



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

**Case Reference** : **MAN/OOFD/MNR/2021/0036**

**Property** : **10 Headingley Avenue,  
Bottesford, Scunthorpe DN17  
2GL**

**Applicant** : **Katarzyna Adameic-Solkiewicz**

**Representative** : **In person**

**Respondent** : **Ongo Homes Limited**

**Representative** : **Christopher Larkin (Counsel)**

**Type of Application** : **Housing Act 1988 Section 13**

**Tribunal Members** : **Tribunal Judge J. E. Oliver  
Tribunal Member P. Mountain**

**Date of  
Determination** : **12<sup>th</sup> December 2022**

**Date of Decision** : **19<sup>th</sup> December 2022**

---

**DECISION**

---

## **Decision**

1. The Tribunal has jurisdiction to deal with the application.
2. The rent payable for 10 Headingley Avenue, Bottesford, Scunthorpe ('the Property') is £100 per week with effect from 5<sup>th</sup> April 2021.
- 3.

## **Application**

3. This is an application by Katarzyna Adamiec-Solkiewicz ("the Applicant") for the determination of the rent payable in respect of the Property, pursuant to Section 13 of the Housing Act 1988 ('the Act').
4. A joint assured shorthold (starter) tenancy of the Property was granted to the Applicant and Jacob Solkiewicz on 20<sup>th</sup> January 2020. This was converted to an assured non-shorthold tenancy on 20<sup>th</sup> January 2021.
5. The Landlord of the Property, Ongo Homes Limited ("the Respondent"), served a notice to increase the rent for the Property ("the Notice") from the existing rent of £94.29 per week to £95.70 per week. The Notice, dated 19<sup>th</sup> February 2021, stated the increase was to take effect from 5<sup>th</sup> April 2021.
6. The Respondent is a registered provider of social housing.
7. The Applicant objected to the proposed increase and filed an application with the First-tier Tribunal for the issue to be determined.
8. In her application to the Tribunal, the Applicant stated her reason for applying to the Tribunal was that the previous tenants had not had a rent increase in the 4 years prior to their tenancy whilst the rent, during her tenancy had increased after one year.
9. An inspection of the Property and a video hearing was fixed for 12<sup>th</sup> December 2022.

## **Inspection**

9. The Property is a small modern semi-detached house on a large housing estate in Bottesford, Scunthorpe.
10. It is a small three-bedroomed semi-detached property comprising two double bedrooms and one single bedroom, kitchen living/dining room, downstairs toilet, bathroom and small hallway. There is a small garden to the rear and off-road parking at the side of the Property.
11. At the inspection it was confirmed all the furnishings and white goods belong to the Applicant
12. Items of disrepair were advised, notably mould in the dining area, a hole and black mould to the ceiling in Bedroom 2 and the right-hand side fencing had broken and a panel was missing. The ownership of the fencing was unclear. Jacob Solkiewicz advised the Respondent had carried out roof repairs to fix the ceiling in Bedroom 2, but further work was to be undertaken. He also advised there was an issue with pressure in the boiler and whilst this had been

- reported to the Respondent and dates had been given to gain access to the Property, one had arrived on a different day. The repair was still awaited.
13. The Property is double-glazed throughout and has gas central heating.

### **Hearing**

14. At the hearing the Applicant and Jacob Solkiewiwz attended, together with Christopher Larkin, Counsel for the Respondent.
15. The Applicant confirmed her application was made upon the basis that she objected to the annual increase of rent for the Property. In April 2021 it had increased from £94.29 to £95.70 per week. Since her application, the rent had again increased, on 5<sup>th</sup> April 2022 and was now just less than £100 per week. It was agreed no application had been made to the Tribunal for the review of this rent increase due to personal circumstances.
16. Prior to the Applicant's tenancy there had been no rent increase for 4 years and consequently it was unreasonable it should now be increased every year.
17. The Respondent, in its written submissions, agreed there had been no rent increase for the 4 years prior to the Applicant's tenancy. This was due to section 23 of the Welfare Reform and Work Act 2016 in which social landlords were required to reduce their rents by 1% from 2016-2020.
18. Details of the disrepair seen by the Tribunal at the inspection were raised, although it was argued by Mr Larkin this should be disregarded by the Tribunal. It was not an issue that had been raised in the application and the Respondent could not fairly respond to it.
19. The Applicant advised she had tried on several occasions to report faults at the Property but the Respondent's system for reporting repairs was ineffective. She advised the mould in the dining room had been repaired at the outset of the tenancy and had still not been looked and had, in the meantime, become worse. The online system seemed to not work, in that reports were not acknowledged such that it was difficult to know whether they had been received.
20. Mr Larkin, relying upon the Respondent's written submissions, stated the Tribunal did not have jurisdiction to deal with the application since the tenancy agreement provides, at clause 1.8, the following:

*“After the first rent increase, we can increase your gross rent (including service charges and any other charges) relating to this tenancy on the first Monday in April each year. We will give you at least one month's notice in writing of the amount of the increase and the new rent payable. We can decrease the rent at any time and will advise you in writing if we do so.”*

This clause renders the application outside the Tribunal's jurisdiction:

*“..because this tenancy falls within Section 13(1)(b) exception of the Act i.e. it is a periodic tenancy in which there is a provision, for the time being binding on the tenant, under which the rent for a particular period of the tenancy will or may be greater than the rent for an earlier period (see **Contour Homes Ltd v Rowen [2007] EWCA Civ 842**”*

21. The Applicant confirmed there was a tenancy agreement but did not have a copy available at the hearing but accepted it would contain the clause if stated by the Respondent.
22. Mr Larkin further argued that since there had been a further rent review in April 2022, that had not been challenged, any decision upon the application would now be redundant.
23. Upon the issue of a market rent for the Property, the Applicant had no evidence or knowledge of what this would be for a similar property. The Respondent suggested a market rent of £130 -£150 per week.
24. Mr Larkin submitted that given the Respondent was a social landlord, the rent increase was reasonable and proportionate. If market evidence was taken and an allowance made for disrepair as stated by the Applicant, there would still be a significant difference between this and the rent charged by the Respondent. It was said the Respondent follows the guidance form the Regulator of Social Housing and that currently permits a rise in line with the Consumer Price Index + 1%. In April 2021, this would have given an increase of 1.5%, being 0.5%+1.%.

### **Determination**

24. The Tribunal firstly considered whether it had jurisdiction to deal with the application. The tenancy must be one that falls within section 13 of the Act.
25. The criteria for this are:
  - the tenant must have exclusive occupancy of the Property;
  - the Property must be a dwelling house;
  - the dwelling house must be let as a separate property;
  - the tenant must be an individual;
  - the tenant must occupy the property as their principal home; The following criteria must then be satisfied:
  - the tenancy is a periodic tenancy that makes no provision for a rent increase;
  - any rent increase is in the prescribed form;
  - the rent increase must be 52 weeks after the commencement of the tenancy;
  - the rent increase must also be 52 weeks after any previous increase;
  - the notice period for the increase must be at least one month;
  - the notice must be signed by the landlords;
  - the proposed rent must be specified to take effect at the beginning of a new period of the tenancy.
26. Section 13(1) of the Act provides for increase of rent under periodic tenancies as follows:
  - (1) *This section applies to-*
    - (a) *a statutory periodic tenancy other than one, which, by virtue of paragraph 11 or paragraph 12 in Part 1 Schedule 1 of this Act, cannot for the time being an assured tenancy: and*

*(b) any other periodic tenancy which is an assured tenancy, other than one in relation to which there is a provision, for the time being binding on the tenant, under which the rent for a particular period of the tenancy will or may be greater than the rent for an earlier period.*

27. The Respondent referred the Tribunal to **Contour Homes**. Here, the Court of Appeal considered whether section 13 of the Act applies when the tenancy agreement has its own provisions for a rent increase. Lady Justice Arden said:

*“However, there is nothing as I see it within section 13(1)(b) to limit rent review clauses which provide for an increase of a fixed amount as opposed to clauses which provide for increase of unspecified amounts to be arrived at in a particular way, for example, as here, by the landlord serving a notice which complies with the tenancy agreement.”*

28. The Tribunal noted the clause within the tenancy agreement begins “*After the first rent increase..*” In evidence the Respondent confirmed the Applicant and Jacob Solkiewicz were granted a joint assured shorthold (starter) tenancy on 20<sup>th</sup> January 2020 that converted to a periodic non-shorthold tenancy on 20<sup>th</sup> January 2021 “*with the terms and conditions remaining the same*”. It therefore appears that the Notice dated 19<sup>th</sup> February 2021 was the first rent increase since the commencement of the tenancy and, as such, does not fall within Clause 1.8 of the tenancy agreement. Consequently, the application relating to the Notice is within the Tribunal’s jurisdiction.

29. The Tribunal considered the argument that any decision of the Tribunal would be redundant by reason of the Applicant and Jacob Solkiewicz accepting the rent increase in April 2022. The Tribunal noted the Applicant’s comments as to why that increase had not been challenged, but that is not a matter for the Tribunal. Whilst it may be redundant, it does not extinguish the application.

30. The Tribunal accepts that any decision made by it upon the application will have no effect beyond April 2022 that rent increase having come into effect and has not been appealed.

31. The Tribunal noted Mr Larkin’s comments upon the issue of disrepair and that they should be disregarded since no notice of them had been given to the Respondent prior to the hearing. The Tribunal does not agree with this argument. It heard evidence of the attempts by the Applicant to contact the Respondent to notify it of the issues in the dining area and with issues relating to the boiler. The Respondent is already aware of the issues with the ceiling damage in the second bedroom given that repair is still ongoing.

32. The Tribunal considered the issue of the open market rent and noted the rents provided as comparable evidence by the Respondent of £130-£150 per week. This evidence was for the rental market for June 2022, whilst the relevant period is April 2021. The Tribunal, relying upon its own knowledge and experience, determined that the current market rent for the Property would be at the lower range of rent, given its size and lack of garage. The rent should then be adjusted to April 2021. The increase in rental prices since April 2021 is between 4-5%. Accordingly, after

adjustment the rent would be in the sum of £118 per week. There should be deducted from the market rent an amount for carpets and white goods, those being items usually included in other rental properties. It would also be appropriate to make a deduction for the items of disrepair referred to above. These would be as follows:

Carpets/White goods	£10.00
Disrepair	<u>£8.00</u>
Total	£18.00 per week

33. The rent for the Property is therefore in the sum of £100 per week with effect from 5<sup>th</sup> April 2021. The Tribunal was not provided with any evidence before it to suggest the Applicant suffered from undue hardship to suggest the rent should not be increased from that date.