



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

Case Reference : **CAM/31UB/MNR/2019/0021**

Property : **The Coach House, Desford Road,
Thurlaston, Leicester LE9 7TE**

Applicant (Tenant) : **Ms Veronica Tinsley**

**Respondent (Landlord)
Agent** : **Maxi Property Management Ltd
Ward Surveyors Ltd**

Original Application : **Determination of a market rent under
Section 13 of the Housing Act 1988**

Application : **Review of Original Decision /Permission to
Appeal**

Tribunal Members : **Judge JR Morris
Mrs M Hardman FRICS IRRV(Hons)**

**Date of Original Decision
& Hearing** : **16th December 2019**

Date of Application : **31st January 2020**

Date of Decision : **3rd February 2020**

DECISION

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DECISION

1. The Tribunal has decided not to review its Decision of 16th December 2019 and refuses permission to appeal to the Upper Tribunal because it is of the opinion that there is no realistic prospect of a successful appeal against its Decision.

REASONS

Original Application

2. The Applicant's Tenancy commenced as a monthly statutory assured tenancy that commenced in March 1993. As a Tenancy, not being for a fixed period of 7 years or more, s11 of the Landlord and Tenant Act 1985 applies in respect of the Landlord's liability for repairs.
3. The Landlord by a notice in the prescribed form dated 10th September 2019 proposed a new rent of £775.00 per calendar month to be effective from 1st November 2019 to replace the existing rent of £422.00 per calendar month. On 16th October 2019 the Tenant referred the Notice to the Tribunal. The referral was a determination following an inspection of the Property and an oral hearing.
4. The Respondent submitted that Coach Cottage, which was the house attached to the Property was the nearest comparable but was in better condition. It had been on the market for £730.00 per calendar month and a rent of £695.00 per calendar month had been agreed. It has the same form of heating and has a kitchen, living room cloakroom on the ground floor and two bedrooms (whereas the Property has three) and a bathroom on the first floor.
5. The Tribunal accepted the closest comparable was Coach Cottage. The Tribunal used the knowledge and experience of its members and found that if the Property were in the same condition as Coach Cottage then, allowing for the Property's larger size overall and it having three bedrooms it would achieve a rent of £825.00 per calendar month. However, the Tribunal found from its inspection and the written and oral representations that the Property is not in the same condition and made a deduction of £175.00 per calendar month. The Tribunal therefore determined that the market rent for the Property is £650.00 per calendar month to take effect from the 1st November 2019.
6. On 31st January 2020 the Applicant applied to the Tribunal to review its decision or to grant permission to appeal.

Grounds

7. The Applicant applied for the Tribunal to review or grant permission to appeal its decision on the following grounds:

Ground 1

8. The deduction of £175.00 from the market rent did not reflect:
(1) the poor condition of the Property;
(2) the cost of electricity to heat the Property and the hot water.

Ground 2

The next-door property (Coach Cottage) is not comparable to the Property and did not provide an appropriate basis for assessing a market rent.

Ground 1 (1) – Condition

9. In support of her contention that the deduction of £175.00 per calendar month did not reflect the poor condition of the Property, the Applicant drew attention to the following paragraphs of the Tribunal’s Reasons which she said did not adequately identify the problems (the Applicant’s comments are summarised):

Inspection

Paragraph 8

The windows at the rear are not in “good condition” and only 4 of the 5 can be opened.

The kitchen door although not rotten does not fit properly and is not protected by the porch which is in a dangerous condition and fills with water in bad weather.

Paragraph 11

Water seeps under the wall from the driveway.

The wooden panelling to the kitchen wall shows signs of damp in the corner adjacent the driveway.

Paragraph 13

The damp in the living room is so significant that the furniture has to be kept away from the wall to prevent damage.

Paragraph 17

The convector heaters do not keep the house warm and are very expensive.

Paragraph 19

The Tenant had removed the carpets in all three bedrooms and the bathroom and replaced them or had the floors sanded and varnished at her expense.

Tenant’s Representations

Paragraph 30

The porch is rotten and in a dangerous condition, the frame is a trip hazard and the glass panes are in danger of falling out. The sliding door had to be removed.

The septic tank needs emptying.

Landlord’s Representations

Paragraph 39

The beekeeper made it clear he would not be repairing the hole in the hall ceiling which has been there for 6 – 8 months with black dust coming from it.

Landlord’s Comparables

Paragraph 41

The Coach Cottage is not comparable to the Property because it has been completely renovated with an electric boiler and shower so hot water costs are less and it is let with carpets white goods and blinds.

10. In summary the Applicant did not consider that the Tribunal took sufficient note of the condition of the rear windows, the kitchen door, the dilapidated porch, the

damp and the lack of carpets, curtains and white goods. Although the latter had been provided when the Property was first let, they had since been replaced by the Applicant.

11. In addition, the Applicant said she had made improvements by drylining a bedroom, clearing the garden and laying new floor coverings which had not been taken into account.

Ground 1 (2) – Energy Costs

12. In support of her contention that the deduction of £175.00 did not reflect the cost of the electrical heating, the Applicant said that according to Ofgem the average dual fuel tariff as of April 2019 is £104.50 per month which is £1,254.00 per annum. The Applicant said that her bills were £3,000 per annum, which is nearly two thirds more, and this was keeping the convector heaters at a temperature of 12 to 14 degrees and with the radiators turned off in the bedroom. The high cost of the heating the space and water by electricity was exacerbated by the lack of insulation, poorly fitting back door, uncovered extractor fans and inefficient hot water system.

Ground 2 – Use of Coach Cottage as a comparable

13. The Applicant said that Coach Cottage is not a suitable comparable to the Property because it has been completely renovated with an electric boiler and shower so hot water costs are less and it is let with carpets white goods and blinds.

Decision

Ground 1 – Condition and Energy Costs

14. The Inspection section of the Reasons is a record of what the Tribunal saw on its inspection which is taken into account in assessing the rent, it is a summary and not a detailed survey.

Paragraph 8

The rear windows were described as being in “fair condition for their age” and the kitchen door was also described as being in “fair condition”.

Paragraph 11

The damp and water ingress in that corner of the kitchen is recorded.

Paragraph 13

The presence of damp in the living room is recorded.

Paragraph 17

The presence of the convector heaters is recorded.

Paragraph 19

The replacement of the floor coverings, curtains and white goods is recorded.

15. The Representation section of the Reasons is a summarised record of what the parties said in their oral and written statements of case.

Paragraph 30

The porch is recorded as being an outstanding repair item.

Paragraph 39

The Respondent's Representative states what she understands to be the position with regard to the repair. That the repair is outstanding is not in dispute.

Paragraph 41

This is considered under Ground 2.

16. The Tribunal took into account the condition and energy costs in its Determination as follows:

Paragraph 44 (a) and (b) refers to the damp, the heating and the lack of insulation and the contribution by the Applicant to the drylining in the bedroom.

Paragraph 44 (d) refers to the replacement of the carpets, curtains and white goods by the Applicant by assessing a rent as if the Property was let without these items.

Paragraph 44 (f) refers to the general structural condition of the Property mentioning a number of items including the making good to the hall ceiling and the rear windows. Although not mentioned specifically this included the porch and kitchen door.

17. The Tribunal has taken into account the Applicant's improvements of drylining and floorcoverings. The maintenance of a garden is a matter for a tenant and was disregarded.

Ground 2 - Use of Coach Cottage as a comparable

18. The way in which the comparable property is used when assessing the rent is set out in paragraphs 42 to 45 of the Tribunal's Determination.

Conclusion

19. The Tribunal considered all the evidence adduced and made its decision accordingly. The Tribunal has decided not to review its Decision of 16th December 2019 and refuses permission to appeal to the Upper Tribunal because it is of the opinion that there is no realistic prospect of a successful appeal against its Decision.

ANNEX - RIGHTS OF APPEAL

As the application for permission to appeal the decision is refused, an application for permission to appeal against that refusal may be made to the Upper Tribunal under the Tribunals, Courts and Enforcement Act 2007, the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and The Tribunal Procedure (Upper Tribunal)(Lands Chamber) Rules 2010. An application to the Upper Tribunal (Lands Chamber) for permission must be made within **14 days** of the date on which the First-tier Tribunal sent you the refusal of permission.