



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

**Case reference** : **LON/00AT/MNR/2020/0087**

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

**Property** : **35a Mafeking Avenue, Brentford, Middx  
TW8 0NJ.**

**Applicant** : **Ms. K. Meszaros**

**Representative** : **In person, assisted by Mr. Esprit.**

**Respondent** : **Capeheights Limited**

**Representative** : **Brinton's property Services Limited,  
Ms. R. Reichs.**

**Type of application** : **Decision under S.13 Housing Act 1988.**

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

**Date of decision** : **22 October 2020**

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**DECISION**

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## **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 tribunal was provided with the Notice of Increase and submissions from the tenant. No documents were received from the landlord.

### **Decision:**

The Tribunal determines the market rent for the property in its current condition to be £1,000.00 per calendar month, exclusive of council tax and water rates. The determination takes effect from 10 June 2020. The reasons for the tribunal's decision are below.

### **Background:**

1. The tenant, Ms. Meszaros entered into an assured shorthold tenancy agreement of the premises on 27 January 2017. Although the property is described as a flat within the tenancy agreement it is in effect a room with shared kitchen. The kitchen is shared between the two units on the ground floor.
2. Ms. Meszaros says that she considers the starting rent for the property to have been too high, but did not make any application to this tribunal for a determination of whether the £1,053.78 charged was in fact the market rent for the property.
3. This is the first rent increase applied for since the start of the tenancy, and by a S.13 Notice dated 1 April 2020 the landlord sought an increase in rent to £1,204.71, which the landlord says is the Local Housing Allowance rate for a similar property.
4. The tenant says that during the tenancy she has experienced various problems with insufficient heating, drafts, a lack of heating in the shared kitchen and the inability to use the back garden because it was overgrown.
5. In December 2019 the Local Authority (London Borough of Hounslow) visited the property and made recommendations as to the improvements that could be made to the property. These included the provision of gas central heating, removal of plaster to walls, replacement tiles to the shower room, and various repairs to the pointing and brickwork externally. The Authority also required the rear garden to be cleared and a large tree cut/felled.
6. It appears that some of these works were carried out, including the installation of a new heater in the room in early 2020, the installation of a fire blanket in early 2020, and the cutting back of the garden/tree in June/July 2020.
7. Other works have not been able to be carried out because of the Covid-19 pandemic and the need for the tenant to shield.

8. In July 2020, the Local Authority served a Hazard Awareness Notice on the landlords, highlighting the defective plasterwork, shower tiles, external pointing and lack of a fire extinguisher in the common parts and required a survey of the drains to identify the cause of smells from the drains. It has not been possible for the landlord to carry out these works again to the Covid-19 pandemic, and the tenant informed the tribunal that because she was shielding (together with the tenant in the other ground floor property) contractors could not enter the premises. This would not, in the tribunals view prevent any external works being carried out.
9. In any event, the Local Authority has not put a time limit on completion of the works, presumably because of the pandemic.
10. It appears from the tenant's evidence that the main issue is the smell of ammonia and sewage in the room which she says emanates from a broken sewer pipe below her floor, but despite the landlord having conducted various surveys, the cause of the problem has not been identified.
11. The other ground floor tenant has had his own survey carried out and says that the contractor informed him the drains were blocked with rubble, causing a back-up of the system. It appears that a further drain survey is to be undertaken by the tenant(s) shortly and this will be presented to the landlord.

#### **The Tenant's Evidence:**

12. The tenant's evidence is that the initial rate for the room was too high, that this was not a self-contained flat as described by the landlord, but was a room with a shared kitchen.
13. She highlighted the various problems she had had since the tenancy started and the effect that these had had on her well-being.
14. In her opinion, the rent for the property should be no more than £650.00, although she presented no evidence to support this statement.

#### **The Landlord's Evidence:**

15. Ms. Reich of Brinton's Property Services Limited, represented the landlord in these proceedings.
16. She said that their landlord/company were one of the view in the area to accept tenants without references, the funds for a deposit, or be in receipt of benefits.
17. She said that the room was in the Council Tax list as a self-contained flat and was therefore not a room, although she accepted that if this was a self-contained flat it did not contain a kitchen, and that this facility was shared between two flats.
18. She said that the landlord had attended to some of the items highlighted by the Local Authority, but pointed to the tenant's shielding that prevented any work being carried out internally to the property.

19. Ms. Reich produced brief details of four properties on which she wished to rely in support of the rent increase. Two of these were studio flats and two were one bedroom. The tribunal considers that the studio flats must represent the best comparables when dealing with rent.
20. One of the properties was recently let at £1,274.00 per month including bills. Ms. Reich said that this was an identical property to the subject and which shared a kitchen. The second comparable also recently let at £1,200.00 per month without bills, but which contained a small kitchenette. No other details of the properties or the lettings was provided.
21. Ms. Reich said that some tenants preferred to share kitchens and others preferred their own. She did not believe there was any difference in the rent payable for either type of property.
22. Ms Reich also said that the DWP was currently paying the increased rent, which in her view showed that they were satisfied that it was the market rent for the property.

**Determination:**

23. The tribunal is not satisfied that if this property were brought to the market today, that a tenant would pay the asking rent for what is effectively a room with shared kitchen. Although the property has its own en-suite, the letting is similar to that one would find in an HMO (although there is no suggestion that this property is an HMO).
24. In the tribunal's view given the presence of dampness, smells of ammonia/sewage, lack of blinds, carpets, curtains that one would normally find in a market letting, a tenant would seek a reduction from the market rent.
25. From publicly available data, although not specifically identified, a similar property in the TW8 area would rent for £1,050.00 per month, but the property would have its own kitchen. The tribunal finds that an amount should be deducted from this starting point to reflect the difference in amenity.
26. The tribunal is not persuaded that if this property were to become vacant the landlord would achieve £1,204.71 per month in its current condition, and repairs and improvements in line with the Hazard Awareness Notice would be required to bring the property up to that level. Similarly, the tribunal is not persuaded that the market rent would be £650.00 as suggested by the tenant. No evidence was supplied to support this view and therefore must be disregarded.
27. In the tribunal's view, the discount that a prospective tenant would seek, would reduce the market rent to £1,000.00 per calendar month, exclusive of Council Tax, but inclusive of water rates, and accordingly determines that amount as the rent payable by the tenant from 10 June 2020.
28. The tenant applied for the exceptional hardship procedure to be applied to her new rent. This enables a tribunal to defer any rent increase to the date of the determination. However in this instance, the tribunal has determined that the

rent should be reduced and therefore exceptional hardship provisions do not apply.

29. The tribunal was informed that the tenant had arrears on her account and any credit against the sum currently being charged would be applied to those before any refund would be made to the tenant.

**Name:** Aileen Hamilton-Farey      **Date:** 22 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 tenancy 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 a tenancy which is less than a year, 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) if 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.