



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

Case Reference	:	CAM/38UC/MNR/2022/0023
Property	:	8 Vicarage Court, Vicarage Road Oxford OX1 4RZ
Applicant	:	Pedro Luis Arroyo Diez (Tenant)
Representative	:	None
Respondent	:	Anchor Housing Association (Landlord)
Representative	:	None
Type of Application	:	Section 13(4) Housing Act 1988
Tribunal Members	:	Mr N Martindale FRICS
Date and venue of Hearing	:	27 June 2022 Cambridge County Court, 197 East Road, Cambridge CB1 1BA
Date of Decision	:	22 July 2022

REASONS FOR DECISION

Background

- 1 The First Tier Tribunal received an application dated 5 March 2022 from the tenant of the Property, regarding a notice of increase of rent, served by the landlord' agent, under S.13 of the Housing Act 1988 (the Act).
- 2 The notice, dated 8 February 2022, proposed a new rent of £366.94 per calendar month with effect from and including 1 April 2022. The passing rent was stated in the notice, to be £352.48 per calendar month. Both rents are exclusive of other substantial monthly charges.

- 3 The tenancy is an assured periodic monthly tenancy. A copy of the tenancy was provided. A copy of the Landlord's notice was provided.

Inspection

- 4 The Tribunal did not inspect the Property owing to the application of the current Covid 19 regulations by the FtT Property Chamber. The Tribunal had regard to Google Street View images of the block within which the Property was located, from the public road (@ May 2019).
- 5 The Property is part of a 1978 purpose built block of small flats and studio flats on two levels. The block appears to show its 'back' to the public road Vicarage Road, with a side entrance. There is limited off street parking on site.
- 6 The block is located on a side road in a residential area near to Oxford City Centre. The walls are brick clad with a double pitched tiled roof to the main section. There is a communal garden.
- 7 The Property is a studio flat, with access from a communal ground floor entrance and stairs. Accommodation comprises, one double bedroom/ living room, kitchen, bathroom/ WC on one level totalling some 27m².
- 8 Windows are double glazed and water and space heating is fed from a communal system maintained by the landlord who recharges its cost via a service charge. The block appears to be in good condition. The Tribunal assumes that the flat is also in substantially good condition reflecting the photographs of the interior provided by the applicant. There are no additional outside areas let with this Property.
- 9 There are no chattels let with the Property but the tenant confirms that all white goods are provided by the landlord. The tenant provided carpets and curtains to areas other than the bathroom and kitchen where the landlord provided lino.

Hearing

- 10 Directions, dated 23 March 2022, for the progression of the case, were issued by Regional Surveyor Mary Hardman. Neither party requested a hearing at that stage. The tenant made brief representations with the application. The Tribunal received extensive representations from the landlord and from the tenant and completed and submitted a copy of the Tribunal's standard Reply Form issued with the Directions. The Tribunal carefully considered such written representations as it received, from both parties in the application and subsequently.
- 11 The application was set for a video/ telephone hearing at 11am on 23 May 2022 but, this arrangement was cancelled just prior, owing to the absence of a translator for the applicant tenant. A new hearing date

was set as 27 June 2022 where the tenant was accompanied by a friend who would translate for the applicant.

- 12 At this hearing the applicant was accompanied by Juan Palomino who translated. The respondent was represented by Martina Kelly, Operations Manager and Helen Edwards, Area Manager.

Applicant's representations

- 13 The hearing on this particular occasion, took the form of a structured discussion, to ensure that all relevant materials presented prior, by the parties, were considered.
- 14 The Tribunal began by identifying the "*Applicant's Statement of Case*" dated 11 May 2022, clearly numbering pages for ease of reference. The applicant was concerned at the degree of increase in rent, 5% higher than 2021 and 12.65% higher than 2019. He provided a comparison between the rent and other outgoings now required of him by the respondent, with his relatively low salary. He also referred to the respondent's charitable and 'not for profit' status and what, in his view was the excessive salaries enjoyed by some senior staff at Anchor.
- 15 The Tribunal drew the applicant's attention to the requirements of S.14, and that the new rent was essentially the market rent that would be charged for the Property under the terms of the lease. Other factors, other than any specific request to the Tribunal from the tenant to reflect short term hardship for any sudden increase, were not relevant factors in deciding that new market rent.
- 16 The applicant referred to a short table. It contained a left hand column showing financial year from 2019 downwards. Next across, were, in turn, columns for rent; then service charge; then support charge; then heating and hot water charge; then water charge ending with a total column. In this table although there was rental figure, it was immediately apparent to the Tribunal this appeared to be far below the market rent. A market rent would absorb any costs from a service charge and often for heating, however support charges and water charges would not be included the former personal to a tenant. Of these latter two costs, the former would not be for a landlord to provide with a letting and the latter would be billed to the household directly by the water company.
- 17 A review of these columns and the addition of the service charge and heating charges to the (base) rent still produced relatively modest sums. 2019 - £533.87; 2020 - £536.55; 2021 - £559.04; 2022 - £569.79 and 2023 (estimated) £606.38 per calendar month. These are though, still well below the monthly rents that might be expected on the open market for the Property on the extant lease terms.
- 18 The applicant refers to numbers of repairs to the Property and to the communal areas and the service charge quantum. Whilst the applicant

is entitled to separately challenge works done and service charges arising but should make enquiry of the Tribunal office if he is unable to resolve them directly with the landlord. The works, their efficacy, value for money and payability are outwith the jurisdiction of the Tribunal for this application.

- 19 The applicant refers to the respondent's case with which he disagrees. Rents charges for 'non-retirement' studio/ one bedroom flats located nearby being quoted as ranging between £800 and £950 per calendar month. By comparison the respondent also stated that the average rent charged for similar 'retirement properties' in this area range between £320 and £410 per calendar month.
- 20 The applicant mentions the respondent's proposal to make a total charge of £647.25 pcm from 1 April 2022 to 31 March 2023. This comprises the (base) rent, service charge, support charge, heating and hot water charges and the water charge. The applicant is also concerned that it does not include the electricity, the internet connection and Council Tax for the Property.
- 21 The applicant refers to the bare nature of the Property when it was let to him. There was no carpet, curtains and blinds and the interior needed to be decorated. He agreed that there was lino to bathroom and kitchen and that white goods were provided.
- 22 The applicant felt that *"the rent charged for the financial year 2022/2023 is higher than which might reasonably be expected if the dwelling were let in the open market by a willing landlord under an assured tenancy."*
- 23 The applicant quotes from the respondent's own documents which state *"At our newer properties an affordable rent may be charged. The amount charged is again subject to regulation and its calculated as being no more than 80% of local market rents. In conclusion, it wouldn't have to be comparable if the dwellings were let in the open market by a willing landlord under an assured tenancy, but 20% less."*
- 24 The applicant states later in his Statement: *"Consequently our rent cannot be comparable with that which might reasonably be expected if the dwellings were let in the open market by a willing landlord under an assured tenancy, but 20% less. Secondly, Oxford – market rents from an estate agency, as Right Move means 20% more due to commission that agency receives. However Anchor is no estate agency but the property company. Several market rents example which provide Anchor from Right Move have similar cost or, even lower. However nearly all mentioned examples are furnished include bills and size of these properties is double than studios Vicarage Court."* The applicant referred to a short table to rooms or studio flats to let locally earlier this year. They range from £850 to £950 in Oxford some including furniture and some bills; others neither.

- 25 The applicant refers to a very nearby one bedroom flat in Nursery Avenue No.21 ground floor. It was said to be completely refurbished with a large separate bedroom, large living room, kitchen and laundry with all white goods and a big private garden for £1250 including all bills internet and Council tax and it was twice the size of the Property. He also refers to a one bed flat in London Place for £1,100 pcm with all facilities, white goods and a separate double bedroom though bills are not included.
- 26 The applicant concluded by requesting that the new rent from 1 April 2022 to 31 March 2023, be reduced from the £647.25 proposed, to £600 pcm: And that this figure include base rent, service charge, support services, heating and hot water and water charges.

Respondent's representations

- 27 The respondent provided extracts from S.13 and S.14 of the Housing Act 1988. These deal with rent increase under assured tenancies. They apply to the proposed increase here and are for the Tribunal to follow when determining the rent. The actual identity of the tenant and landlord in any rent increase are not material however and are not factors when determining the new market rent under the lease.
- 28 The respondent referred to the back ground to the rents that they levied and the interaction of Governmental controls which existed from 2002. There was *"...rent restructuring regime which providers of supported housing were required to adhere to from 2003 onwards. This required Providers to produce a pattern of rents, which over the following ten years conformed broadly to the pattern proposed by the Government."* They continued...*"On 26 June 2013 the Chancellor announced that from 1 April 2015 until 31 March 2025 social rents would increase in line with CPI."* And, *"The rents for Vicarage Court are set by reference to the Regulator of Social's Housing Standard and the associated 'Policy Statement on Rents' published by the Ministry of Housing Communities and Local Government. These set out the basis of calculating an initial 'formula rent'. This is then up-rated by an amount each year not exceeding the maximum set by our regulator. The maximum allowable rate of uplift since 2020 being September's CPI + 1% (this being 4.1%). We applied this rate of increase on our rent review this year."*
- 29 *"It is the respondent's position that the rent charged for the financial year 2022/2023 is comparable with that which might be reasonably expected if the dwellings were let in the open market by a willing landlord under an assured tenancy."* And *"Rents cover the costs of essential items which keep the dwelling habitable such as kitchens, bathrooms, heating and hoot water windows roves doors floors and electric supply. It covers repairs maintenance and insurance of such items as well as covering housing management marketing of properties and administration of tenancies from start to finish. Rents*

also cover cyclical investment in properties for major works such as replacement of windows rofs redecoration kitchen and bathrooms.”

- 30 The respondents objected to the applicants proposal of a new ‘all in’ rent of £600 pcm, referring the Tribunal back to their figure of £647.25 as the new rent.

Law

- 31 In accordance with the terms of S.14 of the Act the Tribunal is required to determine the rent at which it considers the property might reasonably be expected to let in the open market, by a willing landlord, under an assured tenancy, on the same terms as the actual tenancy; ignoring any increase in value attributable to tenant’s improvements and any decrease in value due to the tenant’s failure to comply with any terms of the tenancy. Thus the property falls to be valued as it stands; but assuming that the property to be in a reasonable internal decorative condition.

Decision

- 32 Based on the Tribunal’s own general knowledge of market rent levels in Oxford, it determines that the Property would let on a normal Assured Shorthold Tenancy (AST) terms, for £825 per calendar month, fully fitted and in good order. This would include the (base) rent, the service charge, the water and space heating. It would not include the support charges nor the water charges nor any other charges.
- 33 There were no significant tenant’s improvements or additions to consider but, the Tribunal notes the absence of landlord’s carpets and curtains to the rooms and the undecorated state of the Property that the tenant would have to remedy when taking the flat. These factors would slightly affect the starting rent and the Tribunal deducts £25 per calendar month.
- 34 The Tribunal is to consider the open market rental value at the date of landlord’s rent notice and on the terms of the extant tenancy. Both parties make reference to the Property being a ‘retirement’ flat, and somehow only intended to be or otherwise only suitable or useable for someone who is either retired or over the age of 55 years or indeed over any other stated age.
- 35 The applicant states that he is 65 years old but, still working. However neither party was able to refer the Tribunal to a user restriction by age or occupation or indeed any other occupational criterion, in the tenancy provided. Whatever might have been intended by the parties when the tenancy was granted, such ‘understanding’ was not incorporated into the tenancy and the Tribunal may not consider any adjustment to the open market rent which might otherwise be required to reflect such restriction on the use or occupation of the Property and hence the rent.

- 36 The Tribunal determines the new rent for the Property at £800 per calendar month. Although this figure is considerably higher than the rent sought by the landlord in their notice, the Tribunal is required to determine the market rent and sometimes this is higher than the rent sought or even later charged by the landlord. This figure is then the maximum that may be levied. The landlord remains free to charge any rent up to this figure but, no higher.
- 37 Although the particular landlord here is subject to separate historic and complex Governmental regulations on rent levels and rent increases, these are not relevant to the determination of the open market rent. Similarly the personal circumstance of this particular tenant are not relevant to the new rent save that the Tribunal may consider a delay of the start date of the new rent from expiry of the S.13 Notice, up to the date of the decision. Although the applicant was invited to propose a delay on grounds of hardship, none was made prior to or at the hearing.
- 38 The new S.14 market rent of £800 pcm is payable from and including the date set out in the Landlord's notice, 1 April 2022. Whether in this case, this particular landlord is willing and able to levy this new rent on this particular tenant for this Property, is a matter between the parties.

Chairman N Martindale FRICS

Dated 22 July 2022