



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

**Case reference** : **CAM/00MG/MNR/2022/0074**

**HMCTS code** : **P:PAPERREMOTE**

**Property** : **47 Oxleys, Olney, MK46 5PJ**

**Applicant (Tenant)** : **Emily Wisser**

**Respondent (Landlord)** : **Alison Ward-Baker**

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

**Tribunal members** : **Mr P Roberts FRICS CEnv**

**Date of Determination** : **9 November 2022**

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**DECISION**

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This has been a remote determination on the papers which the parties are taken to have consented to, as explained below. The form of determination was a paper hearing described above as **P:PAPERREMOTE**. The documents that the Tribunal was referred to are in bundles from the Applicant and the Respondent. The Tribunal has noted the contents and the decision is below.

## **Decision**

**The Tribunal determined a market rent of £1,600 per calendar month effective from 5 August 2022.**

## **Reasons**

### **Background**

1. On 9 June 2022 the Landlord served notice under section 13 (2) of the Housing Act 1988 to increase the passing rent from £1,425 per month to £1,525 with effect from 5 August 2022.
2. This rent is stated to be exclusive of Council Tax, Water Charges and fixed service charges.
3. The Tenant made an undated application to the Tribunal in reliance on section 13 (4) of the Housing Act 1988 which was received by the Tribunal on 4 August 2022.
4. The Tribunal issued directions on 15 August 2022, inviting the Parties to submit any further representations (including any photographs and details of rentals for similar properties) they wished the tribunal to consider.
5. Neither Party requested a hearing.

### **The Property**

6. The Tribunal has not inspected the Property and has therefore relied upon the papers provided by the Parties together with Google Images and Rightmove historic sales particulars.
7. The Tribunal understands that the Property comprises a modern detached house comprising a lounge, kitchen/diner, utility and toilet at ground floor together with an integral garage and four bedrooms, one of which benefits from an ensuite bath/shower together with a family bathroom at first floor level.
8. Externally, there is a driveway in front of the garage and garden to the rear. The Property faces onto open playing fields and is located at the end of an attractive cul-de-sac within an established housing estate.
9. The Property benefits from central heating, carpets & curtains, white goods and UPVC double glazing throughout together with modern bathroom and kitchen units.

10. The Tribunal notes that the EPC banding was C albeit this expired on 20 March 2022. The stated assumed floor area extended to 102 square metres.
11. The Tribunal also notes that the Property has been placed in Council Tax E.

### **The Tenancy**

12. The Tenant occupied the Property by virtue of an Assured Shorthold Tenancy that commenced 5 January 2019 and expired on 4 January 2020.
13. The rent under the Tenancy was £1,425 per month.
14. The Property is defined at clause 1.6.1 of the lease as *“The property situated at and being 47 Oxleys, Olney, Buckinghamshire, MK46 5PJ, together with the fixtures, fittings and effects therein and more particularly specified in the Inventory signed by the Tenant and all grounds. It shall include the right to use, in common with others, any shared rights of access, stairways, communal parts, paths and drives.”*
15. The Tenant’s repair obligations are set out at clause 4.2 of the lease and maintenance obligations are at clause 4.3. The Landlord’s obligations are set out at Section 5. The Tribunal notes that the Landlord is not subject to any repair obligations.
16. In the absence of a new Tenancy being entered into, an Assured Periodic Tenancy pursuant to Section 5 (2) of the Housing Act 1988 (the 1988 Act) has arisen such that Sections 13 and 14 of the Act now apply.

### **The Law**

17. Section 5 (3) of the Act provides that the periodic tenancy arising on expiry of the Assured Shorthold Tenancy is one:
  - “(a) taking effect in possession immediately on the coming to an end of the fixed term tenancy;*
  - (b) deemed to have been granted by the person who was the landlord under the fixed term tenancy immediately before it came to an end to the person who was then the tenant under that tenancy;*
  - (c) under which the premises which are let are the same dwelling-house as was let under the fixed term tenancy;*
  - (d) under which the periods of the tenancy are the same as those for which rent was last payable under the fixed term tenancy; and*

*(e) under which, subject to the following provisions of this Part of this Act, the other terms are the same as those of the fixed term tenancy immediately before it came to an end, except that any term which makes provision for determination by the landlord or the tenant shall not have effect while the tenancy remains an assured tenancy”*

18. Section 14 of the 1988 Act provides that the Tribunal is required to determine the rent at which the Property might reasonably be expected to let in the open market by a willing landlord under an assured tenancy:

- a. *“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 rent) are the same as those of the existing tenancy.”*

19. Section 14 (2) of the 1988 Act requires the Tribunal to disregard:

- 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 (as defined by section 14 (3) of the Act) otherwise than as an obligation;*
- 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.”*

20. Examples of a tenant’s failure to comply with the terms of the lease may include, for example, a lack of redecoration.

21. Section 11 of the Landlord and Tenant Act 1985 (the 1985 Act), provides that the Tribunal is to imply a covenant by the Landlord:

- a. *“to keep in repair the structure and exterior of the dwelling-house (including drains, gutters and external pipes),*
- b. *to keep in repair and proper working order the installations in the dwelling-house for the supply of water, gas and electricity and for sanitation (including basins, sinks, baths and sanitary conveniences, but not other fixtures, fittings and appliances for making use of the supply of water, gas or electricity), and*
- c. *to keep in repair and proper working order the installations in the dwelling-house for space heating and heating water.”*

22. Section 14 (7) of the 1988 Act states:

*“Where a notice under section 13(2) above has been referred to the appropriate tribunal, then, unless the landlord and the tenant otherwise agree, the rent determined by the appropriate tribunal (subject, in a case where subsection (5) above applies, to the addition of the appropriate amount in respect of rates) shall be the rent under the tenancy with effect from the beginning of the new period specified in the notice or, if it appears to the appropriate tribunal that that would cause undue hardship to the tenant, with effect from such later date (not being later than the date the rent is determined) as the appropriate tribunal may direct.”*

### **Representations – The Tenant**

23. The Application Form submitted by the Tenant raised the following matters in answer to question 8a (What repairs are the responsibility of the Landlord?):
- 1) There is significant damage to the ceiling and potential hazard in the living room caused by flooding from a burst pipe.
  - 2) There is also significant damage to the ceiling in the kitchen from a separate incident of flooding and water leaks.
  - 3) The curb around the lawn in the back garden is in disrepair.
  - 4) The shed is not waterproof, secure or enclosed as windowpanes are missing.
  - 5) The underfloor heating does not work.
  - 6) The alarm system does not work.
24. In addition, the Tenant made reference, in response to question 5, to services provided by the Landlord as follows:
- 1) Gutter clearing
  - 2) Tree surgery by Council
  - 3) Garden clearing when state of garden became overgrown.
25. The Tenant also submitted a letter dated 15 September 2022 expanding upon the comments set out in the Application Form and concluding that *“...if the property were to be relet, considerable work would first need to be done on (sic) the interior to justify charging the proposed rental amount.”* In addition, the Tenant provided six photographs.
26. The Tenant did not specify what provisions were relied upon to argue that these issues were the responsibility of the Landlord. Similarly, no evidence of market rentals was provided.

## **Representations – The Landlord**

27. The Landlord’s Reply Form confirmed the layout and description of the Property. In addition, the Landlord confirmed that the demised Property included central heating, double glazing, carpets and blinds, and white goods.
28. The Landlord also advised that the Property comprised a “*4 bedroom family home fully decorated in every room of the House Prior to commencement of tenancy (sic)*”
29. The Landlord included copies of various emails directly addressing the Tenant’s points together with photographs and a written submission dated 25 September 2022.
30. In addition, the Landlord provided details of three properties available on the market at rents ranging from £1,800 pcm to £2,500 pcm. In this regard, the Tribunal noted that they had been advised by Marcus Jordan to expect a minimum rent of £1,595 pcm but had decided to propose a rent of £1,525 pcm.

## **Determination**

31. In determining the market rent, the Tribunal has regard to prevailing levels of rent in the general locality and achieved rental values in respect of other properties of comparable accommodation and provision that would be likely to be considered by a prospective tenant. The current rent and the period that has passed since that rent was agreed or determined is not relevant.
32. The legislation requires the Tribunal to have regard to market demand assuming that the landlord is willing. The Tribunal is therefore unable to have any regard to the personal circumstances or identities of the actual landlord and tenant in assessing the level of rent.
33. The Tribunal notes that Section 5 of the lease does not include any obligation on the part of the Landlord to maintain any part of the Property. In contrast, Section 4.2 of the lease clearly sets out the Tenant’s obligations in respect of repair.
34. In this regard, the Tribunal is required by section 14 (2) (c) of the 1988 Act, as set out above, to assume that the Tenant has fully complied with the terms of the Tenancy. In effect, the Tribunal assesses the market rent of the Property on the assumption that it is in the same physical state as existed on commencement of the lease.
35. It is therefore the case that the issues raised by the Tenant are not relevant to the assessment of the market rent as it is assumed that both the Tenant and the Landlord have fully complied with their obligations.

36. It is therefore the case that disrepair is not a relevant consideration in assessing the market rent even if either the Landlord and/or Tenant have not complied with the actual or assumed terms of the lease.
37. It is apparent that there is a current scarcity of similar properties available to rent. For example, there are currently only four properties available to let within a 1-mile radius of the Property and none of them comprise a detached house. In this regard, the largest currently available house comprises a three-bedroom semi-detached town house on Limbrey Drive which comprises part of the new housing development to the north of the town centre. This is advertised at £1,595 pcm.
38. As such, whilst the Tribunal has reviewed the evidence provided by the Landlord and that available in the public domain, it has been necessary for the Tribunal to apply its own expertise and judgement.
39. The Tribunal therefore determines the market rental of the Property with effect from **5 August 2022 at £1,600 per calendar month.** The rent payable may not, therefore, exceed this figure. However, this does not prevent the Landlord from charging a lower figure.

**Name:** Peter Roberts FRICS CEnv

**Date:** 9 November 2022

### **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal 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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).