



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

Case Reference : **CHI/29UB/MNR/2020/0083**

Property : **19 Campion Close, Ashford, Kent TN25
4EF**

Applicant : **Miss J Doherty - Tenant**

Representative : **None**

Respondent : **Mr F Marini - Landlord**

Representative : **Northwood (Ashford) Ltd**

Type of Application : **Housing Act 1988 – Section 13(4)
Determination of Rent under an
Assured Shorthold Tenancy**

Tribunal Members : **R T Athow FRICS MIRPM – Chairman
Mr N I Robinson FRICS
Miss C D Barton BSc MRICS**

Date of Decision : **9th 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 £2,350 per month in place of the existing rent of £2,000 per month to take effect from 12th November 2020.
2. The tenancy is an assured periodic tenancy from 12th May 2019.
3. On 19th October 2020 the Tenant made an application to the Tribunal under Section 13(4) of the Housing Act 1988.
4. On 12th 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 Tenant and to the Tribunal supporting the application for an increase in rent. The Tenant was also required to send a statement to the Landlord and to the Tribunal in support of her objection.
6. Neither party requested a Hearing.
7. The Tribunal met on 9th December 2020 to consider the application.
8. The matter is dealt with as a paper determination without hearing. In the current circumstances it has not been possible to inspect the property and the Tribunal relies on submissions from the Landlord and Tenant in correspondence, publicly available housing data online and its own expert knowledge.

Submissions

Tenant's submissions.

9. Miss Doherty submitted her application stating that the proposed increase was too high especially bearing in mind there were several problems within the property as follows
 - (1) There is a smell from drains
 - (2) The central heating boiler is not working correctly
 - (3) One of the cookers is not functioning correctly
 - (4) The window blinds in one room do not work
 - (5) There is a fault with the washing machine.
10. She did not suggest an appropriate rent that should be paid because of these defects, nor did she give any comparable evidence of rent levels for similar properties in the area.

Landlord's submissions

11. The landlord's agent set out a comprehensive response to the tenant's submissions. It was explained that this was a substantial executive style detached house with four double bedrooms, 6 toilets, four showers, two baths, and had a floor area of over 2,500 square feet. It is situated in a prestige area backing onto the Warren, an area of Woodland which is managed by Kent Woodland Trust.
12. Turning to the issues raised by the tenant, they stated that the drains have been inspected and no problems were found. Dyno Rod carried out a CCTV survey in January 2019 but could not find the cause of the smell. Furthermore, the developer had sent a firm of engineers to carry out a survey of the drains but they found nothing.
13. The managing agent felt that the property was a very large family house and was potentially underoccupied bearing in mind its size and because of this there was not going to be constant use of all of the facilities. As a result stagnant water may be left in the drains that cause the foul smell.
14. With regard to the problem with the boiler, the annual gas safety check was carried out on the 16th July 2020 but no major defects could be found.
15. With regard to the cooker oven, 3 visits have been made by engineers since June 2019 during which time a thermostat has been replaced as well as a fan element and a further callback for an additional thermostat replacement. No other defects were found.
16. The window blinds on the top floor are noted as defective in the inventory. and the landlord had sent a contractor to repair them as they were still under warranty. They were found to be beyond repair and it was agreed between the landlord and tenant that the blind will be kept shut and not replaced as it did not impact on the living conditions in the property. There has been no subsequent mention of this by the tenant.
17. With regard to the defective washing machine, there have been two visits by engineers but no defects were found at either visit. There is within the bundle a copy of some notes sent to the tenant advising her how to use the washing machine.
18. The present tenancy has been in place since 12th May 2019 at £2,000 per month and this is the first proposed rent increase since then.
19. The landlord has been in financial difficulty recently, the property was placed on the market and a buyer has been found, but the sale cannot complete until the tenant vacates.
20. The agents prepared a schedule of properties which they considered to be comparable as evidence of rental values in this area. From this they conclude

that the proposed increase in rent is appropriate bearing in mind the high quality of this property and its size.

The Law

21. 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) (i) 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

22. The Tribunal has considered the representations of both parties.
23. 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.
24. The personal circumstances of the Landlord and Tenant respectively are not relevant to this issue.
25. This house is an executive style of house with a high standard of energy-efficiency features, resulting in an EPC rating of 89/B dated 4th March 2015. It is relatively unusual to find properties with a higher rating and so the house should run very efficiently and be cost effective with its heating and electrical bills. It is set at the head of a cul-de-sac in a quiet residential area, yet within reach of the town centre and Ashford International Railway Station.
26. The Tribunal considered the list of comparable evidence supplied by the landlord and finds that, whilst there is a good selection of styles of property and locations they are not, in many cases, truly comparable with the subject property. However they do give a general overview on rental levels of high calibre properties such as the property in question.
27. In particular, the property on the Godington Estate is the nearest comparable in that it is a modern detached house not far from the subject property, slightly smaller accommodation with four bedrooms which has been on the market at £2,300 per month and has recently been let.

28. Taking the above into account the Tribunal decides that the true open market value of this property in good condition would be £2,350 per month.
29. The Tribunal then considered the items of disrepair reported by the tenant and finds that most of the items have been tested by the Landlord and are in good repair. The defective blinds are not an issue as the tenant has already agreed that nothing should be done on this.
30. This leaves the problem of the foul-smelling drains. The Tribunal has thoroughly read the report from Dyno Rod and notes that there are two areas of standing water between inspection chambers three and four and four and five. The issue is one that can be dealt with by the landlord simply and in a short period of time, and consequently the Tribunal does not consider this to be an item that would affect the rental value.
31. Taking the foregoing into account the Tribunal is satisfied that the current rental value of the property is £2,350 per calendar month.

Determination

32. The Tribunal therefore determines that the rent payable from 12th November 2020, being the date stated in the notice, is £2,350 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.