



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

Case Reference : **CHI/00LC/MNR/2019/0072**

Property : **17 Seaview Road, Gillingham, Kent
ME7 4NL**

Applicant : **Mr T & Mrs C Apcar - Tenant**

Representative : **Ms D Apcar**

Respondent : **Executors for Mrs S Quinn - Landlord**

Representative : **Mr Towers – Counsel instructed by
Boys & Maughan, Solicitors**

Type of Application : **Housing Act 1988 – Section 13
Appeal of Notice of Rent increase**

Tribunal Members : **R T Athow FRICS MIRPM – Chairman
P A Gammon MBE BA (Lay Member)**

Date of Inspection : **5th February 2020**

Date of Decision : **5th February 2020
Amended 24th February 2020**

DECISION

AMENDMENT

We exercise our powers under Rule 50 to correct the clerical mistake, accidental slip or omission at paragraph 34 of our Decision dated 5th February 2020. Our amendments are made in bold. We have corrected our original Decision because of a typographical error.

Signed: R T Athow FRICS MIRPM
Chairman

Dated: 24th February 2020

Background

1. On 8th December 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.
2. The landlord's notice, which proposed a rent of £850.00 per month with effect from 1st January 2020, is dated 6th November 2019.
3. The tenancy commenced on 28th August 1990 and is a statutory periodic tenancy. The current rent payable is £520.00 per month with effect from February 2017.
4. There is no tenancy agreement. The tenancy was created verbally by Mrs Quinn and the tenants.

Inspection

5. The Tribunal inspected the property on 5th February 2020 in the presence of the tenants and Mr Towers, the landlord's representative, and it appeared to be in poor condition for its age and character.
6. It is a mid-terrace house situated in a residential district close to the town centre. It has rendered & colourwashed elevations under a concrete tiled roof. Windows are of the Crittall style being metal framed and single glazed.
7. The accommodation comprises Hall, through lounge/diner, small kitchen, with door to bathroom/WC. From the kitchen there is a door to a uPVC porch at the rear of the property. On the First Floor are 3 bedrooms. There is a cellar accessed from the hall and the tenant has converted this into a bedroom. Although there are radiators in most rooms there is no working central heating system. Domestic hot water is supplied from a wall mounted gas boiler in the bathroom/WC which was supplied and fitted by the tenants at their own expense about 15 years ago. The non-functioning oil fired boiler is in the basement. There is a garage at the end of the rear garden accessed from Queens Road. There is a small forecourt and a small rear garden.
8. All main services are connected.

9. The tenants have carried out many repairs and improvements during their tenancy, including;
 - (a) the installation of new kitchen units, replacing the old sink unit and one base unit that was there when they took over the tenancy.
 - (b) replaced the wash basin & WC in the bathroom.
 - (c) Laid new laminate flooring in the lounge/diner and 3 bedrooms
 - (d) Replaced 2 broken window panes in the front windows
 - (e) Repaired the roof flashings when a water leak was found
 - (f) Converted the cellar into a liveable room
 - (g) Replaced front and rear exterior doors
 - (h) Replaced gas water heater
10. The tenants have provided all of the white goods in the kitchen as well as carpets and curtains.

Statements & Evidence

11. The Tribunal issued Standard Directions on 16th December. These gave 14 days for the Landlord to make a formal statement setting out the landlord's case and include comparable evidence. Within 28 days of the Directions the tenants were required to state what they felt the rent should be, and include comparable evidence, and list any improvements they have made to the property.
12. The Tribunal received written representations from both parties.
13. The tenants requested a hearing.

The Hearing

14. Present at the Hearing were Cynthia and Dawn Apcar and Mr Towers.

The Landlords Case

15. Mrs Quinn has died and Mr Towers understands the matter is being dealt with by her Executors. As a result they are seeking to bring the rent to a current market level.
16. It is accepted there is no tenancy agreement.
17. As far as the landlord understands the situation, the tenants are responsible for maintaining the whole of the property. It has been this way since the tenancy begun. It is they who have failed to maintain the property and allowed it to fall into disrepair.
18. Any works the tenants have carried out has been without written approval by the landlord.

19. Any works that have been undertaken by the tenants are repairs and not improvements.
20. The tenants have erected the rear porch without the landlord's approval.
21. It is accepted that there is no double glazing and some reduction in rental value is appropriate due to this.
22. It is accepted that there has been a certain degree of tenants' improvements due to the kitchen upgrade.
23. It is accepted that the lack of central heating will have an adverse effect on the rental value, but the tenants have reported the system was producing over-hot radiator temperatures.
24. The tenants' comparables do not have a garage and so some adjustment to allow for a garage must be made when assessing the rental value.
25. In respect of the current rental value of the property Mann Countrywide have inspected and assessed the rental value at £750-800 per month. Wards have valued it at £800-850 per month.

The Tenants' Case

26. When the tenancy commenced it was agreed verbally that the tenants could treat the property as their own home and carry out whatever works they wished to do.
27. Rent was paid monthly for many years by Mrs Aparcar meeting Mrs Quinn in the town to hand over the rent. At that time they would talk about the property and discuss any works that were needed, thus obtaining verbal consent to undertake them.
28. Mrs Quinn asked for the rent to be paid direct into her bank, but they still continued to discuss and agree works.
29. Upon moving in, the central heating was found to be uncontrollable as there was no thermostat or programmer, and then the oil tank in the rear garden developed a leak. This was reported to Mrs Quinn, but no repair was undertaken by her. The tenants became concerned about the pollution from the leaking oil and so drained the tank and moved it to the bottom of the garden.
30. Regarding the rent paid, Mrs Quinn was in the habit of reviewing the rent every year or two. Several letters giving notice of increase were enclosed in the bundle and the increase was in the region of £30 per review. Realising the rent paid was not a full market rent the tenants were happy with this arrangement and were happy to continue to carry out the general maintenance to the building at their own expense.

31. The first they knew of Mrs Quinn's demise was when a member of Mrs Quinn's family visited in April and informed them of the situation.
32. In August they were asked to sign an Assured Shorthold Tenancy Agreement, but upon taking advice they decided not to sign as they are Assured Tenants and therefore have security of tenure.
33. On 29th October they received a letter from Boys & Maughan informing that they would shortly be serving a notice to vacate the property. Along with that letter was another letter stating the rent would increase to £850.00 per month, but this was not in the appropriate form to be legal notice of increase. The notice was subsequently corrected and re-served.
34. The property is rated **G** under the EPC rating system. This is below the minimum level of rating for a property to be let legally on a new tenancy. Consequently, the landlord would not be allowed to re-let the property in its current condition. Because of this it is unlikely that the market rent would be anywhere near that quoted by the 2 agents as reported by the landlord. Both agents said during their inspections they would not consider placing a property in this condition on the market to let as it would be illegal.
35. The tenants felt the current rent was the correct level bearing in mind the state of the property and the works and improvements they have undertaken.
36. In respect of the rear porch, they had spoken to the landlord 5 to 6 years ago before carrying out the works and Mrs Quinn was happy for them to go ahead with the works. Planning consent was not required.

The Law

37. In accordance with the terms of section 14 Housing Act 1988 (The Act) the Tribunal proceeded to determine the rent at which it considered that the subject property might reasonably be expected to be let on the open market by a willing landlord under an assured tenancy exclusive of water rates and/or council tax.
38. In so doing the Tribunal, as required by section 14(1), ignored the effect on the rental value of the property of any relevant tenant's improvements as defined in section 14(2) of that Act. The Tribunal cites the relevant section below:
39. *"14.—(1) Where, under subsection (4)(a) of section 13 above, a tenant refers to a rent assessment committee a notice under subsection (2) of that section, the committee shall determine the rent at which, subject to subsections (2) and (4) below, the committee 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; and*
 - (d) *in respect of which the same notices, if any, have been given under any of Grounds 1 to 5 of Schedule 2 to this Act, as have been given (or have effect as if given) in relation to the tenancy to which the notice relates.*
- (2) *In making a determination under this section, there shall be disregarded—*
- (e) *.....*
 - (f) *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,.....”*

40. On 1st July 2013 the rent assessment committee became part of the First Tier Tribunal (Property Chamber) and all references in this decision refer to this Tribunal.

Valuation Considerations

41. In the first instance and in accordance with Section 14 of the Act (see above), the Tribunal determined what rent the landlord could reasonably be expected to obtain for the property in the open market if it were let today on an Assured Tenancy in the condition that is considered usual for such an open market letting exclusive of water rates and council tax.
42. The letting market has grown substantially in recent years and there is now ample evidence of open market rents for Assured Shorthold Tenancies. In the competitive market that now exists, such properties need to be in first class structural and decorative order and be equipped with all amenities such as full modern central heating, double glazing and other energy-saving facilities along with white goods, carpets and curtains to ensure the property attains its full rental income potential. Where such items and facilities are missing the Tribunal has noted that the rent is found to be correspondingly lower.
43. From the evidence submitted the Tribunal concluded that an appropriate open market rent for the property let in first class condition as outlined above on a modern open market letting of an Assured Shorthold Tenancy where the tenant has no liability to carry out repairs or decorations and the landlord supplies white goods, carpets and curtains would be £850.00 per month including the garage.
44. However, the Tribunal noted at its inspection and from the representations made the actual property is not in the condition considered usual for a modern letting at a market rent, and it was necessary to adjust that hypothetical rent of £850.00 per month to allow for the differences between

the condition considered usual for such a letting and the condition of the actual property.

45. The Tribunal takes into account several items to arrive at the rent that it decides is the market rent.
46. In a tenancy of this nature the tenant is not normally liable for internal decorations but should keep the flat in a tenant like manner. Neither should they be responsible for the upkeep of the structure.
47. **Tenants' Improvements** – Under Section 14(2)(f) of the Act, where improvements are made by the tenant the Tribunal must disregard these unless they are carried out under an obligation to the landlord.
48. The tenant has made improvements as listed above that will increase the rental value of the property and is therefore discounted accordingly.
49. **White Goods** – The term “white goods” is a shorthand term which has come into use over a period of years. The housing market has changed in the past decade with private landlords and corporate bodies entering the market and buying property in great numbers. As a result there has been a substantial increase in numbers of new and refurbished property coming onto the letting market. The older conditioned housing stock has tended to be at a lower standard of finish, and fittings were fewer and of a poorer quality. New and refurbished properties tend to have at least a built-in hob, oven, and fridge, and sometimes has additional items such as a freezer and dishwasher. These items have come together to be known as “white goods”, and in this area have become the norm to be included when new tenancies were entered into, and consequently set the standard for Open Market Value.
50. **Carpets and Curtains** - New and refurbished properties tend to have fitted carpets or laminate flooring included. This means that the new properties were more desirable to new tenants and the older properties are required to raise their standards to compete on an even playing field. If properties do not have these facilities the rental value will naturally be lower and the property more difficult to let.
51. Where these do not exist the incoming tenant will need to buy any white goods, carpets and curtains that are not supplied by the landlord, hence there is a cost element for the tenants to consider. This will reflect in the rent they would be prepared to pay and the Tribunal reflects this in its valuation, with deductions made based upon their own knowledge and experience.
52. In this case deductions need to be made to reflect the lack of white goods, carpets and curtains which have been supplied by the tenant.
53. **Central Heating/Double Glazing/Insulation** – It is considered essential that all homes have central heating of some form and that the property should also go some way to meet the modern requirements for energy conservation. Failure to have these facilities will result in the property being difficult to maintain an even temperature to comply with modern

living standards. The normal form of central heating will usually be from a 'wet radiator' type of system with a central heating source such as a gas or oil fired boiler. Where this is not the case, the Tribunal has from its own knowledge and experience noted that rents achieved are less. Where these facilities are not provided the rent is considerably less than would otherwise be the case.

54. In this instance there is no central heating system. The single glazed windows are of the Crittall design – metal casement windows which are in poor condition. These are notoriously draughty and create additional condensation.

55. **Disrepair** - The landlord has a duty to keep the property in repair in accordance with Sections 11 to 16 of the Landlord & Tenant Act 1985. It is not possible to opt out of this responsibility, unless agreed in writing with the tenant. Whilst the tenants have undertaken a lot of the general day to day repairs and maintenance, the landlord retains a liability to keep the building in a good state of repair.

Valuation

56. Whilst there is no laid down formula for arriving at deductions to be made towards these items, the Tribunal has used its own knowledge and experience and decided that, when combined, they have a substantial effect on the rental value of the property. In this instance it is felt appropriate to make a deduction of 25% from the market rent.

Market Rent				£850.00	
less deductions		25%	£212.50		
Net Market Rent				<u>£637.50</u>	

The Decision

57. The Tribunal's decision is the rent at which the property might reasonably be expected to be let on the open market is £637.50 per month.

58. This rent will take effect from 1st January 2020 being the date specified by the landlord in the notice of increase.

R T Athow FRICS MIRPM
Chairman

Dated 5th February 2020

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber), which may be on a point of law only, must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.