



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

Case reference : **LON/00AE/MNR/2020/0095**

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

Property : **66 Ilex Road, London NW10 9NU.**

Applicant : **Ms. A. Osman**

Representative : **In person.**

Respondent : **Mr. Ranganathan.**

Representative : **In person.**

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

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

Date of decision : **13 November 2020.
Date of extended reasons. 24 March
2021.**

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 tribunal was provided with the Notice of Increase and submissions from the landlord and tenant. The tenant also produced evidence of comparable properties in the locality on which she relied.

Decision:

The Tribunal determines the market rent for the property in its current condition to be £1100.00 per calendar month. The determination takes effect from 1 July 2020. The reasons for the tribunal's decision are below.

Background:

1. The tenant, Ms. Osman entered into an assured shorthold tenancy agreement of the premises on 17 November 2016. The property is a one bedroom, living room kitchen and bathroom ground floor flat, with garden access. At the start of the tenancy the rent passing was £302.40 per week.
2. Mr. Ranganathan, the landlord says that the property is a two-bedroom flat and is classified as such by the local housing authority (Brent) who pay the element of Universal Credit to Mr. Ranganathan on the basis that it is a two bed not a one bed.
3. It is not disputed between the parties that the property comprises two rooms, kitchen, and bathroom w.c. with garden access.
4. On or around 5 May 2020, Mr. Ranganathan served a Notice of Increase on Ms. Osman which proposed a rent increase from 1 July 2020 to £365.92 per week, and which Mr. Ranganathan says is in line with the Local Housing Authority rent for a 2-bed flat.
5. Ms. Osman says that the rent for the property is too high, and that the rent has been increased by large amounts every year in March. She said that she had carried out her own research and that a two-bedroom flat could be rented for £1,200 per month. (approximately £275 per week), and therefore the current rent is too high. She also said that Universal Credit was actually paying Mr. Ranganathan £400.00 per week, so as to reduce any arrears that had accrued on her account.
6. The crux of the matter between the parties is that 'is this property a one or two bed? and does the fact that the local authority is willing to pay the landlord the rent for a two bed, affect the market rent?

The Tenant's Evidence:

7. The tenant said that evidence of local lettings suggested that the market rent for the property was in the region of £1,200.00 per month, but that due to her

circumstances she was not able to move from the property and take up a tenancy elsewhere. She had attempted to be rehoused by the London Borough of Hammersmith and Fulham because that is where she worked, but they had refused to accept her onto the housing list.

8. She complained that repairs and maintenance had not been carried out by the landlord, and the property was generally in a poor condition.

The Landlord's Evidence:

9. Mr. Ranganathan disputed the tenant's statement that repairs had not been carried out. He said that prior to letting the property, the local authority had given him a list of works that had to be undertaken, and all of these had been completed to the local authority's satisfaction before the tenancy started.
10. Mr. Ranganathan also produced e-mail correspondence from the Local Authority which confirmed they would be willing to pay the rate for a 2-bed flat should the property be re-let.

Determination:

11. The tribunal is not convinced that if this property were brought to the open market today, that a tenant would pay the rent now being sought by the landlord. We are not satisfied that this is a two-bedroom flat, notwithstanding the fact that the local authority is willing to pay the equivalent rent for it.
12. We find on balance that the local authority has other pressures in re-housing people from temporary accommodation. This cannot be classified as the open market, which is the rent that this tribunal must set.
13. We must determine whether a prospective tenant would use what is in effect a living room as a bedroom, and it may well be that they would, but this does not in our view, make the property a two bed. We find on balance that the property is a two-room flat (one bedroom, one living room), the dining area is not in a room contained by a door, and therefore is not, in our view, a proper dining room. It appears to be a small area created by a recess adjacent to the kitchen.
14. Having concluded that the property is a one-bed flat and, taking into account the comparables provided by the tenant, we considered that the rent passing was at the top of the range for a flat of this size in this area. As such, we set the rent at the current rent passing, making no determination of a rent increase.
15. At the hearing, the landlord suggested that he would accept an increase from December 2020, however the tribunal has not increased the rent, no increase can be charged to the tenant, and we determine the rent at £253.84 per week (£1,100.00 per month) with effect from 1 July 2020.

Name: Aileen Hamilton-Farey **Date:** 24 March 2021.

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 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) 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.