



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

Case Reference : **CHI/21UD/MNR/2020/0054**

Property : **Upper Maisonette, 54 Carisbrooke Road,
St. Leonards, East Sussex TN38 0JT**

Tenant : **Angela Mary Sellek**

Landlord : **Mr. and Mrs. Hanlon Portfolio A Ltd.**

Type of Application : **Rent determination in accordance with
Section 14 Housing Act 1988 (as amended)**

Tribunal Members : **Mr. R. A. Wilkey FRICS**

Date of Decision : **Friday 21st August 2020
No Hearing - paper determination**

DECISION AND REASONS

Background

1. On 8th June 2020 the Landlord served a notice under Section 13(2) of the Housing Act 1988 (as amended) which proposed a new rent of £690 per month in place of the existing rent of £670 per month to take effect from 21st July 2020. No services are provided by the Landlord.
2. The Tribunal received an objection from the tenant to the proposed rent by way of an application dated 15th June 2020 under Section 13(4) (a) of the Housing Act 1988 (as amended).
3. Directions for the conduct of the matter were issued by the Tribunal Office on 17th July 2020 under regulations applicable in respect of the Covid-19 pandemic. The Tribunal intended to determine the application on the papers without a hearing or an inspection in accordance with rule 31 of the Tribunal Procedure rules 2013 unless a request for an oral hearing is made within fourteen days
4. Neither party made a request for an oral hearing and the matter was determined on the basis of a paper determination.

The Property

5. The Tribunal has not inspected the property but checked the area using Google Maps and Street View. It appears to be a two-storey maisonette on the top floors of a terraced house built over 100 years ago and with two bedrooms, kitchen, bathroom with WC on the lower level and a lounge that covers the whole of the upper level. There is no garage.
6. The landlord has provided a copy of the tenancy agreement. It is for a term of 6 months from 21st October 2016 at an initial rent of £650 pcm. Clause 4.1 requires the tenant:

“To take reasonable steps to keep the interior of the property and the fixtures and fittings in the same decorative order and condition throughout the term as at the start of the tenancy, as noted in the inventory and schedule of condition. The tenant is not responsible for the following:

- Fair wear and tear
- Any damage caused by fire unless that damage was caused by something done or not done by the tenant or any other person permitted by the tenant to reside, sleep in or visit the property
- Repairs for which the landlord has responsibility
- Damage covered by the landlord's insurance policy"

Based on the available information, the Tribunal assumes that the tenancy is subject to Section 11 Landlord and Tenant Act 1985.

Evidence and representations

7. The Tribunal received a number of documents in electronic form from both parties. The entire contents have been read and considered by the Tribunal but, for completeness, they are summarised as follows:

Tenant

- (a) Copies of a number of photographs of the inside of the property were supplied to illustrate the condition. They are of limited value as they are not identified, annotated or dated.
- (b) The tenant submitted a hand-written letter to the tribunal which was presented in the form of five image files. The whole of the contents has been considered but it may be summarised:

When she moved in on 21 October 2016 the property was in a terrible condition. She sent details to landlord who was slow in taking action.

There is a history of attempts to get defects remedied but it was not until July 2019 that any repairs were done.

Immediately prior to the last rent increase in July 2019, she made it her mission to "get all repairs done in order for me to agree to the rent rise"

There were ongoing discussions and meetings to get the landlord to carry out work as detailed by tenant

Particular mention is made of two windows in a bedroom which are screwed shut. Both now leak badly and are rotten.

Since the inspection by the landlord, they have repaired:

- The crumbling plaster in the cupboard under stairs
- All the fire doors except the bathroom
- The crumbling wall and loose sockets in the front room
- The hole in the ceiling where you could see the rafters
- The door to the water tank
- The crumbling wall in "my daughter's" room

No other repairs have been done. The landlord has promised to repair the bathroom window and even measured it up but never returned.

Since the crumbling walls have been repaired she now has mould, damp and flaking walls which are far worse.

Since she took occupation, she has had to purchase the following items:

- Towel rail
- Plugs for sinks
- Curtain rails
- Handheld shower
- Carpet tiles for bathroom
- A lock on the outside of the bathroom door to stop it blowing in the wind
- Frosted window [covering] to block open fan and to give some privacy

- Doorbell
- Indoor aerial as the fitting was broken and not connected
- Fan heaters and oil filled radiators as central heating not adequate
- Draught excluders for the windows (plastic sheeting)
- Venetian blind for kitchen.

The items summarised above are her reasons why she feels this rent increase is "unjust and not warranted for the poor condition of the flat."

The tenant thinks the property is worth no more than £650 pcm but provides no comparable rental evidence or other justification for that figure.

8. In addition to the above, there is an attachment to the tenant's application which reads as follows:

I was assured when I moved in that all the repairs would be done ready for my move in date. But none were. I waited three years for the repairs and when they were done they were of shoddy quality. The bathroom lino was ripped up and stuck back down rather than replaced. Crumbling walls were replastered but not damp proofed so now the replastered walls are damp. Some promised were never done i.e. before I moved in they said the ciston [sic] and toilet would be replaced when the repairs were done. The workmen said my landlord wouldn't pay out for replacements if it still worked.

The rent amount (£690 pcm) would reflect the price of a well maintained, comparable, modern fitted out and cared for property. But it doesn't reflect the price of this cold, damp, draughty, old fashioned, poor conditioned, badly equipped and unpleasant property that we have. For example it doesn't run [sic] effectively. No shower. No shower curtain holder. Bathroom so delapidated [sic] that I'm too embarrassed to have guests. You can't heat the property above 13°C in Winter. Wind running

through the property that makes the doors bang open and shut. Windows so draughty I have to nail a blanket over it in Winter as it feels like the windows are open. Kitchen units rotting, desperately old and mismatched. Paint peeling, bubbling, crumbling. I've tried to make improvements but there's only so much you can do to such a delapidated property. Cigarette burns on the toilet cystem [sic] I've tried to scour ancient stains off but it's too old and worn out. It makes me feel as if "is this all we're worth?" To have to look at such damage and not fit for purpose accommodation. Like we're not worthy of a decent home. So I refuse to accept another rent rise as it feels like a "slap in the face"

Our dismal surroundings make both myself and my daughter depressed. The attitude of both Estate Agent and landlord as a response when I ask for repairs is oppressive too. I've often been reduced to tears by the way blame and guilt [final section not legible]

Landlord

- (i) There is a statement dated 24th July 2020 from the landlord which includes a copy of the tenancy agreement for the subject property plus copies of tenancy agreements for five other properties which are considered to be comparable
- (ii) The following additional information is extracted from the landlord's statement:

"As of 23rd July 2020 there are currently 12 two bedroom properties within 1 mile of the property advertised for rent on Rightmove.co.uk (the UK's largest lettings web site) Copy of this search attached.

Of these properties 4 are being advertised for a rent of £675 or below. The remaining eight are being advertised at a rent of £695 or above.

The landlord also attaches copies of five tenancy agreements for two bedroom unfurnished properties where white goods are not supplied that they own within 1 mile of the subject property and are managed by Property Café on their behalf - these are:

Flat 2, 31 Pevensey Road – rented on an AST on 26th October 2018 at £750 pcm

Basement flat, 7 St. Margaret's Road – rented on an AST on 1st March 2019 @ £725 pcm

Flat 4, 31 Pevensey Road – rented on an AST on 18th January 2020 at £725 pcm

Flat 6, 11 Albany Road – rented on an AST on 31st March 2020 @ £700 pcm

Flat 1, 31 Pevensey Road – rented on an AST on 14th April 2020 @ £725 pcm

No furnishings are provided with these properties. The landlord is responsible for repairs within statutory repairing obligations. The landlord is responsible for redecoration due to fair wear and tear and damage caused to the property outside of the tenant's control. The tenant is responsible for redecoration and repairs outside of fair wear and tear and within their control.

The landlord believes that the proposed new rent of £690 is a fair rent for an unfurnished property when compared to similar properties and is below the average rent for properties within 1 mile

9. In addition to the information provided by the parties, the tribunal relied on its own knowledge and experience of local rental values in determining the rent.

The law

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-
 - (i) was carried out otherwise than in pursuance of an obligation to his immediate landlord, or
 - (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
 - (c) 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 to 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 Valuation

10. 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. The personal circumstances of the Tenant are not relevant to this issue.
11. The tenant has not provided any evidence of lettings of comparable properties but has set out in detail a history of failure by the landlord to carry out works required to maintain the property. She considers that a fair rental value is £650 pcm to reflect the present condition.
12. However, the landlords state that they are “not aware of any outstanding maintenance issues within the tenant’s property at the time of writing”

13. The landlord has provided details of a number of lettings of similar properties in the area.
14. In the first instance 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 the terms and in the condition that is considered usual for such an open market letting. The tribunal had regard to the information provided by the parties, supplemented this with its own knowledge and experience of lettings of similar properties and determined that the starting point should be £695 per month.
15. However, this rent is on the basis of a letting in good, modernised condition. In this case, there are outstanding issues mentioned above and a deduction must be made to reflect the fact that the rental bid in present condition would differ from the rent if the maisonette were in good, modernised condition. In order to reflect these considerations, the Tribunal has made a deduction of £20 from the starting point of £695 per month to produce an adjusted rent of £675 per month.

Determination

16. The Tribunal therefore decided that the rent at which the subject property might reasonably be expected to be let in the open market by a willing Landlord under the terms of this assured tenancy is £675 per month.
17. Section 14(7) of the Act provides that the starting date for any rent determined by the tribunal is either the date agreed by the parties, the date specified in the notice or, if it appears to the tribunal that there would be undue hardship, any date directed by the tribunal, but no later than the date that the rent is determined. The tenant made no representations in respect of hardship. Accordingly, the tribunal directs that the new rent of £675 per month will take effect on 21st July 2020 being the date specified in the Landlord's notice.

Appeals

18. A person wishing to appeal this 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.
19. 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.
20. 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 the time limit, or not to allow the application for permission to appeal to proceed.
21. 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. Any appeal in respect of the Housing Act 1988 should be on a point of law.