



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

Case reference : **CHI/00MS/MNR/2022/0047**

Property : **40 Imperial Avenue, Southampton,
Hampshire, SO15 8PS**

Applicant Tenant : **Mr I & Mrs N Bonef**

Representative : **None**

Respondent Landlord : **MYA Property Limited**

Representative : **Mr N Blagden – Property Manager**

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

Tribunal member(s) : **Mrs J Coupe FRICS
Mr MJF Donaldson FRICS MCI Arb MAE
Mr J Reichel BSc MRICS**

Date of hearing : **13 July 2022 via CVP**

Date of decision : **26 July 2022**

DECISION

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Covid-19 pandemic: Description of determination

This has been a remote hearing on the CVP platform. The documents that the Tribunal were referred to are in an electronic bundle of 190 pages, the contents of which have been noted. The order made is described below.

Decision of the Tribunal

On 26 July 2022 the Tribunal determined a market rent of £977.50 per calendar month to take effect from 12 May 2022.

Background

1. By way of an application dated 5 May 2022, the Applicant Tenant of 40 Imperial Avenue, Southampton, Hampshire, SO15 8PS (“the Property”), referred a Notice of Increase in Rent (“the Notice”) by the Landlord of the property under Section 13 of the Housing Act 1988 (“the Act”) to the Tribunal.
2. The Notice was dated 4 April 2022 and proposed a new rent of £1,200.00 per calendar month to take effect from 12 May 2022, in place of the existing rent of £850.00 per calendar month.
3. The Tenant occupied the Property under an Assured Shorthold Tenancy commencing 12 April 2013.
4. On 31 May 2022 the Tribunal issued Directions advising the parties that it considered the matter suitable for determination on papers unless either party objected, in writing, within 7 days. The parties were also advised that no inspection would be undertaken. Following an objection to a paper determination a remote hearing was held on 13 July 2022 during which Mrs Bonef attended and Mr Blagden represented the landlord.
5. The Directions required the Landlord and Tenant to submit their completed statements by 14 June 2022 (Landlord) and 28 June 2022 (Tenant), with copies also to be sent to the other party. The parties complied with said Directions.
6. The matter was determined having regard to the evidence contained in the submissions and application, and the oral evidence presented during the hearing.

Law

7. In accordance with the terms of Section 14 of the Act, the Tribunal are required to determine the rent at which it considers the subject property might reasonably be expected to let on the open market, by a willing landlord, under an assured tenancy, on the same terms as the actual tenancy.

8. In so doing, and in accordance with the Act, the Tribunal ignores any increase in value attributable to tenants' improvements and any decrease in value due to the tenants' failure to comply with any terms of the tenancy.

The Property

9. As stated, and in accord with current Tribunal policy, the Tribunal did not inspect the property, instead relying on the parties' evidence, including photographs, and viewing the property via online portals.
10. The property is a mid-terraced house with accommodation over two floors, constructed with brick elevations beneath a pitched roof clad in tiles.
11. The property is located within close distance of all main amenities and close to public transport links.
12. The accommodation comprises an entrance hall; kitchen, reception room; and bathroom at ground floor, and three bedrooms to the first floor. To the rear of the house is a conservatory with a corrugated perspex roof.
13. A small garden area, enclosed by a low-level brick wall and metal entrance gate, is found to the front of the house; whilst to the rear is a garden typical in size for this type of dwelling.
14. To the rear of the house is a building which the landlord describes as a garage however, due to access issues, the tenants consider this no more than an outhouse. Access is via a narrow track with limited room to manoeuvre a car into the building.
15. The parties concur that the property is double glazed and has the benefit of central heating, and that both are provided by the landlord. With the exception of replacement floor covering in the reception room, laid by the tenants, it is further agreed that carpets throughout are landlord's fittings, whilst the curtains belong to the tenant.
16. The parties did not agree over the provision of white goods, with both claiming ownership.

The Hearing

Submissions – Tenant – Mrs N Bonef (summarised)

17. In her written submissions and oral evidence, the Tenant referred to a number of issues, some evidenced by photographs. Summarised, these included:
 - a. The property was in a poor state of cleanliness at the date of letting, with minor repairs outstanding. The tenants agreed to deep clean the house in lieu of a reduced rent. However, the repairs were subsequently never addressed by the landlord. The tenants decorated throughout at their expense;
 - b. Numerous items of disrepair remain outstanding which, despite notification, the landlord failed to redress;

- c. The landlord failed to replace the reception room carpet when so requested. Deeming the carpet a health hazard, the tenants replaced it with wooden floor covering at their expense;
 - d. Following inadequate repairs to the conservatory roof by the landlord, the tenants undertook patch repairs on multiple occasions;
 - e. Following two burglaries, and with no assistance from the landlord, the tenants undertook repairs to the inner and outer gates of the store, at their expense;
 - f. The tenants' carried out general maintenance and repairs to kitchen and cupboard doors, and fitted replacement kitchen and reception room door handles;
 - g. The tenants installed additional rainwater goods, the cost of such being shared with the owners of the adjacent property;
 - h. Lack of cooker hood resulting in an excess build-up of condensation and grease deposits;
 - i. Lack of extractor fan resulting in condensation;
 - j. Ingrained mould on the bathroom wall surfaces;
 - k. Ill-fittings windows which require hammering shut;
 - l. Escape of water and drainage issues when the washing machine is in use;
 - m. Tenants' repairs to the store roof to remedy water ingress; the store is nearing collapse;
 - n. Tenants' improvements to the garden;
 - o. The property and fittings throughout are tired and require updating;
 - p. Landlords' white goods were a health hazard and were replaced at the tenants' expense;
 - q. The landlord twice previously served notice to increase the rent and, on each occasion, the parties entered into amicable negotiations. In this instance the landlord refused to negotiate and provided inadequate notice of the increase;
 - r. Tenants' comparables demonstrate that the increased rent is excessive.
18. The tenants referred the Tribunal to nine comparable properties advertised online as available to let. Each comparable was a three bedroom house, being either terraced or semi-detached. The tenant considered all were within close geographical proximity however she stated that their condition was superior to the subject property. The asking rents ranged from £950.00 to £1,100.00 per month.

Submissions – Landlord – Mr N Blagden (summarised)

19. In his written and oral submissions, the landlord addressed the tenants' issues, a summary of which follows:
- a. Mr Blagden was relatively new to the firm and was therefore only able to respond to the best of his knowledge and from property records. Furthermore, two recent system upgrades had resulted in some records being lost;
 - b. Mr Blagden averred that the timing, between the Notice and the effective date of rental increase, met legal requirements. He advised that the landlord is always willing to enter into rental negotiations however, in this instance, his clients considered the matter and determined that the increased rent was reasonable in the current market;

- c. Mr Blagden agreed that the property appeared to require work at the date of letting, as reflected in the asking rent at the time, but considered this had no effect on a rental assessment nine years hence;
 - d. Mr Blagden refuted the allegation that the landlord failed to address notified disrepair in a timely manner, instead claiming that the tenant failed to report such matters. He claimed that, on occasion, access to the property had proven difficult. However, on questioning from the Tribunal, he later conceded that at no time had access been repeatedly refused;
 - e. Mr Blagden noted the replacement reception room flooring to be of good quality, however he considered the tenant to have afforded the landlord an inadequate opportunity to affect a carpet replacement;
 - f. Mr Blagden noted that the landlord was aware of the inadequate rainwater provisions, however they were awaiting advice from their solicitors concerning the boundary ownership and repair liability, so the tenants' actions in effecting a solution were considered premature;
 - g. Mr Blagden considered the build up of grease around a cooker, and condensation mould in a bathroom, to reflect general usage, for which any tenant would be responsible. He did not consider the lack of an extractor fan or cooker hood to be disrepair or that the provision of such was a mandatory landlords' requirement;
 - h. Mr Blagden noted that the poor windows were previously reported and that a landlord appointed contractor attended approximately two-three years ago. No action was taken at the time, as the contractor advised that the windows be monitored. Upon questioning by the Tribunal, Mr Blagden advised that no such monitoring had been undertaken. He further commented that the tenants' hammering of the windows may have contributed to their failure;
 - i. In response to the tenants' photographs of peeling paintwork in the bathroom, Mr Blagden suggested that the quality of the paint used was unknown, as was the period of time between painting and shower usage;
 - j. Mr Blagden considered the drainage issue, if caused by the tenants' own washing machine, not to be a defect for which the landlord was responsible;
 - k. In response to the tenants' claim of a lack of assistance in repairing doors damaged during two burglaries, Mr Blagden commented that he regarded this to be a civil disturbance of relevance to the police rather than the landlord;
 - l. In response to questions from the Tribunal, Mr Blagden advised that he was the sole property manager at the firm, managing in excess of 780 flats plus commercial properties. He further advised that he neither inspected the subject property prior to recommending to his client a rental increase, nor prior to these proceedings. He understood that his firm last inspected the property in 2018;
 - m. In summary, Mr Blagden considered the property to be in a generally good condition, although showing signs of wear and tear.
20. In support of the proposed rent, the Landlord referred the Tribunal to five comparable lettings advertised on Rightmove and Zoopla online platforms. Each property was a three bedroom terraced house or end-terraced house and each was located in Southampton. The asking rents ranged from £1,200.00 to £1,250.00 per calendar month.

21. Responding to questions from the Tribunal, Mr Blagden advised that some of the comparables were a considerable distance from the subject and, at least one, was close to Southampton Hospital where rental properties were in high demand. When questioned as to why he had chosen not to include any let comparables, either from market evidence or from his own managed portfolio, he responded that he had not considered such.
22. The Tribunal asked Mr Blagden whether the property held a valid Energy Performance Certificate (EPC), a mandatory requirement for letting and, if so, the band of certification. He advised that an EPC was registered but that the band was not within his information to hand. The Tribunal provided an opportunity for him to verify his statement by referring to the government online EPC register, However, having done so, he commented that the site was experiencing technical difficulties. The Tribunal advised Mr Blagden that they had previously examined the register and that no valid, or expired, EPC was evident.

Determination

23. The Tribunal determines a market rent for a property by reference to rental values generally and to the rental values for comparable properties in the locality in particular. It does not take into account the present rent and the period of time which that rent has been charged, nor does it take into account the percentage increase which the proposed rent represents to the existing rent. In addition, the legislation makes it clear that the Tribunal cannot take into account the personal circumstances of either the landlord or the tenant.
24. The Tribunal assesses the rent for the property as it is on the day of the Hearing, disregarding any improvements made by the tenant, but taking into account the impact on rental value of disrepair which is not due to a failure of the tenant to comply with the terms of the tenancy.
25. In determining the rent, the Tribunal has regard to the evidence supplied by the parties and the Tribunal's own general knowledge of market rent levels in the wider area.
26. The Tribunal was grateful to both parties for their submissions and oral evidence, particularly in view of Mr Blagden's limited time at the firm. The Tribunal were however concerned with the reliability of part of Mr Blagden's evidence given that a) he had never inspected the property, b) that by his admission records had been lost during two system upgrades and c) a lack of basic knowledge such as whether the property had an EPC.
27. The parties each provided a basket of comparables which supported their respective arguments. The tenants' comparables were, with the exception of three, local to the subject house, whereas the landlords' comparables were located further afield and closer to the city centre and major employers which the Tribunal considered would command a premium. The tenants' comparables were considered to be in a dated to average condition, whereas the landlords' comparables were considered superior in condition. The comparables had first floor bathrooms.

28. In determining the rent, the Tribunal has regard to whether the property meets the standard of accommodation, repair and amenity of a typical modern letting. In this instance the Tribunal determined that the subject property fell short of the standard required by the market.
29. It was common ground between the parties that the property would benefit from some modernisation, particularly to the kitchen and bathroom, and an element of general maintenance, for example, inter alia, to the windows. The Tribunal accept that many, not all, defects were reported to the landlord and that timely remedial action was not forthcoming in some instances.
30. The Tribunal noted Mr Blagdon's explanation in regard to the rainwater discharge issue. Whilst his firm sought legal advice as to the boundary ownership, the tenant effected the remedial work in collaboration with the neighbour, sharing the cost equally.
31. Having considered the written submissions and oral evidence, the Tribunal accept the tenants' assertion that the white goods are tenants' fittings. In regard to floor coverings the Tribunal accept these as landlord fittings, including the reception room floor covering, replacement of which was the tenants' preference. It was undisputed that curtains belong to the tenants.
32. 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, and will be priced accordingly.
33. The Tribunal, acting as an expert Tribunal, and having considered the comparables provided by both parties and its own specialist knowledge, determined the rent which the Property could be expected to achieve on the open market if it were in a condition and state of modernisation considered usual for such a letting, including an EPC rating of E or above, would be £1,150.00 per calendar month.
34. However, the subject property is not in a condition considered typical of a modern letting at a market rent. The kitchen and bathroom are dated, the property lacks basic general maintenance, and the current white goods and curtains are provided by the tenant. Accordingly, and in reflection of such differences, the Tribunal makes a deduction of 15% from the hypothetical open market rent.
35. Deducting a total of 15%, the Tribunal arrived at an adjusted market rent of £977.50 per month.
36. For the avoidance of doubt, the Tribunal value the outbuilding as a store, as opposed to a garage. The poor access and lack of room to manoeuvre a vehicle preclude it from being of regular use as the latter.
37. The Tribunal identified no hardship grounds in regard to the date of increase and, accordingly, this rent will take effect from 12 May 2022, being the date stipulated within landlord's 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 by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.
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.