



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

Case reference : **FL/LON/00AH/MNR/2019/0079**

Property : **61 Richmond Road, Thornton
Heath, Surrey CR7 7QF**

Applicant : **Ms S Mustafa**

Representative : **Ms McCauley-Slowe, Solicitor, of
McCauley-Slowe Solicitors,
Streatham SW16 (acting pro bono)**

Respondents : **KSM Properties Ltd**

Representative : **Kilostate Estate Agents (written
representations only)**

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**

Background

1. On 21 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 £300 per week is dated 30 May 2019. The notice proposed a starting date for the new rent of 8 July 2019. The rent passing was stated as being £282.70 per week.
3. The tenancy is an assured periodic tenancy. From the tenant’s application, the assured tenancy commenced in July 1992. An undated licence agreement made between a Mr KS Mohindra and the tenant was provided to the tribunal, together with a tenancy agreement dated 17 December 2002 also between the same parties.
4. Directions were issued on 26 June 2019, which set the matter down for determination by written representations. The landlord was directed to provide a written statement by 22 July 2019 and the tenant likewise by 5 August 2019. The landlord was permitted to provide a reply by 12 August 2019. The directions gave notice of inspection of the property by the tribunal on 23 August 2019. Subsequent to the directions, the tenant requested an oral hearing. This took place on 23 August 2019 (see below).
5. On 23 August 2019 the Tribunal determined that the market rent pursuant to the section 13 Notice should be £268 per week and Notice of that Decision was issued.
6. A previous section 13 notice had been referred to the tribunal in April 2014 and the tribunal had been supplied with a copy of the that decision which included reasons.

Hearing

7. The hearing took place at the Tribunal’s hearing rooms on 23 August 2019. The applicant Ms Mustafa attended and was represented by Ms McCauley-Slowe, Solicitor, acting on a pro bono basis. The tribunal wishes to thank her for acting in this way and assisting the tribunal. The respondent landlord produced written representations but did not appear and was not represented at the hearing. The tenant requested reasons at the conclusion of the hearing.

The landlord’s Case

8. The Landlord’s case was set out in a letter dated 9 July 2019 from its agents, Kilostate Estate Agents who have offices in Norbury and South Norwood. The letter attached what were described as details of similar properties on the market in the same area. Five of these properties had

an asking rent of £1,550 per calendar month and one £1,700 per calendar month. In addition, the landlord made the following points, (i) any maintenance issues and repairs reported by the tenant have been dealt with by the landlord and (ii) the rent increase requested was well below the current market rental according to the location and size of the property (three-bedroomed house). Accordingly, the landlord's request for the rent to be increased to £300 per week was "not unreasonable".

The Tenant's Case

9. From the tenant's written representations dated 22 July 2019, as expanded upon by Ms McCauley-Slowe at the hearing, the tenant's case may be summarised as follows. When the assured tenancy commenced in 1992 the property was in complete disrepair and uninhabitable. During the past 27 years the tenant has carried out a complete refurbishment all at our own expense. The proposed rent increase is not justified as the landlord's comparables are not similar. Some are detached or semi-detached and include off street parking and a conservatory. There is no off street parking at the property and parking is very difficult. The previous rent increase in January 2018 to £282.70 per week went unchallenged only as a result of the tenant's ill health and other hardships the tenant was then suffering. In the past, increases have equated to between 1 and 2% but the proposed increase is much higher. Not all works requested by the tenant had been dealt with appropriately. Since the tenancy commenced the tenant had carried out the following works:

- Replaced windows in the rear elevation and the back door
- replaced all doors within the property
- constructed door frames and skirtings
- re-plastered the property
- installed new ceilings in bathroom and kitchen
- installed a new bathroom suite
- installed a new fitted kitchen
- fitted wooden floors throughout the hallway dining room and for other rooms
- installed new double radiators in dining room and kitchen
- installed garden fence in the rear garden
- installed a new boundary fence to the front of the house

The tenant did not refer to any comparables.

Inspection

10. The tribunal inspected the property on 23 August 2019 shortly after the hearing. The property comprises a three-bedroom Edwardian mid-terraced house, of brick under tiled roofs. It is set back from the road by a small front garden. Internally the rooms are large and there is a large

rear garden. The ground floor comprises a former scullery now improved as a fitted kitchen by the tenant and a rear room also fitted as a kitchen by the tenant. The rear kitchen includes a Potterton gas boiler. The Tribunal noted exposed pipework. There is a rear reception room with bay window which incorporates UPVC French doors to the rear garden. There is a large front lounge with three aluminium framed double glazing units. The tenant had replaced skirting in that room. At first floor, the bathroom had been replaced by the tenant about 15 years ago, but the landlord had subsequently replaced the WC. The rear bedroom was double-sized with replastered walls. The laminated floor and door were tenants' improvements. The first front bedroom was double in size two aluminium framed double glazed windows. The radiator was a tenants' improvement. The tenant had replaced the door and installed a timber flooring. The second front bedroom had aluminium framed windows and laminate floor. Richmond road is a residential street within walking distance of Thornton Heath Station. The street is reasonably wide but not tree lined.

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 deciding 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, always 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 landlord's comparables were provided in summary form only from what appeared to be an internet search. Nonetheless, the tribunal accepts as a starting point a rent of £1,550 per calendar month for the subject property having regard to the mid-terrace comparables provided. However, this would be on the basis of a modern letting as an assured shorthold tenancy reflecting the current conditions in the property.

13. Furthermore, the tenant has made substantial improvements to the property since 1992 which the tribunal has to disregard when assessing rent by virtue of section 14(2) and (3) of the Housing Act 1988 (see above). In addition, the tenant's obligations of repair are greater than those normally found in an assured shorthold tenancy, as there is an express tenants' repairing covenant in relation to the interior of the property under clause 4(5) of the 2002 tenancy agreement. In addition, the tenant has provided white goods which would normally be provided by the landlord in an assured shorthold tenancy. For these reasons, the tribunal considered that an adjustment of 25% was necessary giving an adjusted monthly rent of £1,162.50. This equates to £268.29 per week, say £268 per week.

14. Therefore, the tribunal determined that the new rent should be £268 per week with effect from 8 July 2019 being the commencement date specified in the section 13 notice.

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.