



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

Case reference : **KA/LON/00AG/MNR/2019/0125**

Property : **Flat 3, 78 Canfield Gardens
London NW6 3EE**

Applicant : **Miss Wendy Moses**

Representative : **In person**

Respondents : **Northumberland & Durham
Property Trust Ltd**

Representative : **Ms Jasmine Williamson,
Grainger plc**

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

Tribunal members : **Mr Charles Norman FRICS
(Valuer Chairman)
Mr L Packer**

Date of Decision : **22 November 2019**

Date of Reasons : **11 January 2020**

REASONS

Background

1. On 23 September 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 £2,100 per month is dated 13 September 2019. The notice proposed a starting date for the new rent of 1 November 2019. The rent passing was £2,050 per month.
3. The tenancy is an assured periodic tenancy. From the tenant’s application, the assured tenancy commenced on 8 August 2009. The tenant stated in her application to the Tribunal that there was no tenancy agreement.
4. Directions were issued on 24 September 2019. These set the matter down to be determined by written representations, unless a party requested a hearing, which neither did. The landlord was directed to send a written statement by 18 October 2019 including any comparables. The tenant was directed to respond by 1 November 2019 to include a statement as to what furnishings were provided, who is responsible for repairs and decoration, details of any improvements to the property carried out at the tenant’s own expense since the assured tenancy came into effect and any other reasons that the tenant wished the Tribunal to consider. The landlord was permitted to make a reply by 8 November 2019. Notice of inspection by the Tribunal was given, to take place on 22 November 2019, sometime after 10 am.
5. On 22 November 2019 the Tribunal determined that the market rent pursuant to the section 13 Notice was £2,060 per month and Notice of that Decision was issued. Subsequently, the landlord requested reasons.

The Landlord’s Case

6. The landlord’s submissions may be summarised as follows. The subject property is a two bedroom flat in a desirable area in South Hampstead. The property was served by Swiss Cottage underground station with good connections to Central London. West Hampstead had many amenities. The landlord referred to three comparables. A flat in Acol Road South Hampstead NW6 was recently let at £2,254 p.c.m. This comprised two bedrooms, reception room, ensuite bathroom and main bathroom. At Greencroft Gardens, South Hampstead a two bedroom flat with reception and bathroom had been let at £2,925 p.c.m. At Compayne Gardens South Hampstead, a two bedroom flat with reception room, bathroom and private courtyard had been let at £2,817 p.c.m.

The Tenant's case

7. The tenant's case may be summarised as follows. There was historic damage to a living room ceiling and walls caused by a roof leak. The tenant submitted photographs of these defects. The tenant submitted that this had been reported to the landlords. The roof repairs were finally completed in May 2016 but damage to the internal fabric of the flat had not been repaired. This included the effects of damp in the hallway and cracks and missing plaster under the window adjacent to the front door of the flat. There were also plaster cracks in the living room. The window frame in the smaller bedroom was rotten due to damp. The tenant had provided all bathroom appliances and tiling following a flood in 2009.
8. The tenant disagreed with the comparables put forward by the landlord. Acol Road was furnished. Greencroft Gardens at 1207 sq. ft. was said to be larger than the subject flat. This included a communal garden, wooden floors, stunning kitchen appliances, an ensuite bathroom plus a shower room, guest WC and private balcony. Compayne gardens was a brand-new development.
9. The tenant referred to three comparables. A property was available in Acol Road at £2,000 per calendar month with two bedrooms and two bathrooms furnished with a private garden. In Goldhurst Terrace a garden level flat was available with two bedrooms, a study and two bathrooms at £2,145 per calendar month. A second flat in Goldhurst terrace was a refurbished first floor flat with two bedrooms and two bathrooms with an asking rent of £1,863 per calendar month. The tenant stated that the agents (whom she had visited) did not necessarily expect to achieve those asking rents owing to the uncertainty of Brexit.
10. In addition, the tenant submitted that she was retired, not in good health and that she found it increasingly difficult to make ends meet.

Inspection

11. The property comprises the third floor flat in a large semi-detached Edwardian converted house. The property is set back from the road with a sizeable front garden. The flat comprises a large entrance hall, two large double bedrooms, very large living room, large dining room, sizeable bathroom and a smaller galley style kitchen. Windows are a mixture of double and single glazed sliding sash with timber frames. There is gas central heating. The kitchen was refitted by the landlord in 2014 with floor and wall cupboards and work surfaces. However, the white goods belong to the tenant. The bathroom was replaced by the tenant in 2010 and comprises a modern bath with mixer taps, wash hand basin and WC and is of good quality. There is wall and floor tiling.
12. The Tribunal noted significant disrepair in the flat. In the living room, the plaster cornice was coming away from the ceiling and there were

large visible plaster cracks in the wall. In the kitchen, the window did not open and there was evidence of past damp on the ceiling. The window frames in the front bedroom were in poor condition. A power socket was also coming away from the wall. In the dining room, a sash window had a broken cord. In the entrance hall, there was severe plaster damage. The Tribunal also noted plaster cracking at the bottom of the stairs within the flat, and loose wiring. It noted that trunking and cabling were surface mounted. The common parts were in good condition. The tenant has no access to the rear garden. Canfield Gardens is an attractive road in a high value area.

The law

13. 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; [...]

(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;

Findings

14. The Tribunal was struck by the large size of the subject property and for that reason found that the best comparable was the letting at Greencroft Gardens. The Tribunal rejected Compayne Gardens as this was a newly constructed property. It found the other comparables less helpful as in some cases the floor areas were not adequately stated whilst in others it was clear that the properties were significantly smaller. The Tribunal firstly adjusted Greencroft Gardens to reflect the additional bathroom, WC balcony and rear garden access at that property. It considered that this required an adjustment of £175 per month giving an adjusted rent of £2,750 per month had the subject property been in the condition usual for a current market letting. However, the subject property was not in that condition owing to the disrepair (see above) and the absence of landlords' white goods. The Tribunal was also required to disregard the effect of the tenants' improvements to the bathroom. The Tribunal considered that these factors required an adjustment of 25% or £687.50 per month. This left an adjusted rent of £2,062.50 which the Tribunal rounded to £2,060 per month.
15. The Tribunal therefore determined that the market rent was £2,060 with effect from 1 November 2019 being the commencement date for the new rent as specified in the landlords' notice.

Mr Charles Norman FRICS

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.