



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

Case reference : **LON/00AH/MNR/2020/0048**

HMCTS CODE ; **V : Remote Video Hearing.**

Property : **Flat 6, 1 Heath Close, Croydon, Surrey,
CR2 6NH.**

Applicant : **Ms. Neera Meah**

Representative : **In person.**

Respondent : **Clarion Housing Association.**

Representative : **In person.**

Type of application : **Decision in relation to the referral of a
Notice of Increase under S.13 Housing
Act 1988.**

Tribunal member(s) : **Ms. A. Hamilton-Farey LLB FRICS**

Date of decision : **21 October 2020**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been consented to/not objected to by the parties. The form of remote hearing was V: Video Remote. A face-to-face hearing was not held because it was not practicable, and all issues could be determined during a remote hearing. The documents which were referred to us are in a bundle that included the notice of increase, the tenancy agreement, and appeal documents from the tenant. The landlord consented to the matter being dealt with by video hearing, but did not attend. The applicant tenant attended via the telephone.

Decision:

The Tribunal determines that market rent for the property at £245.00 per week with effect from 21 October 2020. As explained to the tenant during the hearing, this is the market rent for the property. She is a social housing tenant paying a social housing rent, and this is therefore unlikely to be the rent actually demanded by the landlord, where rents are capped in line with a Government formula.

Background:

1. The tenant, Ms. Meah entered into an assured shorthold tenancy agreement with effect from 10 February 2010.
2. On 7 February 2020, the respondent landlord served a Notice of Increase in rent proposing that the rent increase from £112.28 per week to £125.76 per week with effect from 1 April 2020. Ms. Meah referred that Notice to the tribunal for a determination of the rent.
3. Ms. Meah made representations to the effect that she was struggling to pay the current rent and could not afford the increase. She said that she had not been aware the landlord could increase the rent in this way, but did not suggest what the rent for the property should be.
4. The landlord whilst agreeing to the matter being dealt with remotely, did not provide any submissions or comparable rental evidence on which it wished to rely to support the proposed increase.
5. During the hearing the tribunal explained that is bound by the legislation. S.14 of the Act, which requires us to set a market rent for the property, that is the rent that could be achieved on an open market letting, and not a social housing rent, which is usually lower.
6. From the tribunal's own experience, the open market letting for a flat of this size, in good condition and on a similar tenancy agreement would be in the region of £245.00 per week, exclusive.
7. Also as explained to the applicant, the landlord being a social housing provider would not usually charge the market rent set, but this is not a matter for this tribunal.

8. In the circumstances, the tribunal sets the market rent for the property at £245.00 per week.
9. The tribunal then heard the applicant's case for exceptional hardship to be applied, and is satisfied that exceptional hardship exists in this case, and that any rent increase will therefore take effect from 21 October 2020, and not 1 April 2020, as sought by the landlord.

Name: Aileen Hamilton-Farey **Date:** 21 October 2020.

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

THE LAW:

S.13 The Housing Act 1988. – Increases of rent under assured periodic tenancies:

13(1); This section applies to –

- (a) A statutory periodic tenancy other than one which, by virtue of paragraph 11 or paragraph 12 in Part I of Schedule 1 to this Act, cannot for the time being be an assured tenancy; and
- (b) Any other periodic tenancy which is an assured tenancy, other than one in relation to which there is a provision, for the time being binding on the tenant, under which the rent for a particular period of the tenancy will or may be greater than the rent for an earlier period.

13(2) For the purpose of securing an increase in the rent under a tenancy to which this section applies, the landlord may serve on the tenant a notice in the prescribed form proposing a new rent to take effect at the beginning of a new period of the tenancy⁶ specified in the notice, being a period beginning not earlier than –

- (a) The minimum period after the date of the service of the notice; and
- (b) Except in the case of a statutory periodic tenancy –
 - a. In the case of an assured agricultural occupancy, the first anniversary of the date on which the first period of the tenancy began;
 - b. In any other case, on the date that falls 52 weeks after the date on which the first period of the tenancy began; and
 - c. If the rent under the tenancy has previously been increased by virtue of a notice under this subsection or a determination under S.14
 - i. In the case of an assured agricultural occupancy, the first anniversary of the date on which the increased rent took effect;
 - ii. In any other case, the appropriate date.

(3) the minimum period referred to in subsection (2) above is;

- (a) in the case of a yearly tenancy, six months;
- (b) in the case of tenancy is less than a month, one month, and
- (c) in any other case, a period equal to the period of the tenancy.

(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 of the dwelling house concerned, or are payable under separate agreements.

S.14 Determination of rent by the tribunal:

(1) Where under subsection (4)(a) of Section 13, **a tenant refers to the appropriate tribunal** a notice under subsection (2) of that section, **the appropriate tribunal** shall determine the rent at which, subject to section (2) and (4) above, the appropriate 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 notices relates; and

(d) in respect of which the same notices, if any, have been given under any of the grounds 1 to 5 of Schedule 2 to the 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 cost 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.