



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

Case Reference : **CAM/11UE/MNR/2020/0007**

Property : **45 Thornbridge Road, Iver, Buckinghamshire
SL0 0QB**

Applicant (Tenant) : **Mrs Anita Waner**

Respondent (Landlord): **London & Quadrant Housing Trust**

Type of Application : **Determination of a reasonable rent under
Section 22 of the Housing Act 1988**

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

Date of Decision : **20th April 2020**

DECISION

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DECISION

The Tribunal makes no determination.

REASONS

THE PROPERTY

1. According to the Representations and Street and Satellite Views on the Internet, the Property is a semi-detached bungalow on an estate of 32 similar bungalows on Thornbridge Road and Heatherden Green, providing social housing for persons over 50 years of age. The bungalows were probably constructed in the 1950s and are of brick and part rendered elevations under a tile roof. They have upvc double glazed windows and upvc doors.
2. To the front the bungalows are set back from the road with a large lawned area between the bungalow and the footpath. The Property is accessed by its own path across the lawned area to the front door. To the rear of the Property there is a garden with two brick sheds. At the rear all the bungalows overlook a green.

3. The Property comprises a living room, kitchen, a bedroom and a bathroom. Space and water heating are by a gas central heating system. The Property has mains gas, electricity, water and drainage. The Property is let unfurnished.
4. The Property is situated in a residential area off the A412. Slough is about 5 miles away where there is a wide range of amenities.

THE TENANCY

5. The Tenant commenced her tenancy with the Landlord on 6th January 2015 at 14 Heathway, Iver Heath SLO 0BZ which was a one bedroom first floor flat with a rent of £128.00 per week. This original tenancy was for a 6-year Fixed Term as an Assured Shorthold Tenancy (Affordable Rent) with Probationary Period, copy provided.
6. On 20th February 2019 the Tenant was offered a Lifetime Tenancy which she accepted and this was confirmed by the Landlord by an email dated 26th April 2019. Between April and June 2019, the Tenant received details of her Lifetime Tenancy which she signed and by an email on 26th June 2019 the Landlord confirmed the grant of an Affordable Rent Assured Non-Shorthold Tenancy (Renewal) from 1st April 2019 at a weekly charge of £123.66 (rent of £123.14 plus £0.52 service charge per week). Copies of correspondence and tenancy provided.
7. Due to physical disabilities the Tenant subsequently placed a bid on the Property which is a bungalow and afforded easier access than the flat the Tenant had been occupying. The Tenancy commenced on 7th October 2019 and is described as an Affordable Rent Assured Tenancy with Starter Probationary Period. A copy of the Tenancy was provided. The Tenancy Agreement defines the Starter Tenancy as being an Assured Shorthold Tenancy for the first twelve months which is the Probationary Period which may be extended for a further six months when it will remain an Assured Shorthold Tenancy. After the Probationary Period the Tenancy will automatically become an Assured Non-Shorthold Periodic Tenancy.
8. The total weekly charges are £128.75 pe week. This includes services which are set out in a Schedule to the tenancy and identified as being a Management Fee - 9 and Grounds Maintenance. It is not clear what is meant by the number “9” after Management Fee and, notwithstanding Clause 2.3.2, the Particulars do not specify whether the service charge is fixed or variable, although it appears to be fixed, i.e. included in the rent, as the amount is not separately stated at Item 8 of the Particulars.

THE APPLICATION

9. The current rent is £128.75 per week.
10. A Notice of rent Increase was served on the Tenant dated 17th February 2020 informing the Tenant of an increase from 1st April 2020 to £132.23 per week. This notice is not the subject of this Application.
11. The Tenant applied under s 22 of the Housing Act 1988 on 11th February 2020 for a review of the rent. Under section 22 a Tenant may make an application to a tribunal within six months of the commencement of the tenancy for a determination of the rent which, in the tribunal’s opinion, the landlord might reasonably be expected to

obtain under an Assured Shorthold Tenancy. If the rent is significantly higher than the rent which the landlord might reasonably be expected to be able to obtain under the tenancy, the tribunal may make a determination as to what rent would be reasonable. The application was by way of written representations.

THE INSPECTION

12. On 17th February 2020 the Tribunal informed that parties that it intended inspecting the Property on 20th April 2020.
13. However, it was subsequently decided that no inspection should take place due to measures introduced to combat the spread of the Coronavirus (COVID-19) and to protect the parties and the public, particularly those at risk. The Procedural Judge wrote to the parties on 17th March 2020 saying:

Given the current situation and considering Public Health England's advice, the Procedural Judge has determined that the Tribunal's planned inspection of the Property on Monday 20th April 2020 will no longer take place.

If any party considers that an inspection is essential to deal with the case fairly and justly then that party must notify the Tribunal (and send a copy of such notification to the opposing party) within the next 10 days setting out reasons. The Judge will then determine whether or not the case should be stayed to allow an inspection to be carried out at a later date. Currently we are unable to say when this might be.

Otherwise the Judge will review the papers that have been submitted and decide whether a decision can be made on the basis of the papers – and possibly an external inspection which would not require any entry into your property.

You may wish to submit further evidence for the Tribunal to consider and which would have been apparent on inspection – this may include photographs. These must be sent by 3rd April 2020 both to the other party and to the Tribunal.

14. Neither party provided further evidence in response to this letter, the Tenant having already provided representations with supporting documentation on 2nd March 2020. The Tribunal therefore considered the matter on 20th April 2020.

THE LAW

15. By virtue of s 22 of the Housing Act 1988
 - (1) ...the tenant under an assured shorthold tenancy may make an application in the prescribed form to the appropriate tribunal for a determination of the rent which, in the committee's opinion, the landlord might reasonably be expected to obtain under the assured shorthold tenancy.
 - (3) Where an application is made to the appropriate tribunal under section (1) above with respect to a rent under an assured shorthold tenancy, the committee shall not make a determination as is referred to in that subsection unless they consider:

- (a) that there is a sufficient number of similar dwelling houses in the locality let on an assured tenancies (whether shorthold or not); and
- (b) that the rent payable under the assured shorthold in question is significantly higher than the rent which the landlord might reasonably be expected to be able to obtain under the tenancy, having regard to the level of rents payable under the tenancies referred to in paragraph a) above.

REPRESENTATIONS

16. The Tenant made representations which are précised and paraphrased as follows:
17. The past history of tenancies with the Landlord were detailed and which are set out above in "The Tenancy" section of these Reasons. In particular the Tenant was of the opinion that the Landlord, as a Social Housing Provider was not complying with the appropriate regulations by:
 - not giving details of the service charge;
 - applying any increase to the rent including the service charge;
 - the failure to recognise the past lifetime tenancy;
 - the resultant manner in which the increase has been calculated;
 - the general way in which the tenancy has been granted.
18. In addition, the Tenant stated that she had not been credited with over £800.00 which was due to her from her previous property and had been served with claims for rent arrears that she considered she did not owe. She had also been served with a Notice of Rent Increase under the Rent Review Clause 2.2.2 which she considered raised her rent unfairly.
19. With regard to the condition of the Property when she commenced occupation she said:
 - The Property had not been deep cleaned;
 - The extractor fans in the kitchen and bathroom do not work or operate effectively;
 - The grass had not been cut properly and the paths were covered in moss;
 - The hedge was overgrown and was ten feet high;
 - The walls and ceilings were stained with nicotine;
 - There was only one set of front door keys;
 - The radiators in the bathroom and bedroom do not work;
 - The gutters leak especially at the back door;
 - The paint is peeling off the radiators and skirting boards.
20. With regard to rents for comparable properties the Tenant said that all her neighbours are paying approximately £106.00 per week plus a service charge of £4.00 per week. Their service charge is itemised separately and any increase in rent is only applied to the rent not the service charge as well. She said that she had asked the Landlord about this and was told that it was not known why the charges were not separate and would investigate the matter but she had not heard anything further.
21. The Tenant concluded by saying that the rent she should be charged was a social rent. She referred to the Landlord's website which said that persons over 60 years of

age will get a lifetime periodic tenancy and that secure tenants will pay a registered rent or an affordable rent.

22. The Landlord made no representations.

DETERMINATION

Response to Tenant's Representations

23. The Agreement is for an initial period of 12 months from 7th October 2019 as an Assured Shorthold Tenancy (subject to a 6 month extension) and thereafter from month to month as an Assured Non-Shorthold Tenancy. This Application is made with reference to the amount of the initial rent under section 22 of the Housing Act 1988 and is made within the first 6 months of the tenancy.
24. The Tenant referred to the Landlord's rent increase during the first year. The Tenancy Agreement makes specific provision in clause 2.2.2 for a rent increase within the initial period and thereafter every 52 weeks. No other provision for the increase in rent is specified and therefore the Tribunal found that under section 13 of the Housing Act 1988 rent increases were within its jurisdiction. However, this application is specifically in relation to the initial rent and not the subsequent rent increase.
25. In response to the Tenant's other representations the Tribunal found as follows:
26. As the service charge is not itemised as such, the Tribunal assesses a rent as if the service charged was a fixed service charge within the rent. Therefore, in making its decision it will consider what is a reasonable rent for the Property taking into account the service charge for grounds maintenance.
27. The Tribunal bases its decision upon the market rent for the Property taking into account the terms of the tenancy which in this case is the "Affordable Rent Assured Tenancy with Starter Probationary Period", a copy of which has been provided. Only the current tenancy is considered and not the previous two tenancies.
28. The first tenancy was a 6 year fixed term assured shorthold tenancy. The second tenancy was a periodic assured non-shorthold tenancy. The third tenancy is at the present time an assured shorthold tenancy. All are tenancies under the Housing Act 1988 as amended. The only difference between the three tenancies is that the shorthold tenancy may be terminated under section 21 of the Housing Act 1988 basically just by giving two months' notice. This provision is not available in respect of a non-shorthold tenancy and therefore it has greater security of tenure.
29. So far as rent is concerned a market rent could have been charged for all three tenancies subject to any government limitation imposed on the Landlord by virtue of it being a Social Housing Provider. Tribunals have no jurisdiction with regard to compliance with the regulations applicable to Social Housing Providers.
30. The Tribunal's jurisdiction with regard to rent control in respect of these types of tenancy is to assess a reasonable rent, with regard to the initial rent under section 22 of the Housing Act 1988 and to set a market rent with regard to subsequent increases under sections 13 and 14 of the Housing Act 1988. The latter applies provided there is no provision for increase within the tenancy agreement such as

annual increases in line with the consumer price index or retail price index.

31. This Application is under section 22.
32. The Tenant referred to Secure Tenancies. These are governed by the Housing Act 1985. The Tenant does not have a Secure Tenancy. The Tenant also referred to Regulated Tenancies and registered rents. These are governed by the Rent Act 1977. The Tenant does not have a Regulated Tenancy.
33. The Tribunal makes its assessment as to whether the rent is reasonable based upon market rents for comparable properties. The Tenant refers to rents for comparable properties but all the comparable properties which the Tenant refers to in the area are let by a Social Housing Provider. These are unlikely to be market rents and therefore cannot be relied upon by the Tribunal.
34. The reasons for their not being market rents are referred to in the “Frequently asked questions” section attached to the Notice of Rent Increase under “Why is my rent different from my neighbours?”
35. Reasons for the difference may be due to:
 - different tenancies e.g. secure or regulated which are subject to different legislative provisions;
 - date when the tenancy started and the legislation or policy applicable at the time;
 - the classification of the rent e.g. whether it is affordable, subsidised, stepped or capped.
36. In making a rent assessment the Tribunal has regard to the condition of the Property as let. The extractor fans in the kitchen and bathroom and the radiators in the bathroom and bedroom would be expected to work efficiently also notwithstanding tenant’s obligation to maintain the garden and the internal decorations it would be expected that the Property was in generally good condition when let.
37. The issue as to whether the Landlord has failed to credit rent over paid under previous tenancies is not within the Tribunal’s jurisdiction.

Determination

38. The Tribunal is required under section 22 of the Housing Act 1988 to assess whether:

“there is a sufficient number of similar dwelling houses in the locality let on an assured tenancies (whether shorthold or not)”
39. Due to the very specific nature of the Property, i.e. a one bedroom semi-detached bungalow, the Tribunal considered properties in Buckinghamshire and adjacent parts of Bedfordshire and determined that there is a sufficient number of dwelling houses in the locality let on assured shorthold tenancies.
40. The Tribunal then went on to consider whether:

“the rent payable under the assured shorthold in question is significantly higher

than the rent which the landlord might reasonably be expected to be able to obtain under the tenancy, having regard to the level of rents payable...”

41. The reasons for not considering the rental evidence adduced by the Tenant as reliable are given above and the Landlord did not submit evidence of market rental values of comparable properties.
42. The Tribunal found that similar properties were let at rents in the region of £150.00 per week to £250.00 per week. Therefore using the knowledge and experience of its members the Tribunal found that the rent payable under the assured shorthold in question is not significantly higher than the rent which the Landlord might reasonably be expected to be able to obtain under the tenancy, having regard to the level of rents payable. Therefore, the Tribunal makes no determination.

Judge JR Morris

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal 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.
2. 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.
3. 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.
4. 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.