



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

Case reference : **LON/00AY/MNR/2021/0112**

HMCTS code (paper, video, audio) : **V:CVPREMOTE**

Property : **Flat 6, 11 Brixton Water Lane, SW2 1NU**

Applicant : **Ms M Smith**

Representative : **In Person**

Respondent : **Notting Hill Genesis**

Representative : **In House**

Type of application : **Market Rent under ss13 and 14 of the Housing Act 1988**

Tribunal member(s) : **Mr A Harris LLM FRICS FCI Arb**

Date and venue of hearing : **9 September 2021 at 10 Alfred Place, London WC1E 7LR**

Date of decision : **23 September 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a video hearing on the papers which has been consented to by the parties. The form of remote hearing was V: CVPREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined by video hearing. The documents that I was referred to are the submissions from both parties the contents of which the tribunal have noted

Decisions of the tribunal

- (1) The tribunal determines that the market rent on the basis of the original affordable tenancy is £577.24 per calendar month.
- (2) In the Alternative if the tenancy is to be assessed at 80% of the market rent the new rent is £1115.20 per calendar month.
- (3) The tribunal makes the determinations as set out under the various headings in this decision.

The application

1. The applicant seeks a determination pursuant to section 13 and 14 of the Housing Act 1988 following the service of a notice of increase dated 20 April 2021 proposing an increase in the rent from £563.33 to £683.33 with effect from 1 June 2021. The letter explains that the increase is on the basis that the tenancy is an intermediate market tenancy and should pay rent at 80% of market rent. As the rent has not been increased for some time the landlord proposes to increase the rent to that level over five years.

The property

2. The subject property is a 2nd floor flat with accommodation consisting of open plan living room/kitchen, two bedrooms and bathroom/WC. The flat has central heating and double glazing.

The Tenant's evidence

3. The tenant's evidence includes details of various items of disrepair including poor ventilation, disrepair to the bike sheds, insecure access to the building and antisocial behaviour, the rubbish area not secure leading to vermin infestation, problems with internal door locks and problems with the balcony. No curtains, carpets or white goods were supplied.

4. The tenant supplied details of the original planning consent under which the development was built restricting use of the property to key worker housing in the first instance. The tenant was and remains the original key worker.
5. The tenant argues that the restrictions on rent increases set out in government guidance applies limiting the rent increase in any one year to CPI +1%.

The landlord's evidence

6. The landlord has supplied details from a Rightmove printout of various flats in the area at rents supporting a rent of £1640 per month.

The Law

7. The Housing Act 1988, section 14 allows a tenant, who has received a notice of increase to apply to the tribunal for a determination of the rent which in the tribunals opinion the rent at which the dwelling might reasonably be expected to be let in the open market by a willing landlord under an assured tenancy, which is a periodic tenancy having the same periods as the tenancy, beginning at the beginning of the notice period and on the same terms other than the amount of rent as are contained in the tenancy.

Discussion

8. The case concerns an application for determination of a market rent following a landlord's notice of increase. Market rent depends upon the terms of the tenancy. The landlord proposes that the rent should be an intermediate rent at 80% of market rent for the flat on an open market assured shorthold tenancy whereas the tenant argues that the rents are affordable rents as the flats were originally let as key worker housing and therefore subject to affordable rent capping.
9. I have been provided with a copy of the planning consent under which the buildings were developed dating June 2004.
10. Schedule 2 to that consent sets out the conditions:
11. 1.3 states that the affordable housing units shall not be used or occupied otherwise than to meet the objectives of an RSL
12. 1.4 the affordable housing units shall not be occupied otherwise than pursuant to a tenancy of not more than 12 months

13. 1.8 it shall ensure that any occupation of any of the social rented units is in accordance with the nominations agreements
14. 1.9 the key worker's units shall not (subject to the provisions of paragraphs 1.1 to 1.6 and 1.10 to 1.12 inclusive of this schedule 2) be occupied other than as affordable housing for rent to key workers where the rental costs are as agreed with the Housing Corporation as part of the grant awarded to an RSL pursuant to an application for challenge fund or at a rental level in line with high housing corporation rent guidelines from time to time to be agreed by the council such agreement not be unreasonably withheld or delayed making the key worker housing units accessible to those key workers who would not otherwise be able to afford to rent such accommodation on the open market.
15. The tribunal is satisfied that the tenant is a key worker and has been occupation since the properties were built. The Housing Corporation was abolished in 2008 and replaced by the Homes and Communities Agency now known as Homes England. RSL's are required to set rents in accordance with the Rent Standard produced by the Regulator of Social Housing.
16. The evidence indicates that the flats are Affordable Rent Housing and subject to the restrictions in paragraph 3.10 to 3.14 of the Standard. Paragraph 3.14 states that the rent of an existing affordable rent tenant (including where they have a new tenancy) may not be increased by more than CPI +1% in any year subject to the cap in paragraph 3.2. Existing tenant in this context means an existing tenant of the specific property concerned. For the avoidance of doubt, the revised rent on re-letting to an existing tenant may only re-be be rebased to 80% of current market value where the resulting rent will be no more than the rent arrived at by a CPI +1% increase.
17. Applying this to the current tenancy the tribunal is of the view that the CPI +1% cap applies to this tenancy.
18. On the evidence before it the tribunal is satisfied that the tenant would not suffer hardship if the rent increase is backdated to the date of service of the notice.
19. The new rent on the basis of the CPI +1% cap is £577.24 per month.
20. In case I am wrong on this point the landlords evidence is that market rents for a two-bedroom flat in the locality would be £1640 per month and 80% of that is £1312 per calendar month. For a one-bedroom flat the rent would be £1280 per month and 80% of that is £1024 per calendar month.

21. In the view of the tribunal these are not unreasonable rents for flats of this type in the open market but the tribunal has heard evidence of significant disrepair and management issues over a number of years and makes allowance for this. Also flats in the market would be expected to let with carpets curtains and white goods. The tribunal deducts 15% for these factors from £1640. This reduces the monthly rent to £1394 and 80% of this becomes £1115.20 per month.

Name: A P Harris LLM FRICS FCI Arb
Valuer Chair

Date: 23 September 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).