



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

**Case reference** : **CHI/21/UG/MNR/2023/00215**

**Property** : **Tibbs Oast, Udimore Road, Udimore,  
Rye, East Sussex**

**Applicant** : **Tobi John Butler**

**Representative** : **None**

**Respondent** : **Kate Lovering-Worchester**

**Representative** : **Ms Kate Richmond (Counsel)**

**Type of application** : **Section 13(4) Housing Act 1988**

**Tribunal members** : **Mr Duncan Jagger MRICS  
Mr Nigel Robinson FRICS**

**Venue** : **Video Hearing**

**Date of decision** : **31<sup>st</sup> May 2023**

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**DECISION**

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## **Decision of the tribunal**

- (1) Having heard evidence and submissions from the parties and considered all the documentation provided The Tribunal determines that the rent that the property in its current condition as at 24<sup>th</sup> May 3<sup>rd</sup>, 2023 might reasonably be expected to achieve under an assured tenancy is **£2,333.20 per month**

## **Background**

1. The tenant has lived in the property as assured periodic tenant since the 23<sup>rd</sup> October 2018 under a previous agreement and the present agreement commenced on the 4<sup>th</sup> October 2019.
2. The accommodation extends to approximately 418m<sup>2</sup> and is provided over two floors and was variously described by the parties in the annotated floor plans. Ground floor; Kitchen, Utility Room, 5 rooms, cloakroom. First floor: 5 rooms, 3 shower rooms.
3. On 19<sup>th</sup> December 2022 the landlord served a notice pursuant to section 13(2) of the Housing Act 1988 seeking to increase the rent from £1,900 to £2,500 per month effective from 23<sup>rd</sup> January 2023.
4. By an application dated 20<sup>th</sup> January 2023, the tenant referred that notice to the tribunal for a determination of the market rent. The Tribunal firstly issued Directions for the conduct of the matter on 7<sup>th</sup> March 2023. Further Directions were issued by Tribunal member J Coupe following a Case Management Application from the tenant for an extension of time an inspection by the Tribunal. All matters were refused. Finally, a third set of Directions were issued on the 7<sup>th</sup> April once again by Judge Coupe. In paragraph 8 it was decided that an inspection is required, and an oral hearing is necessary via video platform.

## **The Evidence**

5. The parties have prepared a detailed bundle of evidence which extends to 817 pages which includes a background to the case, the application, two condition survey reports, the three sets of directions, comparable evidence, the tenancy agreement, completed rent appeal statement, the floor plans and duplicated photographic evidence. A further comparable was submitted to the Tribunal by Mr Butler on the day of the hearing and the landlord did not object to this late piece of evidence which formed the basis of the tenant's case as we shall see below.
6. Based on the evidence before the Tribunal it is evident the that the parties have had a turbulent history and it could be said that communications have broken down. There have been detailed condition

survey reports carried on behalf of each party and local authority intervention.

### **The Inspection**

7. The Tribunal inspected the property on the morning of the 24<sup>th</sup> May 2023 in the presence of Mr Butler the tenant. Ms Richmond and a representative from the current letting agent Batcheller Monkhouse also attended the property in order to carry out a joint inspection. Mr Butler, however denied access to these parties and the Tribunal inspected alone with Mr Butler.
8. The property is a converted Oast House built around 1820 and converted during the 1980s, with some subsequent improvements including new kitchen in 2016 and master bedroom en-suite in 2017. The property is in a rural area set in an elevated position with views over the Tillington Valley and is approximately three miles from Rye. The property has four distinctive rondels and is situated in sloping gardens extending to approximately 0.5 acres with a double garage and parking. It is evident to the Tribunal that the fabric of the building has been neglected over the years and is in need of general maintenance and renewal of some elements. Internally, general refurbishment is required with indications of damp staining to plasterwork and beams. The tenant confirms that the oil heating boiler is not functional. Hot water is provided by a dated immersion heater located in the ageing hot water cylinder. The extensive photographic evidence provided in the bundle amplified the condition of the property.

### **The Hearing**

9. The hearing took place at 2.00pm following the inspection. The landlord and tenant took part via the Video link and the landlord was represented by Ms Kate Richmond. At the hearing each party was provided with the opportunity to outline their respective cases. The supporting documents set out a chronology of events which on the whole is generally agreed between the parties and the Tribunal does not propose to provide the details in this decision.

### **The Tenants case**

10. The tenant relied on the single comparable provided on the day of the hearing. The property is located in Wormdale Hill, Newington, Sittingbourne, Kent which is obviously some distance from the property. It has three bedrooms one bathroom, garage and gardens. The floor plan indicates the floor area to be 208m<sup>2</sup> which is approximately 50% less than the subject. The photographic evidence confirms the property is in

reasonable condition. The property is available to let in June 2023 at a proposed rent of £1800 pcm. The tenant suggests this is a good starting point and over the years the subject property has suffered neglect and requires significant refurbishment which must be reflected in the rental figure. When asked what rent he would be willing to pay, the tenant did not confirm a figure. Further, when asked what he thought of the comparable evidence produced by Batcheller Monkhouse he confirmed that none of the properties were comparable.

### **The Landlords case**

11. Ms Richmond confirmed that the landlord has submitted and served the notice in accordance with the Act and the landlord has complied with the terms of the tenancy agreement during the original term of the agreement up until today. It is stated this is a somewhat unique property set in a sought-after rural area. The letting agent has prepared a report confirming their opinion of rental value is in the region of £4000 pcm. This figure is backed up by a schedule of comparable evidence which we will come to later. The landlord has made a deduction of £1500 pcm in order to take into account the current condition. It is stated the property was initially let out at lower than market rent as the tenant was prepared to pay four months up front and therefore the tenant has lived at the property below the market rents which have been rising during the five years. It is claimed the landlord has undertaken a series of works in accordance with the expert report including the formation of a large retaining wall adjacent the neighbouring property. Therefore, the proposed rent increase to £2,500 pcm is more than reasonable.

### **The Law**

12. The rules governing a determination are set out in section 14 of the Housing Act 1988. In particular, the Tribunal is to determine the rent at which the property might reasonably be expected to be let in the open market by a willing landlord under an assured tenancy, subject to disregards in relation to the nature of the tenancy (i.e. it being granted to a “sitting tenant”) and any increase or reduction in the value due to the tenant’s improvements or failure to comply with the terms of the tenancy. In the absence of any evidence to the contrary, the Tribunal has proceeded on the basis that the landlord is responsible for repairs to the structure, partial exterior and any installations pursuant to section 11 of the Landlord and Tenant Act 1985 and the tenant for interior decoration and rainwater fittings.
13. In the agreement there is a rent review clause on page 21 of the bundle clause 9. It states, “*The rent will be reviewed annually and periodically increase by the rate of inflation*” Unfortunately, this clause does not define the method of inflation calculation, ie RPI or CPI.

14. So, the first thing the Tribunal must decide is: should this clause be considered, when calculating the rent in accordance with the Act. When asked Ms Richmond was of the firm opinion, the Tribunal was not bound by this clause and was able to exercise its discretion in order to determine the rent.
15. The Tribunal disagrees. The rent review clause provides a clearly set out mechanism to determine the rent and surely it was what each party contemplated when a rent review takes place. The Tribunal must be obliged to take into consideration each of the clauses in the agreement. Clause 9 must be a relevant consideration in the calculation of the rent review and cannot be put to one side. For these reasons the Tribunal will carry out two calculations and the lesser of the two will be the new rental figure.

### **The valuation**

16. The first step is to calculate the rental figure without the inflation-based rent review clause (clause 9). Having carefully considered all of the evidence, and using its knowledge and experience the Tribunal considers that the rent that would be achieved in good condition with refurbished kitchen and bathroom fittings, external maintenance, internal renovation, modern services, an operational central heating system, carpets, curtains, functioning white goods supplied by the landlord would be **£3750** per month. The Tribunal did its very best to analyze the generic “Rightmove” comparable evidence provided by the landlord. Together with the “Rightmove Best Price Guide” presented by letting agents Batcheller Monkhouse dated 15<sup>th</sup> March 2023. The provides 6 comparables of varying types within a 2-mile radius between December 2020 and March 2023. This is a relatively individual property in terms of location and type. Therefore, the Tribunal had to make certain assumptions regarding specification, location, floor area, house type, actual achieved rent value and any market movement compared with the date of valuation.
17. That however is the rent that would be achieved if the property was let in good condition with all modern amenities. The Tribunal must disregard any increase in rental value attributable to the tenant’s improvements, unless they are carried out under an obligation to the landlord. The Tribunal has been provided with a copy of the tenancy agreement, which incorporates the usual repair obligations.
18. Based upon the evidence provided to the Tribunal we consider that that the rent should be reduced by 35% (£1,312.50) to reflect the need for internal refurbishment and upgrade of services. The existing condition of the exterior and gardens. Our deduction reduces the rent to a figure of **£2,437.50** per month

19. Step two, is to calculate the rent review clause. The Tribunal has adopted the RPI inflation basis, which is considered the most common government measure of consumer inflation and indeed the approach adopted for the determination of Registered Rents.
20. The Tribunal took the published figures for August 2019 and November 2022 which gave us a value of 291.7. This provided an inflation percentage of 22.8% during the tenancy which crystalized a revised rent of £2333.20 pcm.
21. Therefore the Tribunal determines the market rent in accordance with Section 13(4) of the Act to be **£2333.20 pcm** being the lower of the two calculated figures.
13. The Tribunal received no evidence of hardship and, therefore, the rent determined by the tribunal is to take effect from **23<sup>rd</sup> January 2023**.

**D Jagger MRICS Valuer Chair**

**31<sup>st</sup> May 2023**

### **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).