



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

Case Reference : **CHI/00ML/MNR/2020/0060**

Property : **Room 32, 27/28 Belvedere Terrace,
Brighton BN1 3AF**

Tenant : **Ms. Mathia Davies**

Landlord : **Chestnut Development Company Limited**

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

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

Date of Decision : **Thursday 22nd October 2020
Paper determination**

DECISION AND REASONS

Background

1. On 17th August 2020 the Landlord served a notice under Section 13(2) of the Housing Act 1988 (as amended) which proposed a new rent of £150 per week in place of the existing rent of £120 per week to take effect from 20th September 2020. This replaces a previous notice dated 11th June 2020 [see “History and circumstances” under item 5 below]
2. The Tribunal received an application dated 3rd July 2020 [see “History and circumstances” under item 5 below] from the Tenant under Section 13(4) (a) of the Housing Act 1988. The Application is silent as to whether any services are provided by the landlord. However, reference is made to a variable charge for electricity. [see later]
3. Initial directions for the conduct of the matter were issued by the Tribunal Office on 25th August 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.

History and circumstances

5. The situation leading up to the present determination are relevant and may be summarised:
 - (a) The Tribunal issued directions dated 4 August 2020 which stated that it was of the preliminary view that the Landlord’s notice dated 11th June 2020 is defective and of no effect, thus there is no dispute to be determined by the Tribunal
 - (b) The Landlord issued a further notice dated 17th August which was identical save for the starting date for the new rent which was changed from 20th July 2020 to 20th September 2020
 - (c) Further directions were issued by the tribunal on 25th August 2020

and item 3 states “The tenant is deemed to object to the second notice...”

The property

6. The Tribunal has not inspected the property but is familiar with the Room, building and general area. It comprises a small room arranged as a bedroom/living/kitchen area and is located on the third floor of a pair of terraced houses which were originally built in about 1840 and have since been converted into flats. The building occupies a central position within easy reach of the sea front, shopping facilities and railway station. Nearby properties are generally of similar age and style and many have been converted into flats.
7. The accommodation is not self-contained and presents a cramped appearance. The unit has shared use of shower and WC facilities on the same floor at the rear of the main building. These facilities are used by the occupiers of other rooms in the building.
8. The Tenant’s Application states that the present tenancy “*dates back to 1996*” but no tenancy agreement has been mentioned or supplied. The Application by the tenant to the Tribunal states that the Landlord’s responsibility for repairs is “*all in theory. Also in common areas of house*”. The Landlord has made no observations upon the repairing liabilities

Documents

9. The Tribunal has been provided with an electronic bundle consisting of copies of emails and relevant correspondence. It also has sight of previous Tribunal decisions.

All the supplied papers have been read and considered but the most relevant documents may be summarised as follows:

- (i) Amended Form 4b served by the Landlord upon the tenant
- (ii) Application from the tenant objecting to the amount of the proposed rent
- (iii) Reply form from the tenant which includes numerous observations (see later)
- (iv) Copies of various emails and two previous decisions issued by the Tribunal.

- (v) Two sets of Directions issued by the Tribunal

Evidence and representations

Landlord

10. By email dated 21 September 2020, the landlord states “...her rent has not been increased for 2 years and all other assured tenants have agreed to the new rent offered as we have carried out major repairs to the building. This includes new roof, new carpets in hallways, new showers, new fire alarm system and we have fitted new security front door fob system”
11. An email dated 17 August 2020 states “...we clean all the public ways and bathroom facilities, pay for all the landlord’s electricity (heating and lighting). Water consumption and council tax. We also carry out weekly fire alarm testing and look after external and internal façade of the building”
12. The landlord has not provided any evidence of comparable rents.

Tenant

13. The tenant has made several detailed observations by email and as part of the application. Whilst these are not set out in full, the contents have been read and considered by the Tribunal. Particular mention is made of the following comments by the tenant:
- (a) *New double-glazed window was installed by landlord in last year.*
- (b) *The statement by the landlord that the rent has not increased for 2 years is untrue as the rent was increased last Summer.*
- (c) *The improvements spoken of in the email were certainly not all made in the last year.*
- (d) *I am a statutory/sitting tenant as my tenancy dates originally*

from 1996. Apart from a few other statutory tenants in the building, all other residents are frequently changing emergency temporary accommodation council placements. I believe this factor very significantly affects the rent that could be asked for the property if newly let. There are very very frequent issues with problem tenants.

(e) It should please also be noted that existing included charges as identified by the landlord...do not remotely correspond to those decided by the Tribunal in 2019

14. The tenant did not provide any evidence of comparable rents.

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 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.

Preliminary comments by the Tribunal

15. In addition to the representations by the parties, the Tribunal obtained considerable background and pertinent information from personal knowledge and previous determinations in 2017 and 2019.

16. The landlord refers to substantial works carried out to the property. However, as confirmed in previous decision of the Tribunal, all of these works were carried out prior to the last increase in rent.
17. The landlord's notice to increase the rent states that it includes the sum of £13 in respect of council tax, £11 in respect of water charges and £12 in respect of fixed service charges. The tenant is responsible for the cost of the electricity supply to Room 32.

Consideration and Valuation

18. 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.
19. 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. In the absence of comparable evidence from the parties, the tribunal relied on its own knowledge and experience of lettings of similar properties and determined that the starting point should be £132.50 per week including the items referred to under 17 above. This rent reflects the fact that much of the building is used for Emergency Temporary Housing Accommodation and there is significant adverse effect of noise and disturbance due to the transient nature of these occupiers
20. The tenant has to pay for her own electricity and a deduction of £7.50 a week is appropriate. This represents the Tribunal's opinion of the difference that a hypothetical tenant would make for a room with and without electricity included.
21. Thus the net market rent is £125 per week including £13 in respect of council tax, £11 in respect of water charges and £12 in respect of fixed

service charges. This new rent is to include the amounts for service charges, water charges and Council Tax and is a fixed sum.

Determination

22. 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 £125 per week.
23. 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 £125 per week will take effect on 20th September 2020 being the date specified in the Landlord's notice.

Appeals

24. 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.
25. 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.
26. 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.
27. 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.