



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

Case Reference	:	CHI/43UB/MNR/2020/0005
Property	:	3 Lavender Court, Molesham Way, West Molesey KT8 1NY
Type of Application	:	Decision in relation to Housing Act 1988
Tenant	:	Mr M Barnes
Landlord	:	Area Estates Ltd
Representative	:	Hamways Ltd
Date of Decision	:	13 May 2020

Reasons for the decision

Background

1. The Landlord served a notice under Section 13(2) of the Housing Act 1988 which proposed a new rent of £891.63 per month in place of the existing rent of £870.00 per month to take effect from 30 March 2020.
2. The tenancy is an assured periodic tenancy formed by succession on 31 December 2017.
3. On 19 February 2020 the Tribunal received an application from the Tenant under Section 13(4) (a) of the Housing Act 1988.
4. On 25 February 2020 the Tribunal made Directions requiring the Landlord to send a statement to the Tenant and to the Tribunal supporting the application for an increase in rent. The Tenant was also required to send a statement to the Landlord and to the Tribunal in support of her objection.
5. On 17 March 2020 the Tribunal office informed the parties that in view of the Governments advice with respect to the Covid 19 outbreak an

inspection would not take place. The parties were given the opportunity to provide supporting photographs of the property and if desired make representations to have the case stayed until an inspection was possible.

Information

6. The matter is dealt with as a paper determination without hearing. In the current circumstances it has not been possible to inspect the property and the Tribunal relies on submissions from the Landlord and Tenant in correspondence, publicly available housing data online and its own expert knowledge.
7. Tenant's submissions. Mr Barnes considers a fair market rent to be £870 pcm. He cites the age of the property, that the kitchen and bathroom are in need of replacement and had been condemned by an agent of Hamways, the Landlord's agent.
8. He states that there is ongoing dampness affecting all four properties in the block.
9. A set of photographs of the interior of the flat Mr Barnes sent to the Tribunal appears to show condensation damage, cracking and poor decoration, damaged tiling and dated kitchen and sanitary facilities.
10. In an email to the Tribunal of 24 March 2020 he states that "the cracks are always reappearing no matter how many times they have been filled and there has always been a problem with the block suffering with damp. The kitchen and bathroom are in need of modernizing, the tiled ceilings need to be replaced as they were put up years ago after complaints. They kept re-cracking, they have said they are a fire hazard and are supposed to have been replaced. After many years of going on about the damp and being listened to on deaf ears my father did everything in here as he couldn't get anywhere with Landlords and agent's so he just got on with repairs as he was in the building trade. There are other problems with taps and rubbers in windows letting in wind, water outside the flats builds up due to position of building being built on old pond".
11. He feels that the rent increase at this time is completely unwarranted and unfair.
12. He has been informed by the tenant that the rent of 4 Lavender Court is £875 per calendar month.
13. No furnishings are provided and he is responsible for internal decoration and Hamways are responsible for all repairs.
14. He comments that Hamways have failed to supply him with the tenancy agreement which is a succession tenancy from his late father. Despite requests he has received nothing to date.

15. All internal repairs have been undertaken by Mr Barnes' father through his tenancy 1963 to 2017.
16. Landlord's submissions. For the Landlord, Hamways, in a letter dated 12 March 2020, describe the property as a purpose-built two-bedroom flat in a block of four with the benefit of a shared garden and garage.
17. The Tenant occupies under regulated tenancy and it is assumed that Section 11 of the Landlord and Tenant Act 1985 repair obligations apply.
18. Property details are provided for lettings in the same block, Lavender Court, between May 2006 and September 2019. Each is a two-bedroomed flat on an assured shorthold tenancy, presented to the market in a modernised order, let with white goods and unfurnished and with modernised kitchens and bathrooms. Rents are per calendar month.
 - September 2019 £1175
 - February 2018 £1046.67p
 - September 2017 £1125
 - October 2016 £1147
 - May 2015 £1127
 - May 2010 £1000
 - May 2006 £1132
19. In submissions, Hamways state that having regard to allowances for the Tenant's improvements, condition and security provided by an assured tenancy, the proposed rate of £891.63p is below market rent, and is fair and reasonable.

The Law

20.S14 Determination of Rent by First-tier Tribunal

(1) Where, under subsection (4) (a) of section 13 above, a Tenant refers to a First-tier 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; 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-

- (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-*
was carried out otherwise than in pursuance of an obligation to his immediate Landlord, or
- (c) (i) 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; and*
- (d) any reduction in the value of the dwelling-house attributable to a failure by the Tenant to comply with any terms of the tenancy.*

(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; and*
- (c) that, on the coming to an end of an assured tenancy at any time during that period, the Tenant (or, in the case of joint Tenants, at least one of them) did not quit.*

(4) In this section "rent" does not include any service charge, within the meaning of section 18 of the Landlord and Tenant Act 1985, but, subject to that, includes any sums payable by the Tenant to the Landlord on account of the use of furniture, in respect of council tax or for any of the matters referred to in

subsection (1) (a) of that section, whether or not those sums are separate from the sums payable for the occupation.

Consideration and Determination

21. The Tribunal has considered the representations of both parties.
22. The Tribunal is required to determine the rent at which the subject property might reasonably be expected to be let in the open market by a willing Landlord under an assured tenancy. Whilst Hamways state that this is a regulated tenancy, that is not the case as it is subject to the Housing Act 1988 and not the Rent Act 1977.
23. The personal circumstances of the Tenant are not relevant to this issue.
24. In determining the appropriate rent, the Tribunal would disregard any improvements made under Mr Barnes' existing tenancy. In this case the improvements were carried out under the previous Fair Rent tenancy enjoyed by his father and as such no deductions can be made.
25. Hamways rely on the rents of similar properties in the same block, the most recent being let at £1175 per month and the Tribunal accepts that in good lettable condition the property would be likely to achieve a rent of £1175 per month.
26. For the property to achieve such a rent it would need to be in good condition throughout, free of damp and with a fitted kitchen with integral white goods, modern bathroom and WC. It would also be expected to have good quality floor coverings and curtains in good condition.
27. The property is not in the condition described above and a prospective Tenant would expect to pay a lower rent to reflect those differences. The Tribunal considers that the reduction in rent to reflect this would be of the order of around 25% to £881.25 per month, but say £880 per month.
- 28.** The Tribunal therefore determines that the rent payable from 30 March 2020 being the date stated in the notice is **£880 per month.**

W H Gater FRICS ACI Arb
Regional Surveyor
13 May 2020

PERMISSION TO APPEAL

1. A person wishing to appeal the decision to the Upper Tribunal (Lands Chamber) 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.