



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

**Case Reference** : CHI/29UE/MNR/2020/0016

**Property** : 51 Markland Road, Dover, Kent CT17 9LY

**Type of Application** : Decision in relation to Housing Act 1988

**Tenants** : Mr M & Mrs S Worsfold

**Landlord** : Mr I McKenzie

**Date of Decision** : 5<sup>th</sup> August 2020

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**Reasons for the decision**

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## **Background**

1. The Landlord served a notice under Section 13(2) of the Housing Act 1988 which proposed a new rent of £675.00 per month in place of the existing rent of £625.00 per month to take effect from 1<sup>st</sup> April 2020.
2. The tenancy is an assured periodic tenancy originally from about 2005, but now under an Assured Shorthold Tenancy Agreement dated 7<sup>th</sup> April 2010.
3. On 5<sup>th</sup> March 2020 the Tribunal received an application from the Tenants under Section 13(4) (a) of the Housing Act 1988 dated 3<sup>rd</sup> March 2020.
4. On 19<sup>th</sup> May 2020 the Tribunal made Directions informing the parties that in view of the Government's 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.
5. The Directions required the Landlord to send a statement to the Tenants and to the Tribunal supporting the application for an increase in rent. The Tenants were also required to send a statement to the Landlord and to the Tribunal in support of their objection.
6. The Landlord requested a hearing.
7. On 2<sup>nd</sup> July further Directions were issued and both parties made additional submissions.

## **Information**

8. The Hearing was a Remote Hearing by telephone. Normally Hearings are held in public, but under the current public health emergency the Hearing was held in private. The Chairman confirmed the Tribunal Procedure Rules (Coronavirus Act 2020) require the hearing to be recorded and this took place.
9. Present were Mr and Mrs Worsfold and Mr McKenzie.
10. In the current circumstances it has not been possible to inspect the property but the Tribunal noted the situation and construction of the property by viewing via Google Street Map.
11. **Tenants' submissions.**
12. The Tenants stated in their application that they were satisfied the current rent was appropriate for the house in its current condition, but that any increase in rent in this condition was unjustified.
13. The Tenants submitted the current tenancy agreement which was from 1<sup>st</sup> April 2010 for a term of 6 months and were now holding over on a month by

month basis. They had occupied the property under a previous agreement since 2005.

14. The original problem of the defective central heating and hot water gas fired system was due to the boiler installed in 2006 being too small for the size of property. The boiler was designed to heat 4 radiators, but they heat 7 in the house, as well as supplying hot water throughout. The boiler is too small to provide both sufficient heating and hot water simultaneously. This results in the family having to schedule when each member could bath and time these around the requirement for heating the radiators during the colder months.
15. The problem has been reported to the Landlord many times and between 12<sup>th</sup> October 2018 and 8<sup>th</sup> November 2019 32 e-mails were sent to the Landlord. They had been without hot water between 9<sup>th</sup> and 12<sup>th</sup> June, and again on 24<sup>th</sup> and 25<sup>th</sup> June. The Landlord stated he would visit the property but cancelled the visits until his eventual arrival on 31<sup>st</sup> December 2019 when he said that any issues would result in a rent increase.
16. Because of the Landlord's failure to react the Tenants wrote to Dover District Council on 25<sup>th</sup> November 2019 and they inspected the property, following up on 22<sup>nd</sup> January 2020 with letters to the Landlord and Tenants including a Notice listing the Defects Identified as follows:
  - (1) Excess Cold – Heating is insufficient as can only use when hot water is not in use.
  - (2) Falls on Stairs, etc – Large gaps in balustrades
  - (3) Falls between levels – large gaps between spindles on landing
  - (4) Falls on level surfaces – Carpet in hallway worn and fraying in places
  - (5) Electrical Hazards – Old and out of date RCD consumer unit with wired fuses. Please provide an electrical installation condition report
  - (6) Fire – Polystyrene ceiling tiles in kitchen and bathroom.
17. During the period of occupancy the Tenants have carried out many items of repair and maintenance at their own expense.
  - (1) Installation of immersion heater in 2005/6 to improve heating efficiency of the system - £277.25
  - (2) 6 electric heaters to supplement the radiators in 2005/6 -£239.94
  - (3) Replace 4 electric sockets – 2006 – 2016 - £20.00
  - (4) Repair Wash basin 2008 - £111.45
  - (5) Install lighting and power socket in loft 2010 - £18.21
  - (6) Repairs to fencing – 2011-2016 £116.50
  - (7) Ditto - 2016 - £190.54
  - (8) Repair front door 2012 –
  - (9) Window cill weatherproofing – 2014 - £65.00
  - (10) Fit Fire Alarm detector – £12.95
  - (11) Minor repairs to shed – materials paid for by Landlord, labour by Tenants.

- (12) 2017 Replace dislodged brickwork outside lounge, cement front gully, weatherproof brickwork - £91.45
- (13) Replace felt roof to shed 2019 - £29.98

18. An EPC was due to be carried out on 3<sup>rd</sup> March 2020 but the inspector had no form of identity and was asked to leave.

19. The Tenants stated the family were currently classed as “vulnerable” and were self-isolating under the Government’s guidelines as there were health issues within the family

- (1) Mr Worsfold is in a vulnerable age group being over 75, suffered from high blood pressure for which he is on medication. He also suffers from shortness of breath.
- (2) His wife is 54 and healthy
- (3) Their elder son is 23 and is suffers from autism
- (4) Their younger son is 16 and healthy.

20. Because they are self-isolating it is not possible for contractors to visit the house.

21. Regarding the Landlord’s submissions on comparables he felt the rents were for new build or modern houses in first class condition. As the house is in disrepair the rental value would be considerably lower. He was of the opinion the rental value is £625, the same as the current rent. He accepts the rent would need to increase when the works were completed.

**22. Landlord’s submissions.**

23. The Landlord stated it had been his family home for many years. He had grown up in the house and his mother lived there until 2005. The property had previously had central heating and the boiler was replaced in about 2007 with a boiler of the size recommended by British Gas who carried out the work. The property was rewired about 50 years ago.

24. A list of works undertaken by the Landlord were included in the submissions. They include

- (1) 2004 - Kitchen upgrade - £5,000
- (2) 2007 - New Central heating boiler - £3,814
- (3) 2009 – replace external guttering - £2,360
- (4) 2017 – General upkeep - £690
- (5) 2018 – Roof repairs, window renewal, boundary wall - £3,774
- (6) 2019 – General upkeep - £507
- (7) 2020 – Works to be done - Central heating, Electrical test/refurbishment – approx. £5,000 - £6,500

25. The Landlord accepted there are now issues with the hot water system, but 3 different contractors have inspected, and each has a different view of what causes the problems and the repairs needed. He added that none of the

contractors had been able to replicate the fault the Tenants had reported. He accepts there are problems and has tried to gain access to obtain quotes and effect repairs but has been refused access due the family's self-isolation strategy.

26. With reference to the Dover District Council Notice claimed by the Tenants, the Landlord stated there was no Notice, merely a letter dated 22<sup>nd</sup> January 2020 and a list of defects. Most of the work was cosmetic. It is a list of defects, not an improvement notice. The letter states that the list brings the property up to the "ideal standard" and was not making it a list of legally obliged repairs. In the meantime, the Tenants can still enjoy the whole property.
27. The Landlord has refunded the cost of materials for works carried out by the Tenants, when requested.
28. As the Government has reduced the restrictions covering self-isolation spoke to the Tenants a month or so ago telling them he is ready to go ahead. The Tenants confirmed at the Hearing the family are still in self-isolation.
29. He intends to carry out the works but, without the co-operation of the Tenants, he is unable to gain access to assess the extent of repairs needed, obtain quotes and undertake the works. He had tried to gain access before the Covid 19 pandemic, but the Tenants were not co-operative with him or his contractors by refusing access.
30. The Landlord has used the same plumber since 2013 and had to use somebody else only once last year when he was on holiday. Usually delays are due to having to wait for spare parts to arrive. He will ensure the boiler & system are suitable for the property.
31. The Landlord has supplied a list of comparable properties in the area which backed his view that the current rental value of similar properties in this locality were in the range of £750 in its current state rising to £850 per month when the repairs are completed. Examples of current asking prices for similar properties in the area were obtained from Zoopla, Prime Location and Rightmove. Geering & Colyer's letter of 11<sup>th</sup> July states they would advertise it at £750 per month in its current condition.
32. The rent charged has been historically low, and over more recent years he has tried to bring this in line with market rents to enable him to carry out the forthcoming major repairs. The proposed rent increase in 2018 was accepted by the Tenants when a local letting agent explained to him that it was below market rent. He has tried to be fair with the increases, realising it might cause concern to the Tenants and offered to phase the increase in an effort to reduce the financial impact.
33. In proposing the rent increase to £675 per month the Landlord took into account the current state of repair at the property and the fact that he had not increased the rent to full market rent over the past years.

### 34. Ending the Hearing

35. The chairman thanked the parties for their cooperation in this, the first remote Hearing held in private due to the current public health emergency. Both parties agreed the hearing had proceeded well and were satisfied they had ample opportunity to state their case and cross examine the other party. Both parties were therefore satisfied with the Hearing process.

### **The Law**

#### 36. S14 Determination of Rent by First-tier Tribunal

*(1) Where, under subsection (4) (a) of section 13 above, a Tenants 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 Tenants;*
- (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 Tenants, if the improvement-  
was carried out otherwise than in pursuance of an obligation to his immediate Landlord, or*
- (c) (ii) 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 Tenants 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 Tenants 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 Tenants (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 Tenants Act 1985, but, subject to that, includes any sums payable by the Tenants 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**

37. The Tribunal has considered the representations of both parties.
38. 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.
39. In determining the appropriate rent, the Tribunal would disregard any improvements made under the existing tenancy. Repairs undertaken by the Tenants (with financial recompense by the Landlord for materials) have been taken into account, together with the current state of the property.
40. The Landlord relies on the rents of similar properties in the area and the Tribunal accepts that in good lettable condition the property would be likely to achieve a rent of £850 per month.
41. 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.

42. The property is not in the condition described above and a prospective Tenants would expect to pay a lower rent to reflect those differences. It is now accepted by both parties the letter from Dover District Council is not a formal notice but is a list of defects found at the inspection. The Landlord has spoken to the Council officer and, with their agreement, has stated that the work will go ahead as soon as the Tenants allow access, especially under these unusual circumstances. The Tribunal decides the only item that would affect the rental value is the problem of central heating and hot water.
43. The Landlord was slow in dealing with this issue and should have tried to deal with it much earlier. However, three different contractors giving 3 different sets of advice caused the Landlord to delay dealing with the issue as quickly as he might have done.
44. The Tribunal is conscious that the Landlord has not sought to increase the rent to the full rental value over the past years and is still seeking a rent below what would normally be the full rent. (Para 32 above)
45. The Tribunal considered the position of the Landlord not being granted access to the property to enable him to carry out the required repairs. This factor does not need to be addressed because the rent sought by the Landlord takes the defects into account. (para 33 above)
46. The Tribunal considers a reduction in the full market rent to reflect all of the foregoing would be in the order of 20%, reducing the market rent from £850.00 to £680.00 per month. As this figure is close to that proposed by the Landlord the Tribunal decides the rent should be set at £675 per month, the figure sought by the Landlord.
47. The Tribunal therefore determines that the rent payable from 1<sup>st</sup> April 2020 being the date stated in the notice is £675.00 per month.

R T Athow FRICS MIRPM  
Valuer Chairman

#### **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.