



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

**Case Reference** : **CHI/21UD/MNR/2021/0056**

**Property** : **Upper Maisonette  
94 Bohemia Road  
Hastings  
East Sussex  
TN37 6RN**

**Landlord** : **Ms C Nay**

**Representative** : **Blackstone Legal**

**Tenant** : **Mrs K Williams**

**Representative** : **None**

**Type of Application** : **Determination of a Market Rent  
sections 13 & 14 of the Housing Act  
1988**

**Tribunal Members** : **Mr I R Perry BSc FRICS  
Mr M J Ayres FRICS  
Mr J S Reichel BSc MRICS**

**Date of Inspection** : **None. Determined on papers**

**Date of Decision** : **15<sup>th</sup> July 2021**

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**DECISION**

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### **Summary of Decision**

1. On 15<sup>th</sup> July 2021 the Tribunal determined a market rent of £450 per month to take effect from 5<sup>th</sup> June 2021.

### **Background**

2. The case concerned the determination of a market rent for the subject property following a referral of the Landlord's notice of increase of rent by the Tenant pursuant to sections 13 and 14 Housing Act 1988.
3. On 26<sup>th</sup> April 2021 the Landlord served a notice under Section 13(2) of the Housing Act 1988 which proposed a new rent of £750 per month in place of the existing rent of £446.33 per month to take effect from 5<sup>th</sup> June 2021. The notice complied with the legal requirements.
4. On 28<sup>th</sup> May 2021 the Tenant applied to the Tribunal under Section 13(4) (a) of the Housing Act 1988.
5. The Coronavirus pandemic and considerations of health have caused a suspension of inspections and Tribunal hearings in person until further notice.
6. The Tribunal issued directions on 3<sup>rd</sup> June 2021 informing the parties that the Tribunal intended to determine the rent based on written representations. The parties were invited to make submissions which could include photographs or videos.
7. Both parties submitted papers by the specified dates. The papers were also copied to the other party. A Tribunal was convened for 15<sup>th</sup> July 2021 using video conferencing.

### **The Property**

8. From the information given in the papers and available on the internet the property comprises a first and second floor dwelling situated above a small flush fronted shop which is in a tertiary commercial position approximately 1/2 mile from Hastings beach. Bohemia Road is the main A 21 through Hastings
9. The accommodation is described as including three bedrooms, a living room, kitchen and bathroom. There is no outside space.
10. The Landlord provided carpets, curtains and a cooker.

### **Submissions**

11. The initial tenancy began on 5<sup>th</sup> March 2011.
12. The Tenant submitted a letter from Hastings Borough Council dated 8<sup>th</sup> June 2021. This letter was addressed to 'The Landlord' but no postal address was used. The letter states that the Landlord may be in breach of Minimum Energy Efficiency Standards (MEES) regulations. The Government EPC register shows the previous EPC had a Grade F but this expired in September 2020.
13. The Tenant also provided two photographs of the inside of the property showing water damage from a leaking roof.
14. The Tribunal was provided with a witness statement from the Landlord dated 11<sup>th</sup> June 2021 in which she states that she inherited the property from her late father and has been denied access to the inside of the property. She considers the property to be in such poor condition that works required exceed £95,000 and could not be carried out with the Tenant remaining in situ.
15. The Tenant states that she cannot afford any higher rent that she would have to pay for alternative accommodation.
16. Neither party provided details of any rents for comparable properties in the area.

## **The Law**

### **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-
    - (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.
- (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 and Valuation**

17. The Tribunal first considered whether it felt able to reasonably and fairly decide this case based on the papers submitted only with no oral hearing. Having read and considered the papers it decided that it could do so.

18. 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 as at the date of the Tribunal. The personal circumstances of the Landlord nor Tenant are not relevant to this issue.
19. In the absence of any evidence from the parties the Tribunal could only rely on its own research judgement and knowledge of rental values in Hastings. Having done so it decided that the market rent for the subject property if let today in a condition that was usual for such an open market letting would be £750 per month.
20. In law the absence of a valid EPC would preclude the property from being let without the Landlord becoming liable for a possible prosecution and fine, but that does not reduce the rental value to nil. The present Tenant pays an established rent for the accommodation in its present condition.
21. The Tribunal is also mindful of the condition of the property and the substantial works that are necessary to refurbish the accommodation which were last estimated at £95,000. The Landlord has been seeking possession of the property in order to carry out such works.
22. Mindful of these factors the Tribunal does not consider that there are grounds for any increase in the present rent and therefore reduces the open market rent by £300 per month to reflect the condition of the property and the consequent inability of the Landlord to obtain an updated EPC at the level required to allow a new letting.
23. The Tenant made no representation that the starting date for the new rent specified in the Landlord's notice would cause the Tenant undue hardship.

### **Determination**

24. The Tribunal therefore decided that the rent at which the subject property might reasonably be expected to be let in the open market by a willing Landlord under the terms of this assured tenancy was £450 per month.
25. The Tribunal directed that the rent of £450 per month should take effect from 5<sup>th</sup> June 2021 this being the date specified in the Notice.

### **RIGHTS OF APPEAL**

1. A person wishing to appeal this 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. Where possible you should send your application for permission to appeal by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) as this will enable the First-tier Tribunal Regional office to deal with it more efficiently.

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.