



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

**Case reference** : **KA/LON/00AP/MNR/2019/0078**

**Property** : **3 Briaris Close, London N17 0JB**

**Landlord** : **Petley Limited**

**Tenant** : **Mr Michael Fenton**

**Type of application** : **Market rent determination in accordance with section 14 of the Housing Act 1988**

**Tribunal members** : **Judge P. Korn (Chairman)  
Mr K Ridgeway MRICS**

**Date of decision** : **20<sup>th</sup> September 2019**

**Date of Reasons** : **24<sup>th</sup> October 2019**

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**REASONS FOR DECISION**

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## **Decision of the tribunal**

The FTT determines the rent to be £235.00 per week, with effect from 20<sup>th</sup> September 2019.

## **Background**

1. On 15<sup>th</sup> June 2019 the Tenant applied to the First-tier Tribunal (“FTT”) referring a notice proposing a new rent under his assured periodic tenancy of the Property.
2. The notice, which was served under section 13(2) of the Housing Act 1988 (“**the Act**”) and was dated 29<sup>th</sup> May 2019, proposed a rent of £325.00 per week with effect from 1<sup>st</sup> July 2019.
3. Both parties sent written representations to the FTT, and the Tenant requested an oral hearing.
4. The Tenant has an assured periodic tenancy of the Property, having succeeded to his mother’s tenancy following her passing in February 2018.

## **Hearing**

5. The Landlord was represented at the hearing by Ms Emma Loizou of Counsel. The Tenant represented himself and was also supported by a friend, Mr Robert Lindsay-Smith.
6. In written representations, the Tenant argued that the rent should reflect the poor condition of the Property.
7. At the hearing, attention was drawn to the comparable evidence provided by the parties and the comparable evidence sourced by the FTT and shown to the parties. The Tenant said that the flat used by him as comparable evidence had the benefit of central heating. He also said that his concerns about water leaks had been ignored by the Landlord until the issue of the rent increase had arisen and that there was a problem with parking on football match-days.
8. Ms Loizou submitted that the Tenant’s comparable evidence was not genuinely comparable as the flat in question was in a completely different location. By contrast, the Landlord’s comparable evidence related to properties in the same location. There were people willing to pay the current asking rents in Briars Close, which indicated that the properties in question were worth those rents.

9. As regards the condition of the Property, Ms Loizou argued that the poor condition should be ignored as the Landlord had offered to undertake repairs but the Tenant had failed to engage with the Landlord's managing agents to facilitate access. In response to a question from the FTT, she did not offer any specific legal authority to support this proposition.

### **Inspection**

10. The FTT inspected the Property on 20<sup>th</sup> September 2019 in the presence of both parties. The Property is a two-bedroom first floor flat, purpose built situated in a quiet cul-de-sac.
11. The FTT found the exterior to be in fair condition, but much of the interior was in poor condition. There were signs of damp in the main bedroom, the lounge and the bathroom. There was no central heating and the Property was unmodernised and largely unfurnished, although with uPVC windows and doors. The kitchen appliances have all been provided by the Tenant.
12. The kitchen leads on to a shared balcony but there is no access from the Property to – or right to use – the rear garden. There is no off-street parking.

### **The Law**

13. In accordance with the terms of section 14 of the Act, the FTT is required to determine the rent at which it considers the Property might reasonably be expected to let in the open market by a willing landlord under an assured tenancy on the same terms as the actual tenancy ignoring any increase in value attributable to tenant's improvements and any decrease in value due to the tenant's failure to comply with any terms of the tenancy. The FTT is also required to take into account (a) the condition of the Property, save to the extent that any disrepair is due to the Tenant's failure to comply with any terms of the tenancy and (b) the terms of the tenancy.

### **Valuation**

14. The starting point is to determine the rent which the Landlord could reasonably be expected to obtain for the Property in the open market in the condition considered usual for a modern letting ("**the initial valuation**"). When calculating the initial valuation, the FTT noted the comparable evidence provided by the parties, as well as the comparable evidence shown to the parties by the FTT. The FTT agrees with the Landlord that the Tenant's evidence is not genuinely comparable as (a) the other property is in a different area and (b) it is a one-bedroom flat, whereas 3 Briaris Close is a two-bedroom flat.

15. Having considered the comparable evidence provided together with its own general knowledge of market rental levels for comparable properties in the area of N17, the FTT arrived at an initial valuation of £325.00 per week.
16. Adjustments then needed to be made to this initial valuation to take into account (a) the actual condition of the Property and (b) the differences between the terms of this letting and the terms of a standard assured shorthold tenancy.
17. Applying these principles to the Property, the FTT does not accept the Landlord's submission that the poor condition of the Property should be disregarded on the ground that the Tenant did not facilitate access to carry out repairs. First of all, the evidence suggests that the Landlord only became interested relatively recently in carrying out repairs to the Property, and in any event it is unclear whether that interest also extended to modernising the Property. Secondly, there is no real evidence that the Tenant has actually been obstructive; it is true that recently the Tenant has not been particularly responsive to the Landlord, but this appears to have been borne out of general frustration plus perhaps some poor judgment in knowing how to get matters resolved and some suspicion as to the Landlord's motives for now being interested in addressing his concerns. Thirdly, the Landlord has not provided any legal authority as to why section 14 should be interpreted in this manner, and in particular the Landlord has not shown that the disrepair results from the Tenant's failure to comply with any terms of the tenancy.
18. Having concluded that there was no proper basis for disregarding the poor condition of the Property, the FTT considered that deductions were due to reflect the lack of central heating, the basic and dated kitchen, the fact that the kitchen appliances had been provided by the Tenant, the dated bathroom, poor provision of carpets and furnishings and the differences in terms and conditions compared to those of a standard assured shorthold tenancy. In the FTT's judgment it was appropriate to reflect these deficiencies in aggregate by a 37½% deduction, which reduced the rental figure from £325.00 per week to £235.00 per week.
19. Accordingly, the current market rent for the Property is £235.00 per week.

**Name:** Judge P Korn

**Date:** 24<sup>th</sup> October 2019