



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

Case reference : **CAM/38UF/MNR/2022/0091**

HMCTS code : **P:PAPERREMOTE**

Property : **21 Starnham Road, Ducklington,
Witney, Oxfordshire, OX29 7XS**

Applicant (Tenant) : **Gabriel Karegwa**

Respondent (Landlord) : **Matthew Appleton**

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 : **14 December 2022**

DECISION

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 £1,425 per calendar month effective from 14 December 2022.

Reasons

Background

1. On 31 August 2022 the Landlord served notice under section 13 (2) of the Housing Act 1988 to increase the passing rent from £1,200 per month to £1,600 per month with effect from 1 October 2022.
2. This rent is stated to be exclusive of Council Tax, Water Charges and fixed service charges.
3. The Tenant made an application dated 30 September 2022 to the Tribunal in reliance on section 13 (4) of the Housing Act 1988.
4. The Tribunal issued directions on 4 October 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 inspected the Property on 28 November 2022. The Tenant provided access, but the Landlord was not in attendance. In addition, the Tribunal has relied upon the papers provided by the Parties together with Google images and Rightmove letting particulars.
7. The Property comprises a semi-detached dormer bungalow dating from the 1970s. There is also a single storey flat roof extension to the rear of the Property which was granted planning permission in August 2002 (ref:W2002/1000) and completed in October 2002 (see Building Control ref: S/FP/0456/02).
8. The Property comprises a kitchen, bathroom (providing bath, WC and sink), living room and two bedrooms at ground floor level and a further bedroom within the roof.
9. It is apparent that the kitchen units are beyond economic repair and, having reviewed the Sales Particulars relating to the Property on Rightmove, it appears that they were already in disrepair prior to the Tenant taking occupation. In this regard, the Property is in need of redecoration and updating including the fitting of extractor fans to both the kitchen and bathroom to manage condensation and damp.

10. The Tribunal observed water dripping through a ceiling spotlight fitting within the ceiling of the single storey extension such that, without having had the benefit of a full structural report, it appears that there is a roof leak. This has meant that the Tenant is unable to use the lights. This warrants immediate attention.
11. The Tenant advised the Tribunal that the Landlord has stated that it requires vacant possession for 24 hours to repair the lighting but the Tenant is not able to rehouse his family for this length of time. Clearly, it is not safe to occupy a property where water is leaking through the roof into the electrics and the Tribunal would hope that this is addressed by the Landlord without further delay.
12. The Property benefits from UPVC double glazing throughout and central heating is provided by means of a gas fired boiler which, according to the Council, was installed on 10 July 2019 (Building Regulation ref: GASAFE/059372).
13. The Tribunal understands that the oven, hob, dishwasher, washing machine and fridge/freezer, together with floor coverings and curtains belong to the Landlord. The Tenant advised the Tribunal that the fridge/freezer leaks water.
14. Whilst the Property is described within the lease as being furnished, it is clear that the majority of the furniture has been provided by the Tenant.
15. There is a garden to the rear which includes a shed which would benefit from some repair. The Tenant advised the Tribunal that the Landlord stores some items in this shed.
16. The Tribunal noted that, in addition to the disrepair to the flat roof, the gutters were blocked with vegetation and the soffit to the rear is bare and exposed to the elements.
17. The front of the Property is laid to gravel and provides two car parking spaces.
18. The Tribunal notes that the EPC banding is E effective from 30 October 2018 and that the assumed floor area extends to 89 square metres. The assessment refers to there being very poor insulation in the roof.
19. The Tribunal also notes that the Property has been placed in Council Tax C.

The Tenancy

20. The Tenant occupied the Property by virtue of an Assured Shorthold Tenancy that commenced 1 April 2021 and expired on 31 March 2022.
21. The initial rent under the Tenancy was £1,200 per month.

22. The Lease stated
- “The deposit will be refunded to the Tenant when they vacate the Premises if it is found to that the Premises have been kept in a clean and tidy condition and the garden has been maintained during the Tenancy. The Landlord will retain responsibility for the cutting of hedges and apple tress found on the Premises. If however at the termination of the Tenancy it is found that repairs are required to be carried out by the Landlord then is agreed that the costs of such repairs will be deducted from the said deposit paid and invoices/receipts in respect of repairs handed to the Tenant. If the Premises are handed back to the Landlord in good condition then the said deposit shall be refunded to the Tenant with no interest earned thereon.”*
23. Section 212 of the Housing Act 2004 sets out the statutory provisions in respect of Tenancy Deposit Schemes.
24. With regard to the Tenant’s obligations and liabilities in respect of repair the Lease states *“The Tenant undertakes to keep the Premises in a clean and tidy condition at all times.”*
25. There is therefore an apparent contradiction between the requirement of the Tenant to merely keep the Premises in a clean and tidy condition comparative to the Landlord seeking to deduct the cost of repairs from the deposit on expiry of the tenancy.
26. In the absence of a new Tenancy being entered into, an Assured Periodic Tenancy has arisen such that Sections 13 and 14 of the Housing Act 1988 now apply in place of the lease terms.
27. In this regard, sections 11 to 16 of the Landlord and Tenant Act 1985 (as amended by the Housing Act 1988” sets out the statutory position in respect of the Landlord’s repair obligations such that the lease provisions are overridden. Further details are set out below at paragraph 31.

The Law

28. Section 14 of the Housing Act 1988 (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.”*

29. Section 14 (2) of the 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.”*
30. Examples of a tenant’s failure to comply with the terms of the lease may include, for example, a lack of redecoration.
31. 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.”*
32. It is therefore assumed that the Landlord is responsible for bearing the costs and implementing repair in respect of the structure and exterior of the Property together with the installations.
33. 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

34. The Tenant explained that the rent increase was considered to be excessive but did not provide any comparable evidence for consideration by the Tribunal.
35. The Tenant pointed out the disrepair existing at the Property, and referred to a lack of maintenance by the Landlord.

Representations – The Landlord

36. The Landlord provided the Tribunal with various details of other properties available to let on the market.

Determination

37. 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.
38. The legislation requires the Tribunal to have regard to market demand assuming that the landlord is willing. The Tribunal is therefore unable to have regard to the personal circumstances or identities of the actual landlord and tenant in assessing the level of rent.
39. The Landlord provided details of nine properties available to let as follows:
 - 1) Semi-detached house at Colwell Green, Curbridge - £1,650 pcm (located 3 miles from the Property)
 - 2) Semi-detached house at Hailey Road, Witney - £1,500 pcm (located 3 miles from the Property)
 - 3) Semi-detached house at Bampton - £1,550 pcm (located 7 miles from the Property)
 - 4) Detached house at Farmer's Close, Witney - £1,600 pcm (located 3 miles from the Property)
 - 5) Detached house at Squirrel Gardens Witney - £1,600 pcm (located 3 miles from the Property)
 - 6) End-terraced three-bedroom house at Lavender Way, Witney - £1,500 pcm (located 3.2 miles from the Property). This has now been reduced to £1,350 pcm
 - 7) Mid-terraced house at Milmore Crescent, Eynsham - £1,600 pcm (located 8 miles from the Property)

- 8) Mid-terraced house at Wadards Meadow, Witney - £1,500 pcm (located 3.1 miles from the Property)
- 9) Mid-terraced house at Hill View, Carterton - £1,500 pcm (located 6.5 miles from the Property)
40. The Tribunal considered that all these properties were in a better location and provided a more modern and attractive fit-out. In addition, none of the properties were within the same catchment area as the Property.
41. In this regard, the Tribunal was aware that there was a detached two-bedroomed bungalow available to let at 9a Sealham Road that had been constructed pursuant to planning permission 16/01561/FUL in circa 2018, located 0.1 miles from the Property and providing two double bedrooms, bathroom, kitchen and living room. According to the EPC register the total floor area is 61 sqm. The asking rent was £1,450 pcm.
42. The Tribunal recognises that 9a Sealham Road provides less floor space and accommodation than the Property but it is a more modern property with a higher quality of fittings and standard of repair.
43. Having considered all the available evidence, the Tribunal is therefore of the opinion that the market rent of the Property, having regard to its current state of repair and configuration and applying the assumptions as set out in section 14 of the Act, is £1,425 pcm.
44. The Tribunal is satisfied that section 14 (7) of the 1988 Act applies and therefore determines that the market rent should apply from 14 December 2022.
45. The Tribunal therefore determines the market rental of the Property with effect from **14 December 2022 at £1,425 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: 14 December 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).