



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

Case reference : **CHI/21UD/MNR/2022/0093**

Property : **66 The Bourne, Hastings,
East Sussex, TN34 3AY**

Applicant Tenant : **Ms K Davis**

Respondent Landlord : **Mr R Pringle**

Landlord Representative : **Oliver & Bailey**

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**

Date of decision : **27 September 2022**

DECISION

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Covid-19 pandemic: Description of determination

This has been a remote determination on the papers which has been consented to by the parties. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote determination on papers. The documents that the Tribunal were referred to are in an electronic bundle, the contents of which have been noted.

Decision of the Tribunal

On 27 September 2022 the Tribunal determined a Market Rent of £880.00 per calendar month to take effect from 3 August 2022.

Background

1. By way of an application received by the Tribunal on 2 August 2022, the Applicant tenant of 66 The Bourne, Hastings, East Sussex, TN34 3AY ('the Property'), referred a Notice of Increase in Rent ('the Notice') by the Respondent landlord of the property under Section 13 of the Housing Act 1988 ('the Act') to the Tribunal.
2. The Notice, dated 29 June 2022, proposed a new rent of £1,100.00 per calendar month, in lieu of the passing rent of £825.00 per calendar month, to take effect from 3 August 2022. The letter accompanying the Notice was dated 30 June 2022.
3. The tenant occupied the property under an Assured Shorthold Periodic Tenancy commencing 3 July 2020. A copy of the tenancy agreement was provided.
4. On 5 August 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. No objections were received.
5. The Directions required the landlord and tenant to submit their completed statements by 19 August 2022 and 2 September 2022 respectively, with copies also to be sent to the other party.
6. The matter was determined having regard to the evidence contained in the tenant's application and submissions.

Law

7. In accordance with the terms of Section 14 of the Act, the Tribunal is 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 evidence submitted and viewing external images of the property via publicly available online portals.
10. The property is a self-contained flat within a three-storey residential building. Online images and agents' particulars provided within the submissions show the building to be constructed with brick cavity elevations beneath a pitched roof clad in tiles.
11. The property is located within close proximity of all main amenities and public transport links. It is also within a short distance of the seafront and town centre.
12. The accommodation comprises an entrance hall; kitchen; reception room; two bedrooms; a third smaller bedroom; bathroom and a private balcony.
13. No private parking facilities are provided; permit parking is available locally. There are no private or communal gardens.
14. The property is heated by gas central heating. The only room with secondary glazing is the master bedroom, all other windows being single glazed.
15. White goods, timber floor coverings and window blinds are provided by the landlord.
16. No service charges or charges for utilities are included in the rent.

Submissions – Tenant – (summarised)

17. The tenant regards the rental increase, in excess of twenty five percent over two years, to be unreasonable and unjustified. The tenant considered a fair rent, assuming the property to be in good condition, to be between £900-£925 pcm. However, she averred that the property is not in such a condition. An abbreviated chronology of events follows.
18. On 28 June 2021, the tenant advised the landlord, via text, of water ingress to the property, writing *"I've just noticed that the wall in the front bedroom is damp around where the previous mark was."* The landlord's response was that he was aware of the issue and that he would, again, refer the matter to Optivo, the block managing agent.
19. On 4 July 2021, the tenant again contacted the landlord to advise that, following heavy rain, the water staining had spread to the living room downstairs. The tenant forwarded the landlord a photo showing water damage. The landlord replied, apologising and advised that he had reported the matter once again to Optivo. The landlord wrote *"Hopefully I can get*

this problem sorted once and for all. It's unacceptable it's taken this long."

20. Having heard nothing further from the landlord, the tenant contacted him again in October 2021, forwarding a photo showing mould growth around the damp stained wall and ceiling. In response, the landlord sent her the reply he had received from Optivo, in which they state, inter alia, *"I've attached the building insurance summary for information as you may want to make a claim for water damage inside your flat."*
21. The tenant stated that at no time did the landlord inspect the reported water ingress or offer any assistance in removal of the mould. She stated that the landlord admitted that the issue had been ongoing for three years, preceding her own tenancy.
22. On 30 December 2021, the tenant provided access to Optivo for an internal inspection of the flat.
23. In or around April 2022, the tenant noted scaffolding was erected. No remedial works to the inside of the flat were undertaken.
24. On 18 May 2022, the landlord contacted the tenant to enquire whether the external remedial works had been completed. The tenant advised the landlord that the mould was causing her health issues and that she had purchased mould spray, but that the internal remedial works were more substantial than anticipated.
25. On 31 May 2022, the landlord inspected the flat and provided a bottle of bleach. The landlord again advised that he would contact Optivo and request an inspection.
26. Optivo scheduled an appointment with the tenant for 7 June 2022. Due to unforeseen work commitments, the tenant notified the landlord, providing more than 24 hours notice, that she was unable to keep the appointment. Optivo's next available appointment was 30 August 2022, which the tenant advised the landlord was unacceptable due to the considerable delay already experienced. The landlord responded by advising the tenant that she should have made alternative arrangements for the appointment on 7 June 2022. He further advised the tenant that Optivo had again suggested the landlord make an insurance claim.
27. On 9 June 2022, the tenant was notified that Oliver & Bailey ("O&B") had been instructed to manage the flat on behalf of the landlord.
28. On 14 June 2022 O&B inspected the flat.
29. On 17 June 2022 O&B advised the tenant that alternative arrangements should have been made for the appointment on the 7 June 2022, especially if she were concerned for her health.
30. On 30 June 2022, the tenant received notice that the landlord intended increasing the rent from £825 to £1,100 pcm.

31. The tenant unsuccessfully attempted to negotiate a lower rent increase with O&B.
32. On 28 July 2022, the tenant emailed O&B advising that due to the ongoing issues and consequential damage to her health she considered that she was entitled to submit a claim against the landlord. Having received no response, the tenant applied to the Tribunal on 2 August 2022.
33. On 3 August 2022, O&B replied to the tenant stating that Optivo had confirmed that all external works were complete, that the landlord had now lodged an insurance claim for redecoration and the making good of internal damage, and that should the tenant wish to pursue a claim for damages this should be against Optivo. Furthermore, that as the outstanding remedial works to the flat were “*superficial*”, that a rental increase was justified.
34. Shortly afterwards, a plasterer telephoned the tenant. The tenant remained concerned however that no remedial works were being undertaken prior to replastering.
35. On 10 August 2022, the tenant was Served a s.21 Notice for possession which the Applicant regarded as retaliatory action on the part of the landlord.
36. The tenant filed eleven photographs in support of her application to the Tribunal, showing water staining, surface mould and blown plaster.
37. The tenant did not provide any comparable rental lettings as evidence.

Submissions – Landlord (summarised)

38. The landlord regards the property as being located in a sought after area of Hastings Old Town and within walking distance of local amenities and public transport.
39. In 2018, the property was improved through the installation of a new kitchen, bathroom and boiler. The property was also redecorated throughout in 2018.
40. The landlord agreed that the building had experienced water ingress and stated that this had affected a bedroom wall in the property. The landlord advised that although the external remedial works had now been completed by Optivo, the tenant had failed to keep appointments with Optivo to provide internal access. The landlord stated that he had since instructed an alternative contractor to attend to the remedial works but that these were dependent on the tenant returning phonecalls. The landlord offered to provide evidence “*if required*”.
41. The landlords’ agent O&B advised that they had recently let Flat 74 The Bourne, a ground floor flat with smaller square footage at a rental of £1,200 pcm. They further advised that if the subject property were to be re-let it would be advertised at £1,200 pcm.

42. A summary of additional comparable evidence supplied by O&B follows:
- i. **The Bourne, Hastings:** 3 bed semi-detached house. Asking price £1,500 pcm, May 2020.
 - ii. **Milward Road, Hastings:** 3 bed flat; newly refurbished; double glazing; bespoke integrated kitchen; all bedrooms a good size; sea views. Asking price £1,400 pcm, June 2022.
 - iii. **High St, Hastings:** 2/3 bed flat; communal gardens; parking space. Asking price £1,350 pcm, April 2022.
 - iv. **Milward Road, Hastings:** 2 bedroom flat. Asking price £1,350, July 2022.
 - v. **The Bourne, Hastings:** 3 bed flat. Asking price £1,200, April 2022.
 - vi. **Wellington Square, Hastings:** 3 bed basement flat. Asking price £1,175 pcm, March 2022.
 - vii. **Nelson Road, Hastings:** 3 bed flat. Asking price £1,150, June 2022.
 - viii. **Milward Road, Hastings:** 2 bed flat. Asking price £1,100, October 2021.
 - ix. **26-27 High Street, Hastings:** 2 bed flat. Asking price £1,100, May 2022.
 - x. **George Street, Hastings:** 2 bed flat. Asking price £1,050 pcm, November 2021.

Determination

43. 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 passing 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.
44. The Tribunal assesses the rent for the property as at the date of the landlord's Notice and on the terms of the extant tenancy. The Tribunal disregards any improvements made by the tenant, but takes 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.

45. In determining the rent, the Tribunal has regard to any evidence supplied by the parties and the Tribunal's own general knowledge of market rental levels in the wider area.
46. Having consulted the National Energy Performance Register online, the Tribunal noted the property to have an Energy Performance Certificate (EPC) Rating of E, and a recorded floor area of 78m².
47. In determining the market 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.
48. With the exception of the master bedroom, the windows of which have the benefit of secondary glazing, all other windows in the property are single glazed.
49. The tenant provided the Tribunal with extensive information concerning the internal disrepair and the report to the landlord thereof. As at the pertinent date, that being 3 August 2022, the internal damage caused by external water ingress remained evident, despite being notified to the landlord as early as June 2021.
50. At the date of the initial report of internal dampness, the landlord was self-managing the property. However, despite notifications and photographs being forwarded by the tenant the landlord did not attend the property personally until May 2022, instead relying on Optivo, the block managing agent, to address matters both externally and internally.
51. The Tribunal was particularly concerned that, by the landlord's own admission, twice he was advised by Optivo to consider making a claim under the buildings insurance policy but, for whatever reason, he chose not to do so.
52. In a text to the tenant, the landlord wrote "*it's unacceptable it's taken this long*". The Tribunal concurs.
53. The Tribunal further finds it disingenuous of the landlord to attempt to apportion some of the blame for the lack of remedial works on the tenant. Through the correspondence submitted within the bundle it is evident to the Tribunal that the tenant made every attempt to accommodate inspections, offering on numerous occasions access to the property.
54. From the evidence submitted, it appears that the tenant rearranged one contractors appointment due to an unavoidable work commitment and, in doing so, provided the landlord with over 24 hours notice. The landlord could have chosen to attend the appointment himself and one would assume that a landlord would welcome an opportunity to inspect damage to his investment in the company of Optivo whom he held responsible, but he chose not to do so.

55. Instead, the landlord, in written submissions, asserted that the works remained outstanding due to the failure of the tenant to keep appointments (plural) with Optivo. The landlord offered to provide further evidence however any such evidence should have formed a critical part of the landlord's submissions to the Tribunal.
56. The Tribunal also finds it curious that the landlord, or their agent, would consider it appropriate to advise the tenant to pursue a claim against Optivo for damages. The tenant has no contract with Optivo. The tenant's contract is solely with the landlord.
57. Turning to the open market rent, and based on the knowledge of its members, the Tribunal finds that the market for this type of property is sensitive to condition and inventory, and will be priced accordingly
58. The Tribunal considers the property to be well situated in terms of local amenities, public transport and access to the seafront, although the lack of allocated parking is considered a disadvantage in such a popular residential area.
59. The tenant provided no comparable evidence for consideration. The landlord provided ten comparable asking prices, including 74 The Bourne recently let by O&B for £1,200 pcm.
60. The Tribunal attributed no weight to the first comparable as, despite being located in The Bourne, the property is a semi-detached house. The Tribunal also attributed little to no weight to those comparables advertised in 2020 or 2021, instead, preferring evidence from 2022.
61. The remaining comparables provided a useful snapshot of flats available for rent within the locality at or around the relevant date, with asking prices ranging from £1,100 - £1,400 pcm. Of particular interest was the advertised letting of a ground floor flat in The Bourne, presumably No 74, available at £1,200 pcm. This property benefits from its own entrance and private front and rear garden, whereas, by comparison, the subject property has a communal entrance and no private outdoor space.
62. Having considered all of the evidence submitted and acting as an expert Tribunal, the Tribunal 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 would be £1,100.00 per calendar month.
63. However, the subject property is not in a condition considered typical of a modern letting at a market rent. The property has single glazed windows in all but one room, for which the Tribunal makes a 5% deduction.
64. The condition of the property at the relevant date was also considered below that which the market would find acceptable. The photographs submitted by the tenant show extensive damage, damage which the landlord has failed to fully address for over twelve months. The Tribunal finds it unlikely that any new tenant would accept a tenancy with these remedial works outstanding. The Tribunal therefore makes a further deduction of 15% to

reflect the poor condition. Accordingly, the Tribunal makes a total deduction of 20% from the hypothetical open market rent.

65. Deducting a total of 20%, the Tribunal hereby determines an adjusted Market Rent of £880.00 per calendar month.
66. The tenant made no submissions to the Tribunal in regard to delaying the effective date of the revised rent on grounds of hardship. Accordingly, the rent of £880.00 will take effect from 3 August 2022, that 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.