



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

Case Reference : **CHI/29UB/MDR/2020/0001**

Property : **42 Farrers Walk, Kingsnorth, Ashford,
Kent TN23 3NL**

Applicant : **Saara Woods - Tenant**

Representative : **None**

Respondent : **Mr C Angibo - Landlord**

Representative : **Ward & Partners**

Type of Application : **Housing Act 1988 – Section 22(1)
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. On 20th October 2020 the Tenant of the above property made an application under section 22(1) of the Housing Act 1988.
2. The tenancy commenced on 3rd September 2020 at a rent of £1,650.00 per month.
3. The Tribunal were provided with a copy of the tenancy agreement with the application.
4. On 30th October 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.

The Property

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.
9. From this information it is noted the property is a detached house with five bedrooms, four bathrooms, lounge, dining room, study, cloakroom, kitchen, and utility room. There is double glazing and central heating, a garage and a garden.

Statements & Evidence

10. The Tribunal did not receive written representations from either party.

The Evidence

The Applicant's Case

11. From her application form the Tenant's case was that she took the tenancy on the property based on representations made by the letting agent. Prior to

signing the agreement, the agent had stated that several items of work would be undertaken before the tenancy started. However, the Landlord has subsequently advised that he would not be putting the house into the condition that she felt it should be. She is of the opinion that the rent is too high bearing in mind the current state of disrepair at the property.

12. Amongst the items of disrepair noted by the Tenant was that the decorative condition of the property was not good as the redecoration by the Landlord had been carried out to a below average standard. The gas boiler and the hot water cylinder are not adequate for the size of property, resulting in one bathroom being unusable as two basins have an inadequate flow of hot water to them. There is also a less than full central heating system as there is no heating to the top floor. The electrics are not fully operational with some of the kitchen and utility appliances not working. There were many light bulbs missing when she moved into the property and there were several marks on the carpets. One part of the double garage has been converted into an office.
13. The Tenant gave no comparable evidence of appropriate rent levels for similar properties in this area.
14. The Tenant did not suggest a rent that was appropriate but requested that the Tribunal decide whether the rent was set too high in this instance being that the property does not have all of the appropriate facilities.

The Respondent's Case

15. Neither the Landlord nor his managing agent made any representations to the Tribunal.

The Law

16. In accordance with the terms of section 22 of the 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.

17. The Tribunal cites the relevant section below:

22 Reference of excessive rents to appropriate tribunal.

(1) Subject to section 23 and subsection (2) below, the Tenant under an assured shorthold tenancy may make an application in the prescribed form to the appropriate tribunal for a determination of the rent which, in the appropriate tribunal's opinion, the Landlord might reasonably be expected to obtain under the assured shorthold tenancy.

(2) No application may be made under this section if—

(a) the rent payable under the tenancy is a rent previously determined under this section;

(aa) the tenancy is one to which section 19A above applies and more than six months have elapsed since the beginning of the tenancy or, in the case of a replacement tenancy, since the beginning of the original tenancy; or

(b) the tenancy is an assured shorthold tenancy falling within subsection (4) of section 20 above (and, accordingly, is one in respect of which notice need not have been served as mentioned in subsection (2) of that section).

(3) Where an application is made to the appropriate tribunal under subsection (1) above with respect to the rent under an assured shorthold tenancy, the appropriate tribunal shall not make such a determination as is referred to in that subsection unless they consider—

(a) that there is a sufficient number of similar dwelling-houses in the locality let on assured tenancies (whether shorthold or not); and

(b) that the rent payable under the assured shorthold tenancy in question is significantly higher than the rent which the Landlord might reasonably be expected to be able to obtain under the tenancy, having regard to the level of rents payable under the tenancies referred to in paragraph (a) above.

(4) Where, on an application under this section, the appropriate tribunal make a determination of a rent for an assured shorthold tenancy—

(a) the determination shall have effect from such date as the appropriate tribunal may direct, not being earlier than the date of the application;

(b) if, at any time on or after the determination takes effect, the rent which, apart from this paragraph, would be payable under the tenancy exceeds the rent so determined, the excess shall be irrecoverable from the Tenant; and

(c) no notice may be served under section 13(2) above with respect to a tenancy of the dwelling-house in question until after the first anniversary of the date on which the determination takes effect.

(5) Subsections (4), (5) and (8) of section 14 above apply in relation to a determination of rent under this section as they apply in relation to a determination under that section and, accordingly, where subsection (5) of that section applies, any reference in subsection (4)(b) above to rent is a reference to rent exclusive of the amount attributable to rates.

18. 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.

Consideration

19. The first consideration to be addressed by the Tribunal was Section 22(3)(a) of the Act. The Tribunal must find there to be a sufficient number of similar dwelling houses in the locality. Law does not define “sufficient”. Similarly, there is no definition of “similar” or “locality”, but there is considerable case law to give guidance to the Tribunal.

20. Because neither party produced any evidence of comparable rents for similar style property in this area the Tribunal, being an expert Tribunal, has looked for evidence of rent levels of similar sized properties within the Ashford area.
21. The Tribunal has no evidence on its own records of lettings of comparable properties within this area or the surrounding five-mile radius of the town.
22. Having researched the current market for available lettings of similar types of property the Tribunal has again failed to find sufficient evidence of comparable houses. It appears that only one other 4 bedroomed property is currently on the market in Ashford and the rent for that is £1,450 per month but is considerably smaller and with fewer facilities. As a result, this is not considered to be a true comparable.
23. Because of the dearth of properties of this size either to let, or recently let, the Tribunal is unable to say that it has managed to find a sufficient number of properties to provide adequate comparable evidence to comply with section 22 (3)(a).

The Decision

24. The Tribunal confirms that section 22(3)(b) is **not** satisfied, and therefore has no power to make a determination in this instance.
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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.