



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

Case reference : **LON/00AX/MNR/2022/0078**

HMTCS Code : **CVP : CVPREMOTE**

Property : **104 Donald Woods Gardens KT5 9NS**

Applicant/Tenant : **Ms Layla Caremena Smith**

Representative : **In person**

**Respondents/
Landlords** : **Kingston Churches Housing Association**

Representative : **Mr Calum Rogers, Housing Services
Manager of the Respondent**

Type of application : **Sections 13 and 14, Housing Act 1988**

Tribunal members : **Mr Charles Norman FRICS
Valuer Chairman**
Mr Oliver Dowty MRICS

**Date and Venue of
hearing** : **21 July 2022
10 Alfred Place London WC1**

Date of Decision : **21 July 2022**

Date of Reasons : **12 September 2022**

REASONS

Covid-19 pandemic: description of determination

This has been a remote determination. The form of remote determination was CVP: CVPREMOTE. A face-to-face hearing was not held because it was not practicable, no-one requested the same, and all matters could be determined by a video hearing. The members sat together in an Alfred Place hearing room. The documents that the Tribunal were referred to are in bundles totalling approximately 50 pages, the contents of which the Tribunal has noted.

Background

1. On 20 April 2022 the tenant of the above property referred to the Tribunal a notice of increase of rent served by the landlord under section 13 of the Housing Act 1988 (“the Act”).
2. The landlord’s notice, which proposed a rent of £112.74 per week month is dated 25 March 2022. The notice proposed a starting date for the new rent of 2 May 2022. The rent passing was stated as being £108.30 per week.
3. The tenancy is an assured periodic tenancy. From the tenancy agreement, the assured tenancy commenced on 23 September 2019.
4. On 12 November 2021 the property was seriously affected by a fire in the flat above. It is common ground that the property cannot be inhabited at present. Consequently, on 8 July 2022 Judge Hamilton-Farey caused a letter to be sent to the landlord inviting withdrawal of the Notice of Increase. The Respondents declined to do so.
5. On 21 July 2022 the Tribunal issued its Notice of Decision, finding that the rent was nil with effect from 2 May 2022. Subsequently, the tenant requested reasons.

Hearing

6. The applicant requested an oral hearing, and this took place on 21 July 2021 via video conferencing. The landlord was represented by Mr Calum Rogers, Housing Services Manager of the Respondent. The tenant requested an inspection but in light of the evidence of the hazardous condition of the property following the fire above, the Tribunal did not inspect for reasons of health and safety. The Tribunal also considered that an inspection was unnecessary to resolve the issues in this case.

The landlord's Case

7. Mr Rogers stated in an email of 7 July 2022:

“The tenant is not currently living at the property...the rent is being challenged due to ...poor condition .We acknowledge this...[there is]...severe mould throughout...due to a fire in the property above.

...the property is currently unliveable...”

8. Mr Rogers also stated in that email that the tenant had been decanted to another property following the fire. At the hearing, Mr Rogers submitted that the tenancy is still in force and therefore rent should be payable. The rental increase sought was 4.1%. However in answer to a question from the Tribunal, Mr Rogers accepted that the property was not lettable in its current condition.

The Tenant's Case

9. The tenant stated in her written submission:

“Fire caused by upstairs tenant which flooded my flat after the fire brigade attended... Mould has spread throughout my flat, no works have been taken out yet to my knowledge since the fire on 12/11/2021. Mould has spread to next doors flat too. Debris has not been disposed of outside my flat from the fire despite being advised this would have been taken care of. Mould destroyed my furniture that I moved in. Unsafe to live in this property.”

10. The tenant also supplied a video file of the interior of the flat. This showed the walls and ceilings caked in thick mould.

The Property

11. The Tribunal did not inspect for health and safety reasons (see above) but considered the tenant's written submission, Google Street View, and the tenant's video file (see below). From these, the Tribunal finds that the subject property is a modern 1 bedroom ground floor flat in a purpose built block which appears to date from the 1980s. The block is of brick construction under pitched tiled roofs and appears to be 2-storey. Donald Wood Road comprises similar modern residential buildings constructed at about the same time. It is located in Tolworth, Surbiton.

The Tenancy

12. The tenant holds the property under a tenancy agreement dated 29 September 2019 which, after the first 12 months, became an assured tenancy. The Agreement provides for annual notices of rent increases, to be referred to the Tribunal if not agreed.

The Law

13. The law as to the Tribunal's approach is given at section 14 of the Act which insofar as relevant is as follows:

(1)Where, under subsection (4)(a) of section 13 above, a tenant refers to a Tribunal a notice under subsection (2) of that section, the Tribunal shall determine the rent at which, subject to subsections (2) and (4) below, the Tribunal consider that the dwelling-house concerned might reasonably be expected to be let in the open market by a willing landlord under an assured tenancy—

(a)which is a periodic tenancy 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 the rent) are the same as those of the tenancy to which the notice relates;

[...].

Findings

14. This is an assured tenancy under the Housing Act 1988. It was common ground that the property was uninhabitable in its current condition. Mr Rogers accepted that the flat would not be lettable in its current condition. The Tribunal agreed with that and consequently found that the open market value at present is nil. Therefore the Tribunal determined under section 14 of the Housing Act 1988 that the rent payable from 2 May 2022 must be nil. By parity of reasoning the same applies to the fixed service charge of £6.37 per week which is included in that rent. Therefore, no rent is currently payable under this tenancy.

Mr Charles Norman FRICS
Valuer Chairman

12 September 2022

ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and these are set out below.
- If a party wishes to appeal against 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.