



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

Case Reference : CHI/29UN/MNR/2020/0081

Property : 7 Ulster Road, Margate, CT9 5RZ

Type of Application : Decision in relation to Housing Act 1988

Tenant : Kyle and Brittany Sigurdsson

Landlord : Nichola Batmaz, c/o Oakwood Homes

Tribunal : R T Athow FRICS MIRPM

Date of Decision : 21st December 2020

Decision

Background

1. The Landlord served a notice under Section 13(2) of the Housing Act 1988 which proposed a new rent of £875.00 per month in place of the existing rent of £825.00 per month to take effect from 27th October 2020.
2. The tenancy is an assured periodic tenancy from 21st July 2017.
3. On 23rd October 2020 the Tribunal received an application from the Tenants under Section 13(4) of the Housing Act 1988 dated 14th October 2020.
4. On 6th November 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. Neither party requested a Hearing.

Information

7. The matter is dealt with as a paper determination without a hearing. In the current circumstances it has not been possible to inspect the property and the Tribunal relies on submissions from the Landlord and Tenants in correspondence, publicly available housing data online and its own expert knowledge.

Tenants' submissions.

8. The Tenants' Statement of Case extended to 12 pages with a further 119 pages of evidence. They will not be repeated in detail in this decision, but all have been noted and taken into account.
9. The Tenants claim the Landlord has failed to maintain the property in a good condition, with many small items of disrepair not being undertaken. Some items result in Health and Safety issues. Thanet District Council have been contacted to deal with those. The main issues include, but are not limited to:-
 - (1) Worn and dangerous carpets
 - (2) Loose floorboards in the kitchen
 - (3) Broken extractor fan in the bathroom
 - (4) Broken pane of glass in one bedroom
 - (5) Old and defective windows to many rooms

10. The original EPC from 2009 registered an EEC of 52/E, but the latest EPC dated 24th April 2020 now showed it as 70/C. The latest certificate was issued without the property being inspected. This gave rise to a doubt as to the accuracy of the certificate as very few improvements have been undertaken during the current tenancy. Some aspects appeared to be inaccurate or inconsistent.
11. The Tenants claim they have been harassed by the Landlord.
12. The Tenants gave comparables of three properties that are on the market or recently let in the area with rents ranging from £1200 to £1250 per month. These were all in first-class order with all modern facilities and all had higher EEC ratings.

Landlord's submissions.

13. The Landlord's bundle extended to 88 pages including 11 documents from Oakwood Homes and a two page statement from the Landlord.
14. The Landlord claims that many items of disrepair reported by the Tenants have been created by them or their family or are the Tenants' liability to maintain under the terms of the Tenancy Agreement. for example in relation to the points raised above:-
 - (1) The carpet damage was caused by the Tenants cat
 - (2) The repair to the kitchen floor cannot be undertaken until the kitchen is empty and the Landlord is waiting for a date from the Tenant as to when that has happened
 - (3) The bathroom has a window which opens and the Tenant should open this regularly to ensure adequate ventilation.
 - (4) The broken pane of glass was caused by the Tenant or a member of the family.
 - (5) The problem with the windows in particular in the bedroom is due to blackout blinds being fitted by the Tenants and as a result there is insufficient ventilation into the rooms which then calls condensation problems.
15. The Landlord gave evidence of five comparable properties mainly terraced houses with three bedrooms in the area with rents ranging from £825 to £950 per month.

The Law

16. 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-
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 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.

Consideration and Determination

17. The Tribunal has considered the representations of both parties from which it is clear that relationships have broken down between the Landlord and the Tenants, in spite of there being a managing agent acting on behalf of the Landlord.
18. The managing agent is in an unfortunate position in that the Tenants' requests for repairs are passed onto the Landlord, but they have no authority to undertake repairs without the Landlord's prior approval.
19. Many of the pages in the bundles relate to issues of the breakdown in relationships between the parties is not for the Tribunal to consider as this is not included under the terms of reference in the Act.
20. The personal circumstances of the Landlord and Tenants are not relevant to this issue.
21. Turning to the valuation of the property, 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.
22. In determining the appropriate rent, the Tribunal would disregard any improvements made under the existing tenancy.
23. 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.
24. The Tribunal did not consider the Tenants comparable evidence to be of use as the properties were mainly either modern properties and/or semi-detached and therefore the price range shown was not of assistance to the Tribunal.
25. The Landlord's evidence was more comparable the majority of these being terraced houses with three bedrooms.
26. From this the Tribunal decides that a rental value for the property in first class order with all facilities and modern amenities would be in the region of £ 950 per month.

27. Most of the items of claimed disrepair are of a minor nature and would not individually affect the rental value to any substantial degree.
28. The Schedule of Condition at the commencement at the tenancy in 2017 contained in the Landlord's bundle shows the property not to be in a first-class condition.
29. It is noted in many places that the carpets were worn or stained. The Landlord states the carpets were renewed in 2014. The Tribunal considers the life expectancy of carpets in a tenanted property to be between 5 and 7 years, so they are towards the end of their life expectancy.
30. The Schedule of Condition states that the decorative condition of the property is worn in many areas especially when the extensive schedule of photographs are viewed.
31. Many windows appear to be the original styled wood sliding sash windows and they are not double glazed. This will result in those rooms being draughty with a large degree of heat loss.
32. Some of the disrepairs noted by the Tenants, such as the broken floorboards and extractor fan are the Landlord's repairing and maintaining liability.
33. Taking all of the foregoing into account a prospective Tenant would expect to pay a lower rent to reflect those defects. The Tribunal considers that the reduction in rent to reflect this would be of the order of 10% to £855 per month but say £850 per month.
34. The Tribunal therefore determines that the rent payable from 27th October 2020 being the date stated in the notice is £850 per month.

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.