



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

Case reference : **CAM/22UF/MNR/2022/0018**

HMCTS code : **P:PAPERREMOTE**

Property : **17 Mildmay Road, Chelmsford,
Essex, CM2 0DG**

Applicant (Tenant) : **Jacqueline Tracy Brennan**

Respondent (Landlord) : **Leon Chandler**

Type of application : **Determination of a Market Rent:
Sections 13 and 14 Housing Act
1988**

Tribunal members : **Mr P Roberts FRICS CEnv**

**Date and venue of
Determination** : **16 May 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote determination on the papers which the parties are taken to have consented to, as explained below. The form of determination was a paper determination described above as P:PAPERREMOTE. The documents that the Tribunal was referred to are in bundles from the Applicant and the Respondent. The Tribunal has noted the contents and the decision is below.

Decision

The Tribunal determined a market rent of £1,050 per calendar month effective from 8 March 2022.

Reasons

Background

1. On 25 January 2022 the Landlord served notice under section 13 (2) of the Housing Act 1988 to increase the passing rent from £775 per calendar month (pcm) to £1,250 pcm with effect from 8 March 2022.
2. The Tenant made an application to the Tribunal in reliance on section 13 (4) of the Housing Act 1988 on 7 March 2022
3. The Tribunal issued directions on 12 March 2022, inviting the Parties to submit any further representations (including any photographs and details of rentals for similar properties) they wished the tribunal to consider.
4. The Tribunal has been provided with:
 - a. Landlord's Response to Tenant's Application dated 30 March 2022
 - b. Applicant's Reply dated 12 April 2022
 - c. Landlord's Response to Tenant's Reply dated 20 April 2022.
5. The Landlord requested a paper determination.

The Property

6. The Tribunal inspected the Property on 16 May 2022.
7. Both Parties were present at the inspection. The Tenant did not permit the Landlord to enter the Property, but a discussion took place in respect of historic alterations to the Property.
8. The Property is a first-floor maisonette within a two-storey block of brick construction with a flat roof, together with a single garage, a small parking space in front of the garage and a garden area to the rear. There is restricted/limited on street parking. It is located in an established urban area in close proximity to all facilities.
9. The accommodation comprises a living room, dining room and kitchen together with two bedrooms, a bathroom with shower and a box room.

The Property benefits from gas fired central heating and double-glazed aluminium windows throughout albeit a number of these have “blown”. In addition, the kitchen units were worn and dated.

10. The Tribunal noted evidence of some condensation and mould within the Property together with roof leaks. In this regard, it was also apparent that there is limited, if any, insulation present in the external walls and roof. In this regard, the Energy Performance Certificate dated 11 October 2019 which assessed the current Energy Efficiency Rating of the Property in Band E, highlighted the lack of insulation to the Property.
11. Overall, the Property was in reasonable condition commensurate with its age and design but it would benefit from modernisation, installation of insulation and replacement windows.
12. The Tenant advised, during the inspection, that upon taking occupation, she had installed the central heating system, replaced the carpets with laminate flooring and installed the “white goods” located in the kitchen.
13. The Tenant stated, during the inspection by the Tribunal, that the Landlord had agreed to a temporary reduction in rent in acknowledgement of the installation of the central heating.
14. It was agreed by the Tenant and the Landlord, during the Tribunal’s inspection, that the Landlord had replaced the gas boiler. In this context, the Landlord had provided a copy of an invoice to the Landlord from JKL Plumbing & Heating for the replacement of the previous boiler with a new Intergas Rapid 32 Combi boiler in November 2018.
15. The Tribunal understands that the Property is listed within the Council Tax list in Band B.

The Tenancy

16. A copy of the Tenancy agreement was provided to the Tribunal.
17. The Tenancy commenced as an Assured Shorthold Tenancy for a fixed term of 12 months with effect from 7 November 1991.
18. It appears that, following expiry of the term of the lease, a statutory tenancy has arisen with effect from 8 November 1991. As a result, Section 11 of the Landlord and Tenant Act 1985 applies in respect of the repairing obligations.
19. Section 11 of the Landlord and Tenant Act 1985 states that there is implied to be 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.”

The Law

- 20. The relevant law is set out in section 14 of the Housing Act 1988 (the Act). Section 14 (1) of the Act provides that the Tribunal is required to determine the rent at which the Property might reasonably be expected to let in the open market by a willing landlord under an assured tenancy:
 - a. “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 rent) are the same as those of the existing tenancy.”
- 21. Section 14 (2) of the Act requires the Tribunal to disregard
 - 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 (as defined by section 14 (3) of the Act) otherwise than as an obligation;
 - 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.”
- 22. Examples of a tenant’s failure to comply with the terms of the lease may include, for example, a lack of repair, redecoration or maintenance.

Representations – The Tenant

- 23. The Tenant stated at paragraph 34 of the Applicant’s Reply in response to the Landlords Response to Tenant’s Application that:
 - a. The level of rent proposed by the Landlord is wholly inappropriate;
 - b. There is no basis for the Landlord to backdate any rent increase to August 2021

- c. There is no basis for the Landlord to seek interest in respect of any backdated rent increase
 - d. The Landlord and Tenancy should bear their own costs of the proceedings and the Tenant is not liable for the Landlord's costs thereof.
- 24. The Tenant has not stated what rent is contended for. However, the Tribunal notes the Tenant provided a copy of an email dated 12 April 2022 that stated:

“I would recommend a current market rental figure of between £1000 to £1050 pcm. This is based on the condition and the style of the property...”
- 25. The Tenant also provided an undated Zoopla rent estimate of £650 pcm within a range of £550 pcm to £700 pcm. Having reviewed this online, the Tribunal notes that it is stated by Zoopla that “there is no historic data currently available for this property.” It is therefore unclear as to the basis of this estimate
- 26. The Tenant also advised that:

“The kitchen was installed by the previous tenant out of his own pocket in circa 1989 with the permission of the then Landlords...”
- 27. The Tribunal therefore understands that the kitchen was fitted in 1989 such that it was already in place on commencement of the 1991 lease.
- 28. In simple terms, the Tribunal understood from the Tenant that:
 - 1. The kitchen was installed prior to the 1991 lease
 - 2. The Tenant installed the central heating during the term of the 1991 lease and paid a reduced rent for a period in acknowledgement thereof
 - 3. The Tenant agreed that the Landlord had subsequently replaced the boiler

Representations – The Landlord

- 29. The Landlord proposed a new rent of £1,250 per month commencing 8 March 2022 within their Notice dated 25 January 2022.
- 30. In addition, the Landlord, at paragraph 34 of the Landlord's Response to Tenant's Application, requested the following orders:
 - a. “The Tenant's rent is increased to £1,250 per month from the earliest available date

- b. The Tenant makes back payment for the rental underpayments from August 2021
 - c. The Tenant makes payment of interest on the sums found to be due to the Landlord, pursuant to Section 69 of the County Court Act 1984 at 8% continuing until judgement or payment of the sums found to be due to the Landlord, or at such rate and for such period as the Court thinks fit.
 - d. The Tenant pays the Landlord's costs in this case.
31. The Landlord sought to support their opinion of value by reference to a stated average rent for two-bedroom flats in Chelmsford of £1,268.00. However, the Landlord did not explain what comprised an average flat and the extent to which the Property compared to such an assumed average flat.
 32. The Landlord also provided a table of property rents as sourced from www.home.co.uk and a schedule of properties.

Determination

33. In determining the market rent, the Tribunal has regard to prevailing levels of rent in the general locality and achieved rental values in respect of other properties of comparable accommodation and provision that would be likely to be considered by a prospective tenant. The current rent and the period that has passed since that rent was agreed or determined is not relevant.
34. The legislation requires the Tribunal to have regard to market demand assuming that the landlord is willing. The Tribunal is therefore unable to have regard to the personal circumstances or identities of the actual landlord and tenant in assessing the level of rent.
35. The valuation disregards any relevant improvements, as defined by section 14 (3) of the Housing Act 1988 undertaken by the Tenant during the period of the statutory tenancy and assumes that the Tenant has fully complied with their repair, maintenance and decoration obligations.
36. In this regard, the Tribunal was advised that the kitchen units were already in situ prior to the commencement of the 1991 Tenancy and therefore do not comprise a relevant improvement such that they are considered to comprise part of the Property.
37. The Tribunal understands that the central heating system was installed during the term of the 1991 Tenancy and is therefore more than 21 years old. Furthermore, the Landlord was aware of the installation of the central heating, temporarily reduced the rent and subsequently replaced the boiler.

38. The Tribunal therefore considers that the installation of the central heating does not comprise “relevant improvements to be disregarded” and is part of the Property to which regard should be had in assessing the rent.
39. The valuation exercise also disregards any disrepair, defects or other matters that are not the tenant’s responsibility. In this context, the Tribunal has taken into account that the lack of insulation and “blown” windows are likely to be contributory factors to the formation of condensation. As such, any incoming Tenant would face similar issues.
40. The Tribunal has been assisted by the submissions made by both the Tenant and the Landlord and has also applied its own knowledge and expertise in reaching its determination.
41. The Tribunal has no jurisdiction to:
- Backdate the rent increase beyond 8 March 2022
 - Make an order for the payment of interest
 - Award costs.
42. The Tribunal determines the market rental of the Property with effect from **8 March 2022 at £1,050 per calendar month.**

Name: Peter Roberts FRICS CEnv

Date: 16 June 2022

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).