



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

**Case reference** : CHI/00HN/MNR/2023/0036

**Property** : 146A Seabourne Road, Bournemouth,  
Dorset, BH5 2JA

**Applicant Tenant** : Ms K Kozlovska

**Representative** :

**Respondent Landlord** : Mrs V McGrail

**Representative** :

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

**Tribunal member(s)** : Mrs J Coupe FRICS  
Mrs A Clist MRICS  
Mr M Woodrow MRICS

**Date of decision** : 15 May 2023

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**REASONS**

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## Decision of the Tribunal

**On 15 May 2023 the Tribunal determined a Market Rent of £810.00 per month to take effect from 1 March 2023.**

## Background

1. By way of an application received by the Tribunal on 22 February 2023, the Applicant tenant of 146A Seabourne Road, Bournemouth, Dorset, BH5 2JA (“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 23 January 2023, proposed a new rent of £900.00 per month in lieu of the passing rent of £800.00 per month, to take effect from 1 March 2023.
3. The tenant occupies the property under a periodic tenancy which commenced on 29 October 2016. A copy of the tenancy agreement was provided.
4. On 31 March 2023, 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 to the Tribunal by 14 April 2023 and 28 April 2023 respectively, with copies to be sent to the other party. Both parties complied.
6. Having reviewed the application, the Tribunal concluded that the matter was capable of being determined fairly, justly and efficiently on the papers, consistent with the overriding objective of the Tribunal.
7. These reasons address in **summary form** the key issues raised by the parties. They do not recite each and every point referred to in submissions. The Tribunal concentrates on those issues which, in its view, go to the heart of the application.

## Law

8. 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.
9. 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**

10. In accord with current Tribunal policy, the Tribunal did not inspect the property, instead relying on the parties' submissions and viewing the property via online portals.
11. The property is a self-contained first floor flat within a two-storey building occupying a corner site with return frontage to Hosker Road.
12. The flat is situated in a mixed residential and commercial area and is itself located above commercial premises. Shops, amenities and the seafront are all within close proximity. The area is well served by public transport and a mainline railway station.
13. At the commencement of the tenancy the premises below were occupied as a garage/workshop, whilst more recently the premises have been re-let as a brewery with a live music venue and bar.
14. The accommodation comprises an entrance hall, kitchen, living room, two bedrooms and a bathroom.
15. Having consulted the National Energy Performance Register online, the Tribunal noted the property to have an Energy Performance Certificate (EPC) Rating of D and a recorded floor area of 61m<sup>2</sup>.
16. The property has no private parking or garage facilities and no garden. A small outside space, shared as a walkway with the tenant of the ground floor commercial premises is included.
17. The property is heated by gas central heating and is double glazed, both installed by the landlord.
18. White goods, floor coverings and curtains are provided by the landlord.
19. No service charges or charges for utilities are included in the rent.

## **Submissions – Tenant (summarised)**

20. The tenant states that the flat is "*very outdated*" and that with the exception of a new cooker/hob and a washing machine which were replaced by the landlord in 2021 and 2022 respectively no other repairs or improvements have been undertaken.
21. The tenant purports that the property lacks adequate insulation and, as such, the accommodation over-heats in the summer and is excessively cold in the winter. The tenant advises that, in recognition of the issue, the landlord offered an electric heater however this was declined on the grounds that it would result in a significant increase in her energy bill.
22. The tenant states that the bathroom requires renovation and that the landlord is aware that the bathroom radiator is not working correctly. The tenant refers to peeling paintwork and surface mould in the bathroom and

that the bathtub, when filled with water, drops 6-8mm exposing a gap between the wall tiling and bath sealant. Undated photographic evidence was submitted.

23. The tenant states that the living room suffers water ingress and dampness each winter. Undated photographic evidence was submitted.
24. In contrast to the landlord, the tenant states that the second bedroom is a single in size as opposed to a further double bedroom.
25. The tenant advises that the landlord owns the entire building and that when she took up occupation, the commercial premises directly beneath were initially occupied as a garage and later used for storage. However, in May 2022, the premises were re-let as a brewery and bar, with live bands and DJ's playing at weekends. The tenant describes the ensuing noise disturbance as living inside a nightclub, with conversations from below clearly audible.
26. In October 2022 the tenant raised the issue of noise disturbance with the Environmental Health department of BCP Council who subsequently attended the property.
27. In a letter from Environmental Health dated 21 February 2023, the case officer advises the tenant that the bar owner has temporarily ceased all live and recorded music from the venue until such time as additional sound insulation is installed. No such insulation was fitted within the subject property and further complaints were made.
28. The tenant refutes the landlord's suggestion that the £6,000 spent on rebuilding and sound-proofing the ceiling beneath the flat were to her benefit.
29. In regard to the landlord's replacement of the rotten flat roof outside the property, the tenant again suggests such works were for the benefit of the ground floor commercial premises.
30. The tenant disputes the landlord's assertion that the flat has the benefit of a balcony, instead describing the structure as a landing "*which is in constant use by the bar owner downstairs*".
31. After inspecting the flat on 21 October 2022, the landlord issued a Section 21 Notice of Possession and, on 26 October 2022, messaged the tenant saying "*... Since I met you last week and saw the flat, I realised I need to do some renovations and look into sound proofing options which will of course take some time to complete.*"
32. Whilst recognising that rental prices have increased, the tenant argues that it is unjust for the landlord to increase the rent whilst a Section 21 Notice is pending and whilst the property remains in need of renovation. Furthermore, the tenant raises the issue of affordability but provides no detail.

### **Submissions – Landlord (summarised)**

33. The Respondent states that the property is situated in a highly sought after area, close to local amenities and the beach and within easy reach of public transport links and railway station.
34. Due to a change in financial circumstance, the Respondent needed to increase the rent in line with current market values. Having researched rental prices and taken advice from local agencies, the Respondent concluded that the open market rent was in the region of £950.00 per month or higher. As a gesture of goodwill, the Respondent limited the increase to £900.00 per month. The Respondent notes that the rent has not increased in nearly five years.
35. The Respondent advises that the previous landlord rewired the property in 2015 and then in 2016 installed a new boiler and provided a new fridge.
36. Since acting as Executor/Trustee, then subsequently as landlord, the Respondent advises that she has carried out the following improvements:
  - i. Electrical installation report; smoke and carbon monoxide alarm testing;
  - ii. £6,000 contribution towards rebuilding the ceiling beneath the flat to reinforce with fireproof and acoustic soundproofing insulation;
  - iii. Replacement of rotten flat roof outside the flat window and over the premises below;
  - iv. Replacement cooker and hob;
  - v. Replacement washing machine and disposal of redundant machine;
37. In addition, the commercial tenant beneath the flat has invested in sound equipment to minimise noise pollution and has installed acoustic ceiling tiles.
38. The Respondent states that all notified repairs are immediately addressed including the replacement of broken bathroom and kitchen fittings. The landlord is unaware of any damp or mould issues but accepts that the defective bathroom radiator is yet to be repaired or replaced.
39. Whilst acknowledging that when the tenant moved into the property the commercial premises beneath were occupied as a garage and are now occupied by a brewery with a music licence, the Respondent does not accept the tenant's assertion of noise disturbance. The Respondent points out that no other complaints have been received from neighbouring residents and that the brewery has not breached their licence terms. Furthermore, that the brewery is working closely with the Environmental Health officer who is satisfied that both the Respondent and the brewery *"have done everything possible to limit any noise."*
40. In support of the proposed rent, the Respondent relies upon the following comparable properties:

- |      |                |   |
|------|----------------|---|
| i.   | Seabourne Road | Asking price £1,000 pcm<br>2 bedroom flat<br>Above commercial premises<br>Directly opposite subject |
| ii.  | Various        | Asking prices £950-995 pcm<br>2 bedroom flats<br>Purpose built or converted<br>Close proximity      |
| iii. | Seabourne Road | Asking price £995 pcm<br>2 bedroom flat<br>Smaller accommodation<br>Above commercial premises       |

### **Determination**

41. The Tribunal determines a market rent for a property by reference to rental values generally and, in particular, to the rental values for comparable properties in the immediate locality. The Tribunal has no regard to the current 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 is unable to account for the personal circumstances of either the landlord or the tenant.
42. 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 has regard to 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.
43. In the first instance, the Tribunal determined what rent the landlord could reasonably be expected to obtain for the property in the open market if it were let today in the condition that is considered usual for such a market letting. The Tribunal has regard to the Respondent's comparable evidence and weighs this against the Tribunal's own expert knowledge as a specialist Tribunal. In doing so, the Tribunal concurs with the Respondent that a figure of £950.00 per month is reasonable.
44. Once the hypothetical rent in good condition was established it was necessary for the Tribunal to determine 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 does not meet the standard required by the market.
45. The Respondent lists a number of perceived improvements to the property including electrical installation and smoke/carbon monoxide alarm testing, soundproofing, flat roof repairs and balcony repairs. The Tribunal does not consider these to be improvements. The items listed are either statutory requirements or repairs necessary for the maintenance of the landlord's own property and without which further rental deductions would be justified. The soundproofing and steps taken to minimise noise

pollution simply enable the commercial tenant to operate and the Respondent to let both properties. Such work cannot be considered an improvement for the tenant's benefit.

46. In undertaking soundproofing work and having received the Environmental Health officer's letter dated 21 February 2023, it is apparent to the Tribunal that the Respondent is aware of the noise pollution affecting the occupier of the flat. The Respondent's phone message to the tenant on 26 October 2022 also acknowledged the need for renovation and sound-proofing.
47. The Respondent states that there has been a lack of complaints from other residents. However, the Tribunal suspects that the only flat directly affected by the noise is the subject flat which sits immediately above the brewery.
48. It is inconceivable to the Tribunal that an occupier of the subject property would not be adversely affected by noise disturbance from live bands or recorded music or from the comings and goings of patrons until 10pm at weekends.
49. The Tribunal therefore consider that the nature of the premises below would limit the pool of potential tenants willing to rent the subject property and thus market rental value would be adversely affected.
50. In reflection of such differences and, in particular, taking into account that the flat is now located over a bar and music venue, the Tribunal make a deduction of 15% from the hypothetical rent to arrive at an adjusted rent of £807.50, rounded to £810.00 per month.
51. The Respondent's financial circumstances have no bearing on the Tribunal's determination of market value.
52. 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 **£810.00 will take effect from 1 March 2023**, that being the date stipulated within the 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](mailto: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.