



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

Case Reference : **CHI/29UL/MNR/2020/0072**

Property : **Flat 4 Ashdown Lodge, Bathurst
Road, Folkestone, Kent CT20 2NT**

Applicant : **Mrs P J Smith - Tenant**

Representative : **none**

Respondent : **Mr D Roodhardt- Landlord**

Representative : **Martin & Co**

Type of Application : **Housing Act 1988 – Section 13
Appeal of Notice of Rent increase**

Tribunal Members : **R T Athow FRICS MIRPM – Chairman**

Date of Inspection : **No inspection carried out**

Date of Decision : **28th November 2020**

DECISION

Background

1. On 30th September 2020 the tenant of the above property referred to the Tribunal a notice of increase of rent served by the Landlord under section 13(4) of the Housing Act 1988.
2. The landlord's notice, which proposed a rent of £807.60 per month with effect from 17th October 2020, is dated 15th September 2020.
3. The tenancy commenced on 17th July 2017 but a new tenancy agreement was entered into on 19th December 2018, commencing on 17th January 2019 at a rent of £746.75 per month and is a statutory periodic tenancy. The current rent payable is £769.15 per month with effect from 17th July 2019.
4. The Tribunal were provided with a copy of the tenancy agreement with the application.
5. The Coronavirus pandemic and consideration of health has caused a suspension of inspections and of the Tribunal hearings in person until further notice.
6. The Tribunal decided that this application is suitable for determination on the papers without an inspection or a hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013. Neither party disagreed.
7. Directions were issued on 15th October setting out a timetable for the parties to comply with.
8. If the condition of the property was considered salient to the issues of the property the parties were given permission to include photographs and/or video footage in their evidence.

Statements & Evidence

9. The Tribunal received written representations from Mrs Smith (the tenant) dated 26th October 2020 and these were copied to the Landlord.
10. No written representations were received from the landlord. This is in breach of the Tribunal's Directions.

The Applicant's Case

11. In the Application Mrs Smith described the flat as being on the first floor and having 2 bedrooms, bathroom/WC, kitchen and living room. There is central heating and double glazing. There is a communal entrance hall and stairs to the first floor. She has the benefit of a car parking space within the grounds and the use of the communal gardens.
12. In her written Statement of Case Mrs Smith said that she had used Rightmove to gain an estimate of the current rental value of her flat, and

also she submitted witness statements from three neighbours from within the block.

13. Regarding her evidence from her research on Rightmove, on 26th October 2020, she found 34 2 bedroomed flats to let, or recently let within a 1-mile radius of her flat. This gave an average of £764.26 per month. This figure is lower than her current rent as well as the rent proposed by the landlord.
14. A photograph and brief details of the comparables was included.
15. Her three neighbours' evidence showed Flat 5 paying £675.00 per month, Flat 6 £700.00 per month, and Flat 8 £710 per month. Flat 6 was refurbished before the commencement of the current tenancy.
16. For these details, Mrs Smith proposed the new rent should be £764.26, bringing it in line with the average rent in the area.

The Respondent's Case

17. No submissions were received from the respondent or the agent.

The Law

18. In accordance with the terms of section 14 Housing Act 1988 (The Act) the Tribunal proceeded to determine the rent at which it considered that the subject property might reasonably be expected to be let on the open market by a willing landlord under an assured tenancy exclusive of water rates and/or council tax.
19. In so doing the Tribunal, as required by section 14(1), ignored the effect on the rental value of the property of any relevant tenant's improvements as defined in section 14(2) of that Act. The Tribunal cites the relevant section below:
20. *“14.—(1) Where, under subsection (4)(a) of section 13 above, a tenant refers to a rent assessment committee a notice under subsection (2) of that section, the committee shall determine the rent at which, subject to subsections (2) and (4) below, the committee 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—

(e)

(f) 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,.....”

21. On 1st July 2013 the rent assessment committee became part of the First Tier Tribunal (Property Chamber) and all references in this decision refer to this Tribunal.

Consideration and Valuation

22. In the first instance and in accordance with Section 14 of the Act (see above), 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 an Assured Tenancy in the condition that is considered usual for such an open market letting exclusive of water rates and council tax.

23. The flat is part of a block of purpose-built flats constructed about 50 years ago in a prime residential part of Folkestone. The town centre is about 1/2 mile away, whilst there are a choice of two main line railway stations within 1/2 mile which have fast services into London.

24. The evidence received was of some limited use to the Tribunal. The Tribunal Chair is very familiar with rent levels and property styles in Folkestone and the surrounding districts, having had a management practice locally for about 50 years. Some of the flats have been visited over the years and so there is knowledge of the general style and layout of the flats in Ashdown Lodge.

25. Dealing first with the Rightmove evidence, the description of each flat was brief. It gave no details of the full extent of the accommodation, nor the floor areas. Several flats were in poorer parts of the town not considered comparable and therefore discounted.

26. 14 comparables were situated close by, in the West End of the town. This is a most desirable part of Folkestone and commands higher rents than those elsewhere in the town. These are usually in converted blocks in what were once luxury homes for the wealthy to use as weekend and holiday homes in the late Victorian and Edwardian period. These are of a totally different style to the subject flat with well-proportioned rooms and high ceiling pitch, and consequently attract a different market.

27. Only one of the properties in the list of comparables was purpose-built in this part of Folkestone. That was situated in Clifton Crescent, a purpose-built block overlooking The Leas to the Straights of Dover. Newly refurbished, this 3rd floor flat was first offered on the market on 23rd

September 2020 at £895.00 per month and has recently been let according to the Rightmove details. It is considered to be in a better location, and having the sea views, has a higher rental value than the subject flat.

28. The evidence of the three neighbouring flat rent levels was considered, but because there was no description of the accommodation, the Tribunal is unable to say if they are one or two bedroomed flats. Whilst this information was useful to some degree, very little weight could be placed upon this evidence as a result.
29. Using the evidence provided together with its extensive local knowledge The Tribunal has been able assess the appropriate rental value for the flat in a normal letting state.
30. The letting market has grown substantially in recent years and there is now ample evidence of open market rents for Assured Shorthold Tenancies. In the competitive market that now exists, such properties need to be in first class structural and decorative order and be equipped with all amenities such as full modern central heating, double glazing and other energy-saving facilities along with white goods, carpets and curtains to ensure the property attains its full rental income potential. Where such items and facilities are missing the Tribunal has noted that the rent is found to be correspondingly lower.
31. The conclusion is that an appropriate open market rent for the property let in first class condition as outlined above on a modern open market letting of an Assured Shorthold Tenancy where the tenant has no liability to carry out repairs or decorations and the landlord supplies white goods, carpets and curtains would be £825.00 per month.
32. Mrs Smith has not listed any improvements that she has made.
33. Mrs Smith states in her Reply Form that there are no white goods included in the tenancy.
34. And so deductions need to be made to take this into account.
35. The landlord has a duty to keep the property in repair in accordance with Sections 11 to 16 of the Landlord & Tenant Act 1985. This is set out in Schedule 2 of the Tenancy Agreement along with other responsibilities.
36. If a property is not kept in good condition it will soon start to deteriorate and it will soon begin to look unattractive, which will have an adverse effect on its rental value. The Tribunal will take these factors into account when assessing the rent.

37. The Tribunal has not been provided with any photographs showing the layout or condition of the flat. The only comments made are by Mrs Smith in her Reply form in which she reports an issue with the plumbing, with several leaks from her flat into the flat below. No more details on the cause of this are given, so the Tribunal cannot decide on whose liability it is or if it would affect the rental value of the flat.
38. Whilst there is no laid down formula for arriving at deductions to be made towards the foregoing, the Tribunal has used its own knowledge and experience and decided to make a deduction of 5% from the market rent for these factors.
39. Thus by deducting 5% from the open market rental this would result in a value of £783.75, rounded to £785.00 per month.

The Decision

40. The Tribunal's decision is the rent at which the property might reasonably be expected to be let on the open market in its current condition is £785.00 per month.
41. This rent will take effect from 17th October 2020 being the date specified by the landlord in the notice of increase.

Appeals

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