c) any reduction in the value of the dwelling-house due to the failure of the Tenant to comply with any terms of the subject Tenancy.

INSPECTION

11. The Tribunal inspected the Property in the presence of the Tenant and Mr Julian Sayers of Adkins, the Landlords' Managing Agent.

12. The Property has been refurbished by the Landlords largely due to damp problems.

13. The Property is situated off a busy road. Access to the Property is over the gravel driveway to 2 New Shifford Cottages, which is nearest the road. The Property has a large garden. A large part of the garden to the rear had been left fallow in anticipation of work by the Landlords following the mistaken removal of the existing garden by one of the Landlords' employees. The garden to the rear and side has a fence boundary to one side and a hedge and tree boundary to the other. The Klargestep septic tank is in the corner at the front and to the side of the Property. The property has mains water.

14. Externally the render to the house seemed to be sound and had been painted. The upvc windows and doors and aluminium rain water goods appeared to be in good condition. There has been a recurrence of damp in a specific part of the kitchen and living room but these appear to have been remedied.

15. Internally the shower room and kitchen are modern. There is also a new combination oil fired boiler which is situated in a separate housing to the side of the house. The house has also been re-wired. It was noted from the Tenant's representations that the Tenant had contributed to the fitting of the original heating and kitchen under the Previous Landlord, Mr Paul Luckett, however, these installations had now all been replaced by the Landlords in the course of the refurbishment.

16. The two living rooms are small and only have windows facing the rear. There are two double bedrooms with rear aspect only. The bathroom is downstairs and access to it is through a living room and kitchen. The Tribunal noted that no work

appeared to have been done to the walls of the internal staircase, some of which appeared uneven.

17. There is an integrated cooker in the kitchen otherwise white goods are not provided. Carpets have been provided by the landlord.

REPRESENTATIONS

Tenant's Representations

18. The Tenant made the following written representations:
- The garden had been landscaped and planted by the Tenant and was originally an enclosed empty plot. On 4th October 2016 the garden was destroyed by the Landlords' employee who had misunderstood the instructions he had been given.
 - In April 1996, the oil-fired heating system had been paid for by the Previous Landlord and installed by the Tenant and the Previous Landlord's employee.
 - In about 2010, the water supply from the well was replaced by a mains supply paid for by the Previous Landlord.
 - In about 2010, the drains of the Property and the adjoining cottage were separated and a Klargestep septic tank was installed by the Previous Landlord, apparently at a cost of £7,000.
 - Over the period of the Tenancy, minor repairs and maintenance work were organised by the tenant and the cost split between the Tenant and the Previous Landlord.
 - In July 2016 the Landlord replaced the windows and the shower cubicle and repaired a leak in the roof.
 - Between July and October 2017, the Property was re-wired and repairs carried out. During which time the Tenant lived in a mobile home and her furniture was stored in a portacabin.
19. The Tenant identified the following:
- a) *Security Access and Vulnerability*
 - Access to the Property is via the adjoining cottage's driveway
 - The entrance to the Property is on a busy main road with limited visibility and is difficult to enter and exit. Vehicles travel at between 60 and 70 mph and there have been several incidents of cars leaving the road.
 - Both the property and the adjoining cottage have been broken into and criminal activity of hare coursing and poaching takes place in the vicinity.
 - b) *Shared Drainage*
 - There are problems with access and responsibility regarding blockages and overflowing of the septic tank.
 - Telephone Communication and Mobile Signals
 - Telephone communication is poor due to the underground phone line as is the internet signal. The mobile phone signal is very variable.
 - c) *Bathroom*
 - The downstairs bathroom is inconvenient.
 - d) *Property Address*

- The Property address is often mistaken for the address of similar cottages at Old Shifford.
- e) Amenities
- There is a lack of amenities due to the rural location.
- f) Garden Management
- The Property has a large garden which is time consuming and expensive to maintain
- g) *Rent Proposal*
- The Landlord served an invalid notice of rent increase.
- h) *Comparable Properties*
- 2 New Shifford Cottage (the adjoining cottage) has a fair rent/Regulated Tenancy of £350.00 per calendar month.
 - 1 Old Shifford Cottages has a fair rent of £170.00 per week (£736.66 per calendar month). This is an Agricultural Tenancy. It has three bedrooms, an upstairs bathroom, central heating, an enclosed front and rear fair-sized garden, a garage and private drive with parking for three vehicles. It is in a secluded position off the main road and is in lovely condition and very spacious inside.
 - 2 Old Shifford Cottages is let at a rent of £650.00 per calendar month. This is an Assured Shorthold Tenancy. It has, like 1 Old Shifford Cottages, three bedrooms, an upstairs bathroom, central heating, an enclosed front and rear fair-sized garden, a garage and private drive with parking for three vehicles. It is in a secluded position off the main road and is in lovely condition and very spacious inside.
20. The Tenant submitted that the proposed rent increase on the Property should be in the region of £500.00 per calendar month.

Landlord's Representations

21. The Landlord's agent provided a schedule of the works and their cost that were carried out in 2017 and were completed on 20th October 2017. While the works were carried out the Tenant resided in a mobile home in the field adjoining the garden. The works were said to "modernise" the house and "improve" it.

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|-------------------------------------|-------------------|
| General building renovation | £17,388.01 |
| Installation of damp-proof course | £290.00 |
| New kitchen | £2,831.18 |
| New bathroom | £960.41 |
| New carpets throughout | £841.67 |
| Flooring in kitchen and shower room | £71.46 |
| Re-decoration throughout | £9,374.45 |
| New UPVC windows and doors | £602.50 |
| Central heating system | £1,840.00 |
| Internal doors | £367.50 |
| Electrical improvements | £6,302.60 |
| Aluminium guttering | £1,774.40 |
| Total | £42,644.18 |

22. The Landlord's Agent submitted rental values for six properties which it was said were comparable. All were described as being of two storeys, having one living room, two bedrooms, fitted kitchens, upstairs bathrooms, central heating, mains water and electricity and were let unfurnished in good decorative order. The location, rent and distinguishing features were as follows:
1. Church Street, Ducklington OX29 on the market at an asking rent of £850.00 per calendar month. Like the Property had a shared access and upvc windows and doors but unlike the Property is terraced, has no off-road parking, is said to be smaller, with smaller garden and is not as remote.
 2. Fulwell OX44 let at a rent of £850.00 per calendar month in November 2018. Like the Property it has off road parking but no shared access. Unlike the Property it is terraced, has timber windows and doors, is said to be smaller, with smaller garden and is not as remote.
 3. Pusey, Faringdon SN7 on the market at an asking rent of £900.00 per calendar month. Like the Property it has shared access and similar parking. Unlike the Property it has metal windows and timber door, is possibly larger but with a smaller garden.
 4. Fulwell OX44 let at a rent of £1,050.00 per calendar month in August 2018. Like the Property it has shared access and similar parking. Unlike the Property has timber windows and doors, is said to be smaller, with smaller garden and is not as remote.
 5. Longworth Road, OX13 on the market at an asking rent of £1,095.00 per calendar month. Like the Property it has gardens to front and side and has upvc windows and doors. Relatively few details but appears to be of similar size.
 6. Rack End, Standlake OX29 on the market at an asking rent of £1095.00 per calendar month. It is said to be slightly smaller, with smaller garden but is not as remote and is a thatched cottage.
23. Copies of the pages from the Internet site for Rightmove relating to the properties were provided.

Landlords' Agent's Reply re Tenant's Comparables

24. The Landlords' Agent said of the properties submitted by the Tenant as comparables that they were managed by the Agent. None of them were recent lettings or recent rent reviews and two of them are Rent Officer registered rents and therefore not suitable comparables for the current open market rent.

Tenant's Reply re Landlords' Agent's Comparables

25. The Tenant said that four of the six properties identified by the Landlord's Agent as being comparable are still on the market and available to rent and therefore, the rent at which they are actually let could be less than the asking rent.
26. The Tenant said:

1. The property in Ducklington is in a village with a school, pub, bus service and in close proximity to the town of Witney.

3. The property in Pusey, Faringdon (3.) is in South Oxfordshire which is a different area from the Property which is in West Oxfordshire. It also has a ground floor cloakroom.

2. & 4. The properties in Fulwell (2. & 4.) are in the Cotswolds in close proximity to the Soho Farmhouse Country House Hotel which is a particularly popular location and a completely different area.

5. The property in Longworth Road has already been reduced by Savills Lettings, has been on the market since 10 May 2019 and is still not let.

6. The property at Rack End Standlake (6.) is a Grade II Listed thatched cottage and is a different type of house to the Property.

DETERMINATION

27. The Tribunal considered the submissions and evidence of the parties.
28. A tribunal assesses the rent based on the condition of the Property as at the date of the inspection and so would take into account the effect (not the capital cost) all the works that had been undertaken by the Landlord have on the rental value.
29. The Tribunal noted that the Tenant had contributed to the heating, kitchen and repairs but these have now been replaced in the course of the work undertaken by the Landlords and therefore cannot be disregarded as tenant's improvements.
30. The Tribunal considered the Property to be in generally good condition. It found that the living rooms were small and that the downstairs bathroom was inconvenient. The Tribunal finds in the experience of its members that gardens often have a neutral effect on rent. In this instance the large garden could be attractive to some but seen as a liability to others. In the present case, any damage to the Tenant's plants and flower beds caused by the Landlords' employee cannot be reflected in the rent.
31. A tribunal determines a market rent for a property by reference to rental values for properties let on assured shorthold tenancies on similar terms to that of the subject property. It bases its determination on rental values generally and on the rental values for comparable properties in the locality in particular. It does not take into account the present rent and the period of time which that rent has been charged, nor does it take into account the percentage increase which the proposed rent represents to the existing rent. In addition, the legislation makes it clear that the tribunal cannot take into account the personal circumstances of either the landlord or the tenant in assessing the rent.
32. Both parties submitted rental values for properties that they considered comparable.
33. The Tribunal found that the rental values for 2, New Shifford Cottages and 1 Old Shifford Cottages which the Tenant submitted as being comparable are registered rents. Registered rents are not considered to be a satisfactorily comparable because

they are subject to variables which may not be apparent from the rent alone. For example, the rents may be capped under the Rent Acts (Maximum Fair Rent) Order 1999 and so may not relate to a market rent. In addition, any market rent may have been reduced due to the effects of scarcity under section 70 of the Rent Act 1977. That is to say that rents for similar dwelling houses in the locality may be substantially 'inflated' because demand for them exceeds supply. If a Rent Officer or tribunal find this to be so they must make a percentage reduction to the rent to reflect this 'inflation'. Even if these provisions did not apply, substantial details would need to be given regarding the property and its condition together with any deductions made, as well as the date of the assessment. None of this information was available.

34. The Tribunal did take into account the rental value of 2 Old Shifford Cottages in its assessment of the general level of rents in the area as a similar house let on an Assured Shorthold tenancy.
35. The Tribunal found from Rightmove that the asking rents for:
Church Street Ducklington had been reduced to £795.00 per calendar month on 27th June 2019,
Pusey, Faringdon had been reduced to £900.00 per calendar month on 2nd July 2019 and
Longworth Road had been reduced to £1,050.00 per calendar month on 2nd July 2019.
36. The Tribunal found that the properties at Fulwell, Pusey, Faringdon and Longworth Road were in a different area to the Property and that the Property at Rack End, Standlake is a different type of property.
37. The Tribunal considered that Church Road, Ducklington was the most similar but had certain advantages to a prospective tenant over the Property, notwithstanding that it lacked off road parking. Although said to be smaller it was better proportioned with a kitchen/diner and living room, it had the convenience of an upstairs bathroom and was in a village with the amenities Witney close by.
38. The Tribunal added to this the knowledge and experience of its members. In reaching its determination the Tribunal found that rental values in the past year had not altered significantly and that it was still appropriate to base the new rent on the current market notwithstanding the intervening year since the service of the Notice. The Tribunal determined that the market rent for the Property is £725.00 per calendar month.
39. The Upper Tribunal found that the original notice proposing a new rent served by the Landlord under the Housing Act 1988 was valid. Therefore, under section 14(7) of the Housing Act 1988, unless the Landlord and Tenant otherwise agree, the rent determined shall take effect from 1st June 2018. However, if it appears that that would cause undue hardship to the Tenant, with effect from such later date as the Tribunal directs (not being later than the date the rent is determined).
40. The parties addressed this provision. The Tenant stated that she was receiving universal credit as she was unable to work due to a hand injury. The amount she received each month was £517.82. She referred to the extent of the injury and that she was unable to use her hand for approximately six months. This affected her

earning ability as a self-employed gardener. The Landlords' Agent said that the Tenant had a partner living at the Property who is earning.

41. The Tribunal found that the Tenant should have been aware that the rent would increase from the 1st June 2018. At the hearing on 18th July 2018 the Tribunal stated that whether the tenancy came within the Rent (Agriculture) Act 1976 or the Housing Act 1988 the starting point for both is a market rent which the Tenant in her representations anticipated would be at least £500 per calendar month. She therefore should have set money aside to take account of any increase. The Tenant's injury and any resultant hardship is subsequent to and not related to the timing of any potential rent increase. Therefore, the Tribunal finds that the increase taking effect as from the 1st June 2018 would not cause the Tenant hardship within the meaning of section 14(7).
42. The Tribunal determined that the rental value for the Property to be **£725.00 per calendar month to take effect from 1st June 2018.**

Judge JR Morris

APPENDIX - RIGHTS OF APPEAL

1. If a party wishes to appeal the decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.