



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

Case Reference : **CHI/45UG/MNR/2019/0051**

Property : **17 West View Cottages, Lewes Road, Lindfield,
West Sussex RH16 2LJ**

Tenant : **Mr. Alan Jones**

Landlord : **BPT (Bradford Property Trust) Ltd.**

Represented by : **Grainger plc**

Type of Application : **Rent determination in accordance with
Section 14 Housing Act 1988 (as amended)**

Tribunal Members : **Mr. R. A. Wilkey FRICS (Surveyor/Chairman)
Mr. K. Ridgeway MRICS (Valuer Member)**

Date of Inspection : **Monday 16th September 2019
Hearing at Brighton Tribunal Centre, City
Gate House, 185 Dyke Road, Brighton BN3
1TL**

Date of Decision : **Monday 16th September 2019**

DECISION AND REASONS

Background

1. On 12th June 2019 the Landlord served a notice under Section 13(2) of the Housing Act 1988 (as amended) which proposed a new rent of £975 per month in place of the existing rent of £840.01 per month to take effect from 20th July 2019. No services are provided by the Landlord.
2. The Tribunal received an undated application (received at the Tribunal Office on 17th July 2019) from the Tenant under Section 13(4) (a) of the Housing Act 1988.
3. Directions for the conduct of the matter were issued by the Tribunal Office on 24th July 2019 and, amongst other things, the parties were advised that the determination will be made on the written representations unless a request for an oral hearing is made within seven days
4. As part of the administrative process, both parties are asked to complete a form stating whether or not they wish an oral hearing to be arranged. The landlord's agent made a request for an oral hearing by completing the form on 5th August 2019. The tenant completed the form on 31st July 2019 but made no such request.

Inspection

5. The Tribunal Members inspected the property on Monday, 16th September 2019 in the company of the tenant, Mr. Jones, and his brother. The landlord had advised the Tribunal that he would attend but was not present or represented
6. The property is an end of terrace two storey house with a single storey rear addition. It was probably built about 100 years ago. The building has frontage to a busy, local through traffic route and is otherwise part of a mixed, established predominantly residential area within reasonable reach of town centre shopping facilities and railway station. There is no garage or space but parking in this section of Lewes Road is currently unregulated.
7. The main and rear addition roofs are pitched and covered with slates. The elevations are brick and rendered. Most windows were replaced with uPVC

double glazed casements about 30 years ago but single glazed, timber casement windows remain in the rear bedroom and bathroom. Externally, the building appeared to be in generally satisfactory order. However, there are a number of outstanding maintenance items including flaking paint and defective woodwork to some windows, barge board and cills, cracks to the main rear elevation which appear to be long standing etc.

8. The accommodation comprises two bedrooms and bathroom/WC on the first floor. On the ground floor is a small entrance lobby leading to a front living room which opens to a dining area which leads to a small kitchen. There is a small front garden and a fairly secluded rear garden.
9. The Landlord rewired the house about two years ago and the bathroom fittings were installed in 1998. The gas fire in the dining area was installed by the landlord but is currently unsafe and cannot be used. There is no other provision for space heating. Hot water is provided by a wall mounted gas fired heater in the bathroom. The Tribunal was informed that it has been placed too close to the window which can thus not be opened, resulting in condensation and dampness in this room and the landing. The tenant installed the kitchen units and has provided white goods, floor coverings and curtains.

Tenancy and repairing obligations

10. Notwithstanding the Directions, neither party has provided a copy of the written tenancy agreement. The tenant's application states that the tenancy began on 25th December 2014 on the death of his mother.
11. As far as the apportionment of repairing and decorating obligations is concerned, the tenant's application states that the landlord is responsible for "repairs and external decoration" and the tenant for "internal decoration". The landlord confirmed this at the subsequent hearing and the tribunal is satisfied that this is the correct apportionment under the terms of the tenancy.
12. The Landlord will be subject to the implied obligations contained in the Landlord and Tenant Act 1985

Section 11(1) of the Act states:

- (a) To keep in repair the **structure and exterior** of the dwelling-house (including drains, gutters and external pipes); and
- (b) To keep in repair and proper working order the **installations** in the dwelling-house for the **supply of water, gas and electricity, and for sanitation**(including basins, sinks, baths and sanitary conveniences **but not** other fixtures, fittings and appliances for making use of the supply of water, gas or electricity), and
- (c) To keep in repair and proper working order the installations in the dwelling house for **space heating and heating water**.

Evidence and representations

Landlord

- 13. The Landlord's agent wrote a letter dated 5th August 2019 and attached a pro forma document entitled "Written representations". Attention is drawn to the observations below under item 14.

The above submission included summary details of three comparables as follows:

- (i) **Kempe Road, Lindfield, Haywards Heath** Two-bedroom semi-detached house letting agreed at £1,295 per calendar month
- (ii) **Brambling Way, Burgess Hill** Two-bedroom semi-detached house available to rent at £1,300 per calendar month (It is not stated whether or not a letting has been agreed at this figure)
- (iii) **Robertson Drive, Haywards Heath** Two-bedroom house available to rent at £1,250 per calendar month (It is not stated whether or not a letting has been agreed at this figure)

From the above, they conclude that the subject property in good condition

would command a rent of £1,300 pcm if fully modernised. Deductions are then made of £180 per calendar month in respect of no central heating, tenant responsible for white goods, curtains, blinds, internal decorations and floor coverings. This produces a rent of £1,120 per month

14. Several aspects of this document are confusing and inconsistent.
 - (a) There is reference to a “fair rent” and “fair rent applied - £225pw”. It is stated that the rent was “Last registered 29th April 2019” These terms are inconsistent with the basis of this tenancy.
 - (b) The rent prior to the application is stated to be £215 per week which is equivalent to £931.67 per month. This does not agree with the information provided elsewhere by the parties. The landlord’s notice states that the existing rent is £840.01 per month and the tenant states that it is £840 per month
 - (c) The adjusted rent after deductions is stated to be £1,120 per month but the rent applied for is £975 per month.

Tenant

15. The tenant has sent two letters and the following salient points are extracted:

Letter dated 16th August 2019

- (a) The tenant refers to various past and present errors in the landlord’s notices proposing the new rent. The latest proposal is £975 per calendar month. This represents an increase of £135 which is considered “way to [sic] excessive”
- (b) The tenant does not think that the examples given are comparable as they are all modern new builds with garage or off-road parking spaces
- (c) The subject property is over 100 years old and the only real modernisation was when the bathroom was put in the small bedroom 21 years ago and it was the first time he had hot running

water...

- (d) He refers to 16 West View Cottages next door and states that, until May this year, the rent was £975 per calendar month. The property has 3 bedrooms, extension on back for bathroom and larger kitchen which was new 2-3 years ago, central heating, double glazing, carpets
- (e) He thinks a fair rent would be £880 per calendar month

Undated letter

- (i) This letter makes further reference to various errors in landlord's notices
 - (ii) A recent inspection by a surveyor instructed by the landlord advised that the energy efficiency of the house was sub-standard
 - (iii) Even though the windows are double glazed they are over 30 years old, rubbers have shrunk and they let in draughts. The back bedroom and bathroom windows are still wooden ones. The bathroom one we have to have shut because the boiler was fitted to [sic] close to it and we have no extractor fan in there which leaves room and the walls of landing and stairs damp
 - (iv) Loft insulation needs replacing and both doors front and back let in draughts
16. The Tribunal has read all the submissions from the parties and the above is only intended to be a summary for completeness.

HEARING

17. A hearing took place at Brighton Tribunal Centre, City Gate House, 185 Dyke Road, Brighton commencing at 11:30 on the day of the inspection. The tenant, Mr. Jones, did not attend and Mr. Holmes attended on behalf of the Landlord.
18. The Tribunal began by outlining what had taken place at the inspection and what had been said by the tenant. Mr. Holmes had no observations.
19. In the absence of the tenant, Mr. Holmes replied to questions raised by the

Tribunal and confirmed the following:

1. The application requested a rent of £975 per calendar month
2. The present rent is £840 per calendar month
3. The rent is due on 20th of each month but the tenant chooses to pay on a different basis.
4. There is no written tenancy agreement
5. He agrees with the tenant's statement regarding the apportionment of responsibility for repairs and decorations.
6. The letting of the property next door (16 West View Cottages) had been referred to by the tenant in written submissions. During the inspection, the tenant advised that the property had been re-let in the open market in May 2019 at a rent of £995 per calendar month [This was subsequently confirmed by the Tribunal] Mr. Holmes noted the position but made no comment.

The law

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-
 - (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.

Consideration and Valuation

20. 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.
21. 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. The Tribunal carefully considered the information provided by the parties in correspondence and at the Hearing. It also relied on its own knowledge and experience of lettings of similar properties in the general area and determined that the starting point should be £1,050 per month.
22. However, this rent is on the basis of a letting in good, modernised condition. In this case, a deduction must be made to reflect the fact that the rental bid in present condition would differ from the rent if the house were in good, modernised condition. It is also necessary to adjust for the tenant's internal decorating covenant. In order to reflect all relevant considerations, the Tribunal has therefore made a deduction of £175 from the starting point of £1,050 per month to produce an adjusted rent of £875 per month. There is no specific formula for arriving at the amount that should be allocated to such items and the Tribunal has used its own knowledge and experience to arrive at the figures shown.
23. The calculation of the market rent is as follows:

Open market rent	£1,050
Less allowance for:	
Tenant's internal decorating liability	30.00
Lack of central heating	50.00
White goods provided by tenant	10.00
Dated bathroom fittings	15.00

Floor coverings and curtains provided by tenant	30.00
Obsolete windows	40.00
Total deductions	<u>175.00</u>
Net market rent	£875 pcm

Determination

25. The Tribunal therefore decided that the rent 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 is £875 per calendar month.
26. The Tribunal directed the new rent of is £875 per calendar month to take effect on 20th July 2019 being the date specified in the Landlord's notice.

Chairman: R. A. Wilkey

Dated: **Monday 16th September 2019**

Appeals

27. A person wishing to appeal this 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.
28. 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.
29. 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

the time limit, or not to allow the application for permission to appeal to proceed.

30. 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.
31. If the First-tier Tribunal refuses permission to appeal, in accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007, and Rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the Applicant/Respondent may make a further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission.