



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

Case Reference	:	CHI/18UC/MNR/2020/0063
Property	:	1 Lyncombe Close Exeter Devon Ex4 5EJ
Type of Application	:	Determination of market rent: Housing Act 1988
Date of Decision	:	9 October 2020
Tribunal Member	:	T E Dickinson BSc FRICS IRRV

Reasons for the decision

Background

1. On 15 July 2020 the Landlord served a notice under Section 13(2) of the Housing Act 1988 which proposed a new rent of £897 per calendar month in place of the existing rent of £854 per calendar month from 1 September 2020.
2. On 6 August 2020 the Tribunal received an application from the Tenant under Section 13(4) of the Housing Act 1988.
3. On 20 August 2020 The Tribunal issued directions for determination of a market rent under Sections 13 and 14 of the Housing Act 1988. The Tribunal Judge stated that this was a formal order of the Tribunal which must be complied with by the parties and that the parties must comply with the Statement on Tribunal Rules and Procedure issued on 3 August 2020 and enclosed with the Directions.



4. Due to the Covid19 Pandemic, it was requested that all communications should be made by email.
5. The Directions were re-issued by the Tribunal Judge on 11 September 2020 stating that the matter would be dealt with by way of determination on papers as the Tribunal considered the application was suitable for determination on the papers and therefore the application would be determined on the papers without a hearing in accordance with Rule 31 of the Tribunal Procedure Rules 2013 unless a party objected in writing to the Tribunal by 25 September 2020.
6. It was stated that the Tribunal would not inspect the property but would consider any relevant information which would have been obtained by the Tribunal at an inspection provided by the parties by other means.
7. The Landlord was directed to send a statement to the Tenant with an electronic copy to the Tribunal by 25 September 2020 and the Tenant should send a statement to the Landlord with an electronic copy to the Tribunal by 9 October 2020.
8. It was stated that the jurisdiction of the Tribunal was limited to determining what the market rent for the property should be, taking into consideration its size, amenities and location. That may mean that the rent proposed by the Landlord may be confirmed, may be increased or decreased. The Tribunal could not take into consideration the personal circumstances of either the Landlord or Tenant when deciding the rent and the Tribunal would make its decision based on the party's submissions.

Tenancy

9. This Assured Tenancy commenced on 3 February 1998 between the original Landlords, Queensway Housing Association and the present Tenants, Dr and Mrs Y Hammad.
10. At Clause 3 of the Agreement it is stated that the Landlord shall provide services in connection with the property including a Resident Caretaker; servicing of gas appliances; maintenance of landscaped areas and access paths.
11. The Landlord shall keep the property insured and is responsible for the maintenance of the structure and interior, covenanting to keep
 - a) Drains, gutters and external pipes.
 - b) Roof.
 - c) Outside walls, outside doors, window cills, window catches and window frames including external painting and decorating.
 - d) Pathways, steps and other means of access.



- e) Garages and stores.
 - f) Boundary walls and fences.
12. The Landlord shall also keep in good repair and working condition any installations provided by the Landlord for space heating, water heating and sanitation and for the supply of water, gas, electricity including:
- a) Basins, sinks, baths, toilets, flushing cisterns and wastepipes.
 - b) Electric wiring including sockets and switches, gas pipes.
 - c) Water heaters and fitted fires and central heating installations.
13. At Clause 7 the Tenant has covenanted to keep the interior of the premises in a good and clean condition and shall decorate all the internal parts of the property as frequently as is necessary to keep them in a good state of decoration.
14. The property was originally let unfurnished.

The parties' representations

15. By a letter dated 23 September 2020 the Landlord's representatives made written representations to support their case for an increase in rent.
16. The Landlord's representatives stated that 3 bedroomed, unfurnished, terraced properties in the immediate vicinity were achieving between £11,400 and £12,288 per annum dependent upon condition and location. They believe that the subject property, in its current condition, would let for £10,764 per annum. This would take into account the differences between the standard of the fixtures and fittings usually found in a fully modernised property and the subject property.
17. Direct comparables managed by Allsop were as follows:
- i. 22 Lyncombe Close, EX4 5EJ
3 bed house, kitchen, bathroom.
£12,265 per annum.
 - ii. 13 Lebanon Close, EX4 5EW
3 bed house, kitchen, bathroom.
£12,288 per annum.
 - iii. 32 Lyncombe Close, EX4 5EJ
3 bed house, kitchen, bathroom.
£11,940 per annum.



18. Comparable properties not managed by Allsop were cited as follows:
- i. St Thomas, EX2 9DT
3 bed house, kitchen, bathroom.
£12,000 per annum.
 - ii. Russell Walk, EX2 7DT
3 bed house, kitchen, bathroom.
£11,400 per annum.
19. With regard to condition, the Landlord's representatives stated that they were not aware of any failure by the Landlord to fulfil their statutory and contractual obligations as defined in the Tenancy Agreement.
20. The Agents stated that the property was located in a privately owned, residential development with easy access to the city centre with four primary schools within 1.3k and four Supermarkets within the same distance. In addition, Exeter Central Station was situated within 1.5 miles with a further two Train Stations (St James's Park and Polsloe Bridge) less than a mile away.
21. Finally, the Agent concluded that the rent as proposed under their Section 13 (2) Notice offered an attractive discount from the market rent. Furthermore, it was stated that the Tenant enjoyed the security offered by an Assured Tenancy not afforded by an Assured Shorthold Tenancy
22. On behalf of the Tenants, Mrs Tasneem Hammad, submitted a reply form to the Tribunal confirming that central heating, double glazing and carpets were provided by the Landlord but not white goods. The property had a garage and off-street parking and private gardens with use of communal gardens.
23. With regard to improvements carried out to the property, a new felt roof was completed in June 2020 at the expense of the Landlord. The front bedroom was again repainted by the Tenant due to damp problems in July 2020.
24. With regard to disrepairs/defects, Mrs Hammad stated that they had rented the property since 1998; the Kitchen was original and had defects; the carpets were in situ when they moved in 22 years ago, they had become threadbare and worn, old and stained. Additionally, the Bathroom was original, there were still cracks in the damp walls which every year needed to be bleached. The Landlords had carried out minor repair work over the years but the fittings had not been replaced.



25. Mrs Hammad also stated that the property was in the same condition as per the Tribunal's last visit. Nothing had changed except that the small front bedroom had been repainted because of damp coming through the walls again.
26. A photographic schedule containing 16 photographs was attached indicating the present condition of the interior of the property including the kitchen and bathroom and internal cracking to the walls.

The Law

27. 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

28. 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.

29. Thus 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.

30. The Tribunal noted the comparables provided by the Landlord's representatives comprising five in total but with three comparables on the same estate. The evidence provided by the Agents indicates that rent levels on the estate increased of late. The Tenants did not provide any evidence relating to comparable rental properties in the area

31. With regard to the subject property the Tribunal noted the following defects/disadvantages (based on the condition at the last inspection):

- Vermin poison left in the small Utility Room.
- Black moulding to the front corner of the Dining Room and minor cracking to the Dining Room Walls.
- High external ground levels in the corresponding position on the exterior of the Dining Room together with plan growth.



- Some ageing double-glazed units fitted by the Landlords about 15 years ago.
- Original kitchen units with cracking to the kitchen wallheads/wall surfaces and vermin poison left inside the kitchen units.
- Some cracks to the ceiling in Bedroom 1 where the walls were noted to have been part re-plastered to the side and rear.
- Damp penetration to the eastern flank wall in Bedroom 1.
- Cracks noted above the window lintel in Bedroom 2.
- The original bathroom fittings, including the original bath, washbasin and wc, although an electric shower had been supplied by the Landlord.
- Whilst the walls in the Bathroom have been repainted at the expense of the tenant there were evident condensation problems.

Determination

32. The Tribunal has no power to alter the terms of a tenancy and therefore determines the rent at which the property might reasonably be expected to be let in the open market by a willing Landlord under the terms of this Assured Tenancy.
33. In comparison to the properties let on Assured Shorthold Tenancies the Tribunal noted the lack of whitegoods, curtains, original kitchen and bathroom fittings, deteriorating condition and the Tenant's responsibility under Clause 7 of the Lease to keep the interior of the property in a good and clean condition and to redecorate all the internal parts as frequently as is necessary to keep them in a good state of decoration. Whilst the Tribunal considers that the property would let for £1,000 per calendar month in AST condition to reflect the above differences a deduction of £103 per calendar month has been applied leading to this determination of £897 per calendar month.
34. The Tribunal therefore determines that the rent shall be £897 per calendar month with effect from the starting date of 1 September 2020.

Chairman:

T E DICKINSON FRICS

Date:

9 October 2020.



APPEALS

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) which may only be on a point of law, 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.