



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

Case reference : **CAM/22UL/MNR/2020/0011**

HMCTS code : **A:BTMMREMOTE**

Property : **Flat 26 Lime Court, Greensward Lane, Hockley, Essex SS5 5HB**

Applicant : **Terance Phillip Milner**

Respondent : **Notting Hill Genesis**

Representative : **Chris Milson**

Type of application : **Decision in relation to section 13 of the Housing Act 1988**

Tribunal member(s) : **Mary Hardman FRICS IRRV(Hons)
Judge David Wyatt**

Date of decision : **29 July 2020**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote audio hearing. The form of remote hearing was A:BTMMREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that we were referred to are in a bundle of 38 pages comprising submissions by both the landlord and the tenant which they had sent individually to the tribunal as requested. At the hearing it was noted that the tribunal did not have a copy of the Starter Tenancy Agreement Part 2: General terms and conditions which the Landlord supplied by e mail following the hearing.

Decision:

1. The Tribunal determined a rent of £93.00 per week to take effect from 6 April 2020. This included the rent, the Intensive Housing Management charge and the Specialist Housing Maintenance charge. The service charge of £36.89 together with the previous year balance adjustment of £10.00 were not the subject of this application.

Reasons

The Property

2. No inspection took 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.
3. The property is a studio flat on the first floor of a purpose-built development served by a lift.
4. The accommodation comprises a hallway, bedroom/living room, a kitchen and a bathroom/wc. The property has central heating and double glazing and is said by the tenant to be in excellent condition. There is off street parking and communal gardens

The Tenancy

5. The tenancy commenced as an assured shorthold tenancy on 25 August 2014 which then converted after twelve months to an assured non-shorthold tenancy. At the hearing the tribunal noted that they did not have Part 2 of the tenancy agreement – General terms and conditions. Mr Milson for the landlord agreed to supply a copy to both the tribunal and to the tenant following the hearing.

The Referral

6. The Landlord by a notice in the prescribed form dated 17 February 2020 proposed a new 'rent' of £120.34 per calendar week to be effective from 6 April 2020. On 20 March 2020 the tenant referred the Notice to the Tribunal.
7. The 'rent' referred to above comprises a Rent of £80.51, Intensive Housing Management charge of £9.36 and a Specialist Housing Maintenance charge of £3.58. There is also a variable service charge of £36.89 together with the previous year balance adjustment of £10.00. The service charge and service charge adjustment were not the subject of this application.
8. The tribunal has treated the Intensive Housing Management Charge and the Specialist Housing Maintenance Charge as rent, in accordance

with Section 14(4) of the Housing Act 1988 meaning that the proposed rent for the purposes of this application is £93.45 per month.

9. The Tribunal issued directions on 7 April 2020 informing the parties that they did not intend to inspect due to the current pandemic. It invited the parties to submit any further representations that they wished the tribunal to consider. Further representations were received from the tenant.

The Law

10. By virtue of section 14 (1) Housing Act 1988 the Tribunal is to determine a rent at which the dwelling-house concerned might reasonably be expected to be let in the open market by a willing landlord under an assured periodic tenancy-
 - (a) 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 rent) are the same as those of the subject tenancy
11. By virtue of section 14 (2) Housing Act 1988 in making a determination the Tribunal shall disregard –
 - (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 (as defined by section 14(3) Housing Act 1988) carried out by a tenant otherwise than as an obligation; and
 - (c) any reduction in the value of the dwelling-house due to the failure of the tenant to comply with any terms of the subject tenancy.

Representations

12. Written representations were provided by the landlord and the tenant. A telephone hearing was held which was attended by the tenant (Mr Milner) and Mr Milson represented the landlord.
13. The tenant explained that he was not querying the service charge and was prepared to accept the base rent of £80.31 providing that the increase from £78.39 the previous year was legal.
14. Mr Milson for the landlord explained that for several years legislation meant rents on social housing had fallen by 1% per annum. For 20/21 the government was allowing social housing providers to increase rents by no more than 2.7%.
15. The increase in base rent appears to be 2.45%.

16. Mr Milner stated that he was also not particularly concerned about the increase in the Intensive Housing Management Charge, given it had risen from £9.14 to £9.36. Mr Milson explained that this was a charge that the social housing regulations allowed them to make and which covered the extra management needed for sheltered or supported schemes.
17. However, Mr Milner was concerned at the imposition of the Specialist Housing Maintenance charge – referred to incorrectly in the notice as Specialist Housing Management - of £3.58. He did not understand what that was for.
18. Mr Milson explained that this was to meet the increased cost of providing specialist housing. He said that meetings were held prior to the introduction of this and that all residents affected were also written to. He agreed to provide the tribunal and Mr Milner with a copy of the letter and the booklet issued in January 2020 ‘Understanding your rent review’ which he did by e mail following the hearing.
19. The Specialist Housing Maintenance charge was explained in a letter (undated copy provided) which set out that the charge was to meet the increased costs of providing specialist housing and covered the additional costs of developing and delivering specialist housing.
20. On questioning by the tribunal Mr Milson stated that these charges were allowed for in the tenancy agreement – section 4 – 3.1-3.4 of the Part 2 General Terms and Conditions. These provisions of the tenancy agreement refer to service charges but, on the information provided by the parties, these additional housing management/maintenance charges are for the purposes of our determination treated as part of the proposed rent, as explained above. The notice period had been given and the consultation required by these provisions of the tenancy agreement had taken place.
21. Whilst no evidence of the actual notice to Mr Milner nor of the consultation was provided, Mr Milner did not deny that it had occurred.

Determination

22. The Tribunal determines a market rent for a property by reference to rental values generally and to the rental values for comparable properties in the locality in particular. It does not take into account the present rent and the period of time which that rent has been charged nor does it take into account the percentage increase which the proposed rent represents to the existing rent. In addition, the legislation makes it clear that the Tribunal cannot take into account the personal circumstances of either the landlord or the tenant.

23. The Tribunal assesses a rent for the Property as it is on the day of the hearing disregarding any improvements made by the tenant.
24. As neither the tenant nor the landlord produced letting details of any similar property, the Tribunal had to rely on their general knowledge and experience.
25. On this basis the Tribunal decision is that the rent at which the property might reasonably be expected to let in the open market is £93.00 per week. This excludes the service charge of £36.89 and any balancing from previous years accounts, which are not the subject of this application (they appear to have been agreed by the parties; if they have not, they could only be determined by the tribunal on a new application under section 27A of the Landlord and Tenant Act 1985).
26. This rent will take effect from 6 April 2020.

**Mary Hardman FRICS IRRV(Hons)
Regional Surveyor**

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

