



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

**Case reference** : **FL/LON/99AX/MNR/2019/0076**

**Property** : **35 Chesham Rd, Kingston-upon-Thames KT1 3AG**

**Applicant** : **Ms Jane Sharp**

**Representative** : **In person**

**Respondents** : **Freshford properties Ltd**

**Representative** : **Sweetings Property Management,  
East Molesey, Surrey**

**Type of application** : **Sections 13 and 14 Housing Act  
1988**

**Tribunal members** : **Mr Charles Norman FRICS  
(Valuer Chairman)  
Mrs Jaqueline Hawkins**

**Date of Decision** : **14 November 2019**

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**REASONS**

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## **Background**

1. On 18 June 2019 the tenant of the above property referred to the Tribunal a notice of increase of rent served by the landlord under section 13 of the Housing Act 1988 (“the Act”).
2. The landlord’s notice, which proposed a rent of £427 per week is dated 30 May 2019. The notice proposed a starting date for the new rent of 24 June 2019. The rent passing was stated as being £218.50 per week.
3. The tenancy is an assured periodic tenancy. From the tenant’s application, the assured tenancy commenced in February 2019 by statutory succession following a Rent Act statutory tenancy held by the applicant’s late father. From representations made by the tenant, there was no written tenancy agreement when the original Rent Act tenancy was entered into.
4. Directions were issued on 20 June 2019, which set the matter down for determination by written representations, unless any party requested an oral hearing of which neither did. The landlord was directed to provide a written statement by 15 July 2019 and the tenant likewise by 29 July 2019. The landlord was permitted to provide a reply by 5 August 2019. The directions gave notice of inspection of the property by the Tribunal on 23 August 2019.
5. On 23 August 2019 the Tribunal determined that the market rent pursuant to the section 13 Notice should be £335 per week and Notice of that Decision was issued.
6. The landlord subsequently requested reasons.

## **The landlord’s Case**

7. The landlord’s agents provided written representations which may be summarised as follows. The property is an attractive three-bedroom two reception room detached Victorian villa in a sought after location of Kingston-upon-Thames. It is located approximately half a kilometre from Norbiton mainline station and about a mile from Kingston town centre. External redecoration was placed on hold by the landlord, following the death of Mr Sharp in early 2019. The landlord was only made aware of the property having a gas boiler subsequent to Mr Sharp’s death. The agents enclosed details of locally listed properties, three assured shorthold tenancies of similar local properties, and a “comparables sheet” (i.e. a summary of comparables). They submitted that the best comparable was the letting of 42 Cobham Rd which was due to commence on 27 August 2019 a monthly rent of £1,940. A redacted version of the tenancy agreement was supplied. That house was said to be very similar in size and condition to 35 Chesham Rd and in the adjacent street.

8. The comparables were in the range of £1800-£2300 per month together with one comparable at £1250 per month which the Tribunal disregarded as being out of line.

### **The Tenant's Case**

9. From the tenant's written representations dated 27 June 2019 as the tenant's case may be summarised as follows. The rent sought was excessive considering the external condition of the property which was the landlord's responsibility to maintain. The landlord failed to undertake external maintenance during the period he has owned it which is circa 20 years. The applicant's late father undertook all external maintenance of the property himself at his own expense. The applicant submitted that the following items of disrepair were present: rotting windows and sills, broken windows, rotting fascia board, unsafe roof finial, dislodged roof tiles, dislodged flashings, damaged paintwork/pointing on the porch roof, internal damp on the ground floor, no pointing a high level, external front boundary wall damaged, non-compliant electrical distribution board and gas safety inspection not carried out until April 2019. The tenant referred to a number of comparables in the range of £1500-£1695 per calendar month.

### **Inspection**

10. The tribunal inspected the property on 23 August 2019 shortly after the conclusion of the hearing in the presence of the tenant alone. The property comprises a three-bedroom Victorian detached house of brick walls under tiled roofs, with central heating. The ground floor comprises two reception rooms, a kitchen/diner and hallway. To the rear is a garden. This is mid-sized and mainly laid to lawn with a patio area. There is an external WC which is in use. The front reception room has evidence of damp staining of wallpaper. There are timber sash windows which do not open. The hallway contains a meter cupboard with an older style fuse board, fitted with mini circuit breakers. The tribunal noticed ceiling cracking to the hall. The kitchen/diner has fitted wall and floor units, a stainless steel drainer and some tiling. The floor is vinyl tiled. The kitchen includes a gas boiler which appeared to be up to 15 years old. Overall, the kitchen was tired and needed refitting. There is a rear reception room, medium sized with French doors to the rear garden. The first floor includes 2 double and 1 single bedrooms. There was evidence of damp ingress to the rear ceiling. The tribunal noted timber framed louvre windows with some cracked glass. The front bedroom, a double, has 2 replacement louvre windows and an original built in wardrobe. The bathroom comprises bath with mixer taps, a Triton electric shower, low level WC and wash hand basin. There is full tiling. The fittings appeared to be circa 25 years old. The exterior of the property appeared tired.

## The law

11. The law as to the Tribunal's approach is given at section 14 of the Act which insofar as relevant is as follows:

(1) Where, under subsection (4)(a) of section 13 above, a tenant refers to a [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;

(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 to 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.

(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; [...].

## **Findings**

12. The effect of the Housing Act 1988 is that tenants' improvements are only to be disregarded if they meet the conditions set out at section 14(2) and (3) (see above). In particular, they must be carried out within the duration of an assured tenancy. Improvements carried out during a previous Rent Act tenancy cannot be disregarded when assessing rental value in respect of an assured tenancy. The practical effect of this in the present case is that only improvements carried out since February 2019 fall to be disregarded. The Tribunal did not identify any works in that category.
13. In terms of rental value, the tribunal preferred the recent letting of 42 Cobham Road to the other comparables. This was physically very close to the subject property. The Tribunal did not find the tenant's comparables to be helpful. Canbury Park was a mid-terrace house clearly much smaller than the subject property and less valuable; Villiers Road was in a somewhat different location. Melrose Gardens was a terraced inter-war house. The property in Clifton Rd described as 3 bedroom detached at £1500 per month appeared out of line to the tribunal.
14. As to 42 Cobham Road, extracts of a tenancy agreement were provided confirming the rent and the tenancy commencement date of 27 August 2019. The Tribunal noted from its external view that this being Edwardian was more modern than the subject property but was also semi-detached. The Tribunal considered that these advantages and disadvantages balanced out and that the starting point should be £1,940 per calendar month for the subject property, had it been available for letting in a condition considered usual for a modern letting.
15. However, the tribunal considered that the condition was poorer than that considered usual for a modern letting. The following factors required adjustment: the poor kitchen, older bathroom/outside WC, damp, ceiling cracking and poor windows. The Tribunal considered that these factors required an adjustment of 25% or £487.50 per month, leaving an adjusted monthly rent of £1,452.50. This equated to £335.19 per week, say £335 per week.

Charles Norman FRICS  
Valuer Chairman

## **ANNEX - RIGHTS OF APPEAL**

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.
- If a party wishes to appeal against this 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.
- 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.
- 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.
- 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.