



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

**Case Reference** : **CHI/24UJ/MNR/2021/0075**

**Property** : **45 Anderwood Drive, Sway,  
Lymington, Hampshire SO41 6AW**

**Applicant** : **Mr D Elbridge (Tenant) c/o  
Scott Bailey LLP**

**Respondent** : **Executors of Mrs J Bishop  
(Landlord) c/o Moore Barlow  
LLP**

**Date of Application** : **8th July 2021**

**Type of Application** : **Sections 13 and 14 of the Housing Act  
1988 (The Act)**

**Tribunal** : **Mr R T Brown FRICS Chairman  
Mr M C Woodrow MRICS  
Mr M J F Donaldson FRICS MCI Arb  
MAE**

**Date** : **24th September 2021**

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**REASONS FOR DECISION**

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### ***Background***

1. The Tribunal gave formal notice of its decision by a Notice dated 24th September 2021 in the sum of **£115.00 per week**.
2. By an application dated 8th July 2021, the tenant of the above property referred a notice of increase in rent served by the landlord under section 13 of the Housing Act 1988 to the Tribunal.
3. The landlord's notice dated the 14th June 2021 proposed a rent of **£220.00 per week** with effect from 19th July 2021, in place of the current rent of £70.00 per week.
4. The original tenancy commenced sometime in 1993. A copy of that agreement, if any, was not produced to the Tribunal. A new tenancy agreement, in common form, is produced and dated 3rd April 2020. The tenancy is subject to the Landlord's repairing obligations defined in Section 11 the Landlord and Tenant Act 1985.

### ***Property and Inspection***

5. Following the Directions dated 19th August 2021 and the explanation contained therein, the Tribunal did not inspect the premises.
6. Extracting such information as it could from the papers supplied to the Tribunal by the parties, by reference to information publicly available on the internet and with the benefit of its knowledge and experience the Tribunal reached **the following conclusions and found as follows:**
7. The property is located in an established residential area in the village of Sway located within the New Forest National Park. Local amenities are available.
8. The property comprises a detached cob cottage which has been subsequently altered and extended by the Tenant to provide the current accommodation.
9. The accommodation now comprises: 2 reception rooms, sun room, kitchen, 2 bedrooms, bathroom. Outside: garden and off street parking.
10. No white goods, carpets or curtains are included in the Tenancy.
11. The Tribunal is informed that all mains services are connected. There is gas central heating and windows are double glazed.

### ***Hearing***

12. A hearing was not requested.

### ***Documents supplied to and considered by the Tribunal***

13. Tribunal Directions dated 19th August 2021.
14. Landlord: Tribunal Reply Form and submission.

15. Tenant: Application Form, Notice of Increase, Tenancy agreement, Reply Form and submission.

***Landlord's Representations (summarised):***

16. The Landlord' representative says in the Reply Form and attachments:
- a) The front, side and rear extensions were constructed without the Landlord's consent.
  - b) Central heating, double glazing, kitchen units and slate roofing undertaken by the Tenant.
  - c) The entire property is in need of modernisation but in reasonable repair. Internal partitions, skylight and sunroom internal walls are unfinished.
  - d) The kitchen and bathroom fittings are dated but in reasonable repair.
  - e) The property is located 1/2 mile from nearest railway station, 500 metres from bus stop. A few minutes from the New Forest and 5 miles from the South Coast.
  - f) The Tenant has been in occupation for 28 years and has had the benefit of a low rent. His improvements have reduced his liability under the repairing obligation in his tenancy agreement.
  - g) A schedule of two bedroom properties available to let at rents ranging from £202.00 to £300.00 per week.
  - h) A number of photographs of the property.
  - i) A report from Moses Rutland detailing further comparables and concluding with the opinion that £70.00 per week is substantially below the market rent.

***Tenant's Representations (summarised)***

17. The tenant's representative says:
18. In the Application Form
- a) Large ground floor extension creating lounge and dining room.
  - b) Conversion of lounge to bedroom.
  - c) Construction of hallway.
  - d) Insertion of roof lights.
  - e) Recovering roof with slates.
  - f) Construction of Front Porch.
  - g) Installation of new UPVC windows.
  - h) Rewiring.
  - i) Gas central heating and plumbing.
  - j) Building Control Certificate of Completion New Forest District Council dated 15th December 2020.
  - k) An historic valuation of the property dated 22nd February 2011.
19. In the Reply Form his Representative says:
- a) Confirms the list of works carried out.

- b) Prior to improvements the property comprised a mud wall cottage with: living room, bedroom, kitchen and bathroom. No central heating and limited electrical outlets. The heating was a single gas fire and the windows single glazed with gaps around.
- c) Following the tenant's improvements the property is now in reasonable repair.
- d) Improvements carried out by the Tenant are to be ignored under Section 14(2)(b) of the Housing Act 1988.
- e) There is a dispute between the Landlord and Tenant in relation to the tenants interest following the improvements. This dispute is not relevant to the issue of the rent.
- f) The determination of the rent by the Tribunal is therefore to be considered on the basis of the property prior to the Tenants improvements. The Landlords photographs are helpful in assessing that condition.
- g) The Tenancy is unfurnished.
- h) There are no directly comparable properties to rent in Sway apart from a 1 bedroom property referred to by the Landlord let at £725.00 pcm (£167.30 per week) in October 2020 and described as '*a modern detached 1- bedroom bungalow*'.
- i) By reference to the Index for Private Registered Providers (Ministry of Housing, Communities and Local Government) for the period 1997 to 2021 shows a percentage increase of 92.00%. Based on £70.00 per week the increase would be to £134.00 per week. Bearing in mind the historic condition of the property a rent of £115.38 per week is proposed.
- j) Photographs showing the property in 2002/2003, 2009, 2011, 2014, 2017 and 2020 showing the various changes made by the Tenant.

### ***The Tribunal's Deliberations***

- 20. 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.
- 21. The personal circumstances of the Tenant or Landlord or any other dispute between them are not relevant to the determination of the current market rent and no reference is made to those issues in this decision.
- 22. The Tribunal found as a matter of fact that the notice of rent increase was a Notice under section 13 as prescribed by Statute.
- 23. The Tribunal checked the National Energy Performance Register and noted that the subject property has a certificate registering the rating D expiring on 11th November 2030. The legal minimum standard for letting a property is Rating E.
- 24. Section 14(2)(b) of the Act (set out in full in the Appendix to this Decision) says, in summary, that Tenant's improvements shall be disregarded for the purposes of assessing the current market rent.

25. The Tribunal first considered first the Tenant's contention that his improvements should not be considered in the determination. The Tribunal determines that the Tenant's improvements should be excluded when assessing the current rent by virtue of Section 14(2)(b) of the Act.
26. The Tribunal considered the Landlord's contention that consent was not granted for these works and the effect this might have on the rent. The Landlord is deceased and her late husband died in 2010. They lived in the adjacent property and no evidence has been produced to support the contention. The Tribunal conclude that this issue is not relevant to its determination.
27. The Tribunal further find that regardless of the Tenant's maintenance covenant in the Tenancy Agreement the Landlord has obligations under Section 11 of the 1985 Act (set out in full in the Appendix to this decision). Those obligations override any obligations set out in the Tenancy Agreement.
28. Based on the knowledge of its members, the Tribunal finds that the market for this type of property is very sensitive to condition and inventory.
29. The Tribunal finds that in its original condition the property would prove to be an unattractive proposition if offered to let in the market without first undergoing substantial repair and improvement.
30. The Tribunal was therefore unable to place significant weight on the comparable evidence provided as it all relates to properties which in the Tribunal's opinion are well maintained to the standard expected by the market.
31. The Tribunal places no weight on the letter of Moses Rutland because:
  - a) It does not define what exactly is being valued.
  - b) It offers no opinion on the actual rental value.
  - c) No indication that the author inspected the property either internally or externally.
  - d) The comparables included are not analysed and would appear to be in main historic.
32. The Tribunal, acting as an expert tribunal, determined what rent the landlord could reasonably be expected to obtain for the subject property in the open market if it were let today in the condition and subject to the terms of such a tenancy that is considered usual for such an open market letting. It did this by having regard to the evidence supplied by the parties and the Tribunal's own general knowledge of market rent levels. Having done so, it concluded that such a likely market rent for a similar modernised property (as it stands today) in fair condition with central heating, double glazing, modern bathroom and kitchen facilities, floor coverings, curtains, all white goods and an EPC Rating above F would be **£225.00 per week.**

33. The Tribunal, after careful consideration of the current market conditions and the apparent condition of the subject property as found by the Tribunal make the following deductions to reflect the condition of the subject property as originally let:

- a) The tenant's improvements (listed in paragraph 18 above) £100 per week.
- b) Carpets, curtains and white goods £10.00 per week.

A total deduction of £110.00 per week.

34. Accordingly the Tribunal determined that the market rent for the subject property is **£115.00 per week.**

35. The rent will take effect from 19th July 2021 being the date specified by the landlord in the notice of increase.

### ***Relevant Law***

36. Sections 13 and 14 of the Housing Act 1988.

37. Assured Tenancies and Agricultural Occupancies (Forms) (England) Regulations 2015 (SI 2015 No.620)

### **RIGHTS OF APPEAL**

1. A person wishing to appeal this decision (on a point of law only) 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.

### **APPENDIX**

## **Landlord and Tenant Act 1988**

### **Section 14(2)(b) of the Act says:**

Determination of rent by rent assessment committee

(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.

38. Section 11 of the Landlord and Tenant 1985 (The 1985 Act) says:

(1) In a lease to which this section applies (as to which, see sections 13 and 14) there is implied a covenant by the lessor—

(a) to keep in repair the structure and exterior of the dwelling-house (including drains, gutters and external pipes),

(b) to keep in repair and proper working order the installations in the dwelling-house for the supply of water, gas and electricity and for sanitation (including basins, sinks, baths and sanitary conveniences, but not other fixtures, fittings and appliances for making use of the supply of water, gas or electricity), and

(c) to keep in repair and proper working order the installations in the dwelling-house for space heating and heating water.

(1A) If a lease to which this section applies is a lease of a dwelling-house which forms part only of a building, then, subject to subsection (1B), the covenant implied by subsection (1) shall have effect as if—

(a) the reference in paragraph (a) of that subsection to the dwelling-house included a reference to any part of the building in which the lessor has an estate or interest; and

(b)any reference in paragraphs (b) and (c) of that subsection to an installation in the dwelling-house included a reference to an installation which, directly or indirectly, serves the dwelling-house and which either—

(i)forms part of any part of a building in which the lessor has an estate or interest; or

(ii)is owned by the lessor or under his control.

(1B)Nothing in subsection (1A) shall be construed as requiring the lessor to carry out any works or repairs unless the disrepair (or failure to maintain in working order) is such as to affect the lessee’s enjoyment of the dwelling-house or of any common parts, as defined in section 60(1) of the Landlord and Tenant Act M11987, which the lessee, as such, is entitled to use.]

(2)The covenant implied by subsection (1) (“the lessor’s repairing covenant”) shall not be construed as requiring the lessor—

(a)to carry out works or repairs for which the lessee is liable by virtue of his duty to use the premises in a tenant-like manner, or would be so liable but for an express covenant on his part,

(b)to rebuild or reinstate the premises in the case of destruction or damage by fire, or by tempest, flood or other inevitable accident, or

(c)to keep in repair or maintain anything which the lessee is entitled to remove from the dwelling-house.

(3)In determining the standard of repair required by the lessor’s repairing covenant, regard shall be had to the age, character and prospective life of the dwelling-house and the locality in which it is situated.

(3A)In any case where—

(a)the lessor’s repairing covenant has effect as mentioned in subsection (1A), and

(b)in order to comply with the covenant the lessor needs to carry out works or repairs otherwise than in, or to an installation in, the dwelling-house, and

(c)the lessor does not have a sufficient right in the part of the building or the installation concerned to enable him to carry out the required works or repairs,

then, in any proceedings relating to a failure to comply with the lessor’s repairing covenant, so far as it requires the lessor to carry out the works or repairs in question, it shall be a defence for the lessor to prove that he



used all reasonable endeavours to obtain, but was unable to obtain, such rights as would be adequate to enable him to carry out the works or repairs.]

(4)A covenant by the lessee for the repair of the premises is of no effect so far as it relates to the matters mentioned in subsection (1)(a) to (c), except so far as it imposes on the lessee any of the requirements mentioned in subsection (2)(a) or (c).

(5)The reference in subsection (4) to a covenant by the lessee for the repair of the premises includes a covenant—

(a)to put in repair or deliver up in repair,

(b)to paint, point or render,

(c)to pay money in lieu of repairs by the lessee, or

(d)to pay money on account of repairs by the lessor.

(6)In a lease in which the lessor's repairing covenant is implied there is also implied a covenant by the lessee that the lessor, or any person authorised by him in writing, may at reasonable times of the day and on giving 24 hours' notice in writing to the occupier, enter the premises comprised in the lease for the purpose of viewing their condition and state of repair.

## **Landlord and Tenant Act 1985**

### **Section 11 Repairing obligations in short leases.**

(1)In a lease to which this section applies (as to which, see sections 13 and 14) there is implied a covenant by the lessor—

(a)to keep in repair the structure and exterior of the dwelling-house (including drains, gutters and external pipes),

(b)to keep in repair and proper working order the installations in the dwelling-house for the supply of water, gas and electricity and for sanitation (including basins, sinks, baths and sanitary conveniences, but not other fixtures, fittings and appliances for making use of the supply of water, gas or electricity), and

(c)to keep in repair and proper working order the installations in the dwelling-house for space heating and heating water.

(1A)If a lease to which this section applies is a lease of a dwelling-house which forms part only of a building, then, subject to subsection (1B), the covenant implied by subsection (1) shall have effect as if—

(a)the reference in paragraph (a) of that subsection to the dwelling-house included a reference to any part of the building in which the lessor has an estate or interest; and

(b)any reference in paragraphs (b) and (c) of that subsection to an installation in the dwelling-house included a reference to an installation which, directly or indirectly, serves the dwelling-house and which either—

(i)forms part of any part of a building in which the lessor has an estate or interest; or

(ii) is owned by the lessor or under his control.

(1B) Nothing in subsection (1A) shall be construed as requiring the lessor to carry out any works or repairs unless the disrepair (or failure to maintain in working order) is such as to affect the lessee's enjoyment of the dwelling-house or of any common parts, as defined in section 60(1) of the Landlord and Tenant Act 1987, which the lessee, as such, is entitled to use.

(2) The covenant implied by subsection (1) ("the lessor's repairing covenant") shall not be construed as requiring the lessor—

(a) to carry out works or repairs for which the lessee is liable by virtue of his duty to use the premises in a tenant-like manner, or would be so liable but for an express covenant on his part,

(b) to rebuild or reinstate the premises in the case of destruction or damage by fire, or by tempest, flood or other inevitable accident, or

(c) to keep in repair or maintain anything which the lessee is entitled to remove from the dwelling-house.

(3) In determining the standard of repair required by the lessor's repairing covenant, regard shall be had to the age, character and prospective life of the dwelling-house and the locality in which it is situated.

(3A) In any case where—

(a) the lessor's repairing covenant has effect as mentioned in subsection (1A), and

(b) in order to comply with the covenant the lessor needs to carry out works or repairs otherwise than in, or to an installation in, the dwelling-house, and

(c) the lessor does not have a sufficient right in the part of the building or the installation concerned to enable him to carry out the required works or repairs, then, in any proceedings relating to a failure to comply with the lessor's repairing covenant, so far as it requires the lessor to carry out the works or repairs in question, it shall be a defence for the lessor to prove that he used all reasonable endeavours to obtain, but was unable to obtain, such rights as would be adequate to enable him to carry out the works or repairs.

(4) A covenant by the lessee for the repair of the premises is of no effect so far as it relates to the matters mentioned in subsection (1)(a) to (c), except so far as it imposes on the lessee any of the requirements mentioned in subsection (2)(a) or (c).

(5) The reference in subsection (4) to a covenant by the lessee for the repair of the premises includes a covenant—

(a) to put in repair or deliver up in repair,

(b) to paint, point or render,

(c) to pay money in lieu of repairs by the lessee, or

(d) to pay money on account of repairs by the lessor.

(6) In a lease in which the lessor's repairing covenant is implied there is also implied a covenant by the lessee that the lessor, or any person authorised by him in writing, may at reasonable times of the day and on giving 24 hours' notice in writing to the occupier, enter the premises comprised in the lease for the purpose of viewing their condition and state of repair.