



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

Case Reference : **BIR/00CN/MNR/2022/0043**

Property : **36 Towyn Road, Moseley,
Birmingham, B13 9NA**

Applicants : **Mr M Evans**

Respondent : **P & K Properties Limited**

Type of Application : **Sections 13 and 14 Housing Act 1988**

Tribunal Members : **Judge M K Gandham
Mr D Satchwell FRICS**

**Date and venue of
Hearing** : **2 September 2022
Centre City Tower, 5 – 7 Hill Street,
Birmingham B5 4UU**

Date of Decision : **2 September 2022**

Issue Date : **10 November 2022**

STATEMENT OF REASONS

Introduction

1. These written reasons have been prepared at the request of P & K Properties Limited r/o 33 Billesley Lane, Moseley, Birmingham, B13 9QT ('the Respondent'), via Mr Adalat Khan, a director of the Respondent company.
2. These written reasons should be read in conjunction with the Decision of the Tribunal dated 2 September 2022.

Background

3. Mr Mark Evans ('the Applicant') is the tenant of the property known as 36 Towyn Road, Moseley, Birmingham, B13 9NA ('the Property') under a weekly assured tenancy which commenced on 11 October 1993. There is no written tenancy agreement.
4. On 22 April 2022, the Respondent gave notice to the Applicant, on Form 4, of a proposed new rent of £199 per week (pw), in place of the existing rent of £127 pw. The starting date for the proposed new rent was 13 June 2022.
5. On 26 May 2022, the Tribunal received an Application from the Applicant under section 13(4) of the Housing Act 1988 ('the Act') in relation to the notice.
6. Although the Respondent queried whether the tribunal had jurisdiction to determine the rent, the Property had been let on or after 15 January 1989 and before 28 January 1997 and did not appear to be subject to any of the exceptions under Schedule 1 to the Act. As such, the tenancy is an assured tenancy and the tribunal has jurisdiction to determine the rent.
7. An inspection was arranged for 2 September 2022 and, as the Respondent had requested a hearing, this was followed by an oral hearing at the tribunal's hearing rooms.

The Law

8. The relevant provisions in respect of jurisdiction of the tribunal and determination of a market rent are found in sections 13 and 14 of the Act.
9. With regard to the determination of the rent, section 14 states as follows:

14 Determination of rent by tribunal

(1) Where, under subsection (4)(a) of section 13 above, a tenant refers to the appropriate tribunal a notice under subsection (2) of that section, the appropriate tribunal shall determine the rent at which, subject to subsections (2) and (4) below, the appropriate 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; and
- (d) in respect of which the same notices, if any, have been given under any of Grounds 1 to 5 of Schedule 2 to this Act, as have been given (or have effect as if given) in relation to the tenancy to which the notice relates.

(2) In making a determination under this section, there shall be disregarded—

- (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 carried out by a person who at the time it was carried out was the tenant, if the improvement—
 - (i) was carried out otherwise than in pursuance of an obligation to his immediate landlord, or
 - (ii) was carried out pursuant to an obligation to his immediate landlord being an obligation which did not relate to the specific improvement concerned but arose by reference to consent given to the carrying out of that improvement; and
- (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.

The Inspection

10. The Tribunal inspected the Property on the morning of 2 September 2022. The Applicant was supported by Ms Lesser, from Birmingham Mind, who allowed the Tribunal access the house. Mr Adalat Khan attended on behalf of the Respondent, but when Ms Lesser confirmed that the Applicant did not give permission for him to enter, he became aggressive and rude towards her. The Tribunal asked Mr Khan to leave, which he did after pointing out to the Tribunal that the Applicant had covered the windows to the house with posters and that the front door and letter box were also in a state of disrepair.
11. The Property is located on Towyn Road, on the outskirts of Moseley, close to the Stratford Road. The house is a mid-terrace Victorian house of brick construction with a slate tile roof. The property does not benefit from any off-road parking, but has a small enclosed area to the front and a small yard to the rear.
12. The accommodation comprises, on the ground floor, a hall, two reception rooms, a kitchen, a lobby and a bathroom to the rear of the house. On the first floor, the landing leads to a front bedroom and a rear bedroom, from which is accessed a smaller room enclosing the boiler.
13. The Property benefits from double glazing but only has partial central heating, there being radiators to the two reception rooms, hall and rear bedroom. The small room where the boiler is located does not have a radiator.

14. The house was in basic condition and in need of complete modernisation. The bathroom suite was dated and there was no shower. The kitchen had very few cupboards, the floor was sloping and part of the ceiling plaster board had collapsed. The back door and kitchen window did not close properly and the rear yard was dilapidated with uneven, slab paving. The Property was also in a poor decorative state.

Hearing and Submissions

15. The Applicant attended the hearing alone and the Respondent was, again, represented by Mr Khan.
16. Both parties had provided written submissions, which included the party's duly completed tribunal pro forma Reply Forms detailing the accommodation and features at the Property. The Respondent's form detailed the house as having a third bedroom, whereas the Applicant described the third room as a box room. There were also some discrepancies regarding the size of the rooms and whether the carpets, curtains and white goods had been provided by the original landlord or the tenant at the commencement of the tenancy.

Applicant's submissions

17. The Applicant submitted that the new proposed rent of £199 pw was too high and that the rent should remain at £127 pw, as determined by the tribunal in October 2021. The Applicant confirmed that there was no written tenancy agreement and that he had been renting the Property prior to the Respondent having purchased the same.
18. He stated that the Property was only partially heated and that the house was damp and draughty. He confirmed that the boiler had been serviced the previous year but stated that there was a fault with the thermostat, which he had reported to the managing agent but which had not yet been repaired. The Applicant also stated that the windows and back door had been poorly installed and that there was a leak from the kitchen sink.
19. In relation to the ceiling in the kitchen, the Respondent confirmed that he had not reported the problem to the managing agent, despite it having occurred around Christmas time 2021.
20. In his written submissions, the Applicant also referred to issues with the plastering of the walls, the deterioration of the kitchen skirting boards, poor guttering and debris on the roof, as well as stating that he had been subject to harassment from Mr Khan.
21. At the hearing, the Applicant confirmed that he would be prepared to allow the Respondent to replace the front door, subject to the Applicant being allowed to install the lock himself.
22. With regard to comparables, the Applicant disputed that the box room could be used as a third bedroom. He, instead, provided details of three, two-bedroom properties as comparables in his written submissions.

23. The first property was a two-bedroom terraced house – 24 Reddings Lane in Tyseley – which he stated was modernised and in good order at a rent of £550 per calendar month (pcm). The second property was a two-bedroom terrace house located at 104 Tenby Road in Springfield, let by Paul & Sons estate agents at £575 pcm. The Applicant had provided a letter from Paul & Sons confirming that this property was a terraced house with two reception rooms, two bedrooms and one bathroom, but the Applicant confirmed that he was unaware as to what fixtures or fittings had been provided or the condition of the property. The final property the Applicant referred to was on Greenhill Road in Moseley, which he stated was advertised online at a rent of £500 pcm, although he had no further details relating to the same.
24. The Applicant had not provided any photographs of the three properties he referred to and was unsure as to whether the property at 24 Reddings Lane was held under an assured tenancy or a protected tenancy.

Respondent's submissions

25. Mr Khan, on behalf of the Respondent, stated that the rent was decreased in the previous year by the tribunal, in part due to some plaster damage in the hallway which now appeared to have been tiled over by the Applicant. Mr Khan stated that the Respondent had never been made aware of any damage to the plastering in the hallway by the Applicant.
26. Mr Khan stated that the Applicant would not allow the Respondent to access the Property except to carry out gas safety inspections or emergency repairs. He stated that the Applicant had the contact details of the Respondent's managing agent, JJK Developments, whom, Mr Khan stated, had been instructed to carry out any reported repairs. He pointed to the fact that the back door and the wc had both been replaced within the past two years.
27. Mr Khan submitted that the Applicant was responsible for much of the disrepair and damage to the Property – that he had broken the slabs in the front and rear garden, that he had damaged the front door and letterbox, that he had painted the front brickwork without consent, that he had tiled certain walls and that the back garden was unkempt.
28. With regard to the issue with the boiler, Mr Khan stated that he was, personally, unaware of the problem, as the Respondent's managing agent would deal with any issues that arose and then invoice him at the end of the year. He confirmed that the boiler had been fully serviced and had a valid Gas Safety Certificate and stated that, if the problem had been reported to the managing agent, they would deal with the same. Mr Khan accepted that the Property only had the benefit of partial central heating and that the boiler was located within the small room on the first floor.
29. In relation to the market rent, Mr Khan stated that rents had risen due to inflation and progressively stringent legislation, which in turn had increased a landlord's costs. He referred to the comparables provided within the Respondent's written submissions by Maplewood Residential.

30. Although Mr Khan confirmed that Jarrar Khan, from Maplewood Residential, was his eldest son, he stated that the comparables supplied had been listed on Zoopla and, as such, were independent comparables.
31. Mr Khan submitted that that the small room on the first floor was a single bedroom and, therefore, the relevant rental comparables were for three-bedroom properties.
32. The letter from Maplewood Residential enclosed two comparable reports, one with properties listed on Zoopla as at 15 August 2022 (being three-bedroom terraced properties within 1 mile of the Property) and the other showing properties that had been listed on Zoopla from 15 August 2021 to 15 August 2022 (being three-bedroom properties within a half mile radius of the Property). The second report included listings which had been archived but was still available to agents.
33. The first set of comparables comprised four properties, three of which were three-bedroom terraced houses, two of which were marketed at a rent of £975 pcm (on Knowle Road, Sparkhill and Malmesbury Road, Small Heath) and one at £895 pcm (on Coldbath Road, Moseley). The fourth property, although detailed as having three bedrooms, was in fact a two-bedroom end of terrace property comprising two reception rooms, a fitted kitchen, a ground floor wc, a first floor bathroom and loft room at £850 pcm (on Manor Farm Road, Tyseley).
34. In respect of the second comparables report, the majority of the properties had been archived and it was unclear as to whether these had been let or when they had been let. Again, they all detailed three-bedroom terraced houses and the rents ranged from £750 pcm to £975 pcm.
35. Although all of the comparables showed one photograph of the property with a brief description, the Respondent had not provided any detailed particulars for any of them.

Reasons for the Decision

36. The Tribunal considered all of the evidence submitted by the parties, briefly summarised above.
37. In determining the rent, the Tribunal must disregard: any effect on the rent of the granting of a tenancy to a sitting tenant, any increase in the value of the house attributable to a relevant improvement carried out by a tenant (subject to certain stipulations detailed in the Act) and any failure by the tenant to comply with the terms of the tenancy. Although the Applicant did not have a written tenancy agreement, under section 11 of the Landlord and Tenant Act 1985, he is still liable to carry out any works or repairs by virtue of his duty to use the Property in a tenant-like manner.
38. Neither party had made any improvements to the Property since the rent was last determined. With regard to any disrepair or reduction in the value of the

Property attributable to the Applicant, the Tribunal disregarded the poor internal decor and the damage to the front door and letterbox.

39. The Tribunal also ignored the damage to the ceiling of the kitchen, as the Applicant had confirmed that this had not been reported to the managing agent, and the fault with the boiler, as both parties acknowledged that the boiler had been serviced in the previous year (and had a valid Gas Safety Certificate) and, although the Respondent was liable to repair the fault as soon as possible, it appeared to be a temporary issue.
40. The Tribunal went on to consider what rent the Property might reasonably be expected to be let at in the open market by a willing landlord under an assured tenancy, having regard to the comparable evidence supplied by the parties and the Tribunal's own general knowledge.
41. With regard to the comparables, the Tribunal did not find the Applicant's comparables to be particularly helpful. The Applicant had failed to provide any photographs, there were limited details as to the state and condition of the properties referred to and the Applicant was unsure as to whether the property on Reddings Lane was held under an assured tenancy or a protected tenancy.
42. In relation to the comparables submitted by the Respondent, again, the Tribunal found that they were of limited assistance. The vast majority of the listings were for three-bedroom properties and the majority of the properties detailed in the second comparables report had been archived and it was unclear as to when such properties had been let (some of which may have been prior to the previous rent determination in October 2021).
43. In addition, all of the Respondent's comparables only included a single photograph (either of the outside of the property or of one of the rooms inside the property) and, again, there were no detailed particulars.
44. Despite Mr Khan's submissions, the Tribunal found that the small room on the first floor, in its current state, was unsuitable as a third bedroom. It was located off the second bedroom, it was too small to comfortably fit a standard sized single bed, it had no radiator and it housed the boiler.
45. The Tribunal found that the best comparable provided was that submitted by the Respondent relating to the listing on Manor Farm Road. This was a two-bedroom end terrace house, within a mile of the Property, which had been advertised to let at £850 pcm a few weeks before the hearing.
46. The Tribunal noted that the Property, unlike the house on Manor Farm Road, did not have the benefit of a loft room or an additional wc, and that the location of the bathroom on the first floor (in the comparable) would also be more attractive to tenants. As such, the Tribunal deducted an amount of £50 pcm. In addition, the Tribunal noted that the listing on Manor Farm Road had been detailed as "*Fully Refurbished*", whereas the Property was in need of some external repair, as well as complete modernisation and refurbishment – including a new kitchen, bathroom and heating in all rooms – to bring it up to

the standard required for letting on the open market. As such the Tribunal deducted a further £200 pcm.

47. This left a sum of £600 pcm, so the Tribunal determined the rent for the Property at £138 pw.

Decision

48. The rent is determined at £138 pw payable from 13 June 2022, being the date specified in the Respondent's notice.

Appeal

49. If any party is dissatisfied with this decision, they may apply to the Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber) **on a point of law only**. Such an application must be made within 28 days of this decision being sent to the parties in accordance with Rule 52(2) of The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, and must state the grounds on which that party intends to rely in the appeal.

M. K. GANDHAM

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Judge M K Gandham