



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

**Case reference** : CHI/00HY/MNR/2023/0044

**Property** : 29 Pembroke House, Fisherton Street,  
Salisbury, Wiltshire, SP2 7SX

**Applicant Tenant** : Mr K Bertenshaw

**Representative** : None

**Respondent Landlord** : Stonewater Limited

**Representative** : None

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

**Tribunal member(s)** : Mrs J Coupe FRICS  
Mr C Davies FRICS  
Mrs A Clist MRICS

**Date of decision** : 19 June 2023

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**REASONS**

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## Decision of the Tribunal

**On 19 June 2023 the Tribunal determined a Market Rent of £171.92 per week, inclusive of fixed service charges of £130.39, to take effect from 3 April 2023.**

## Background

1. By way of an application dated 7 March 2023 and received by the Tribunal on 9 March 2023, the Applicant tenant of 29 Pembroke House, Fisherton Street, Salisbury, Wiltshire, SP2 7SX (“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 20 February 2023, proposed a new rent of £271.20 per week, including fixed service charges of £130.39 in lieu of a passing rent of £181.21 per week, including fixed service charges of £54.47, to take effect from 3 April 2023.
3. The tenant occupies the property under an Assured Weekly Tenancy agreement with a commencement date of 24 June 2019. A copy of the tenancy agreement was provided.
4. On 4 April 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 18 April 2023 and 2 May 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.
10. Under this jurisdiction the Tribunal are only able to determine the rent payable and not the payability or reasonableness of any service charges. Factors such as an abnormal level of service charge or the quality of services provided are only taken into account in so far as they might affect the level of rent payable or the marketability of a property.

### **The Property**

11. In accord with current Tribunal policy, the Tribunal did not inspect the property but did view it externally from publicly available online platforms.
12. Pembroke House is a retirement living complex of solid masonry construction within a converted Grade II listed building, located within the centre of Salisbury. The conversion is understood to have been undertaken in or around 1996. Pembroke House is conveniently located for amenities and public transport. The property is situated on the third floor and is accessed via a lift.
13. The accommodation comprises – hall, living room, kitchen, bedroom and bathroom. There is a communal garden and off-road parking.
14. The property has electric storage heaters and sash windows with double glazed panes.
15. Carpets and curtains are provided by the tenant.
16. White goods within the individual property are provided by the tenant.
17. Residents of Pembroke House also have access to communal living space with kitchen facilities and a laundry room.
18. 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 floor area of 45m<sup>2</sup>.

### **Representations – Tenant** (summarised)

19. The substantial investment in the scheme, as referred to by the landlord, was limited to the communal areas; the individual flats having received no refurbishment since conversion some twenty-seven years ago.
20. The electric storage heaters are some twenty-seven years old and can no longer be considered energy efficient or thereby cost effective. Additionally, the tenant queries the fire safety of the units.
21. The rent includes for electric heating within the living room, bedroom and hallway only. Heating to the kitchen and bathroom is excluded and is paid for by way of a separate charge "*in my regular electricity bill.*"

22. The tenant refutes that the sash windows are double glazed. The individual panes are double glazed however the window units themselves are ill-fitting and draughty.
23. Stonewater have failed to provide sufficient information upon which the tenant can base a challenge of the substantial increase in both the individual and communal electricity elements of the service charge. The tenant considers there to be a lack of transparency in regard to both private and communal charges.
24. The tenant stated that the landlord has failed to meet their obligations in regard to carrying out timely repairs and refurbishment. By way of example, although not limited to the following, the tenant referred to a defective storage heater which was subsequently replaced by the landlord; water ingress above a kitchen window caused by rotten timber and missing sealant which has resulted in damage to the ceiling and flaking paint; concerns over the safety of the electrical installations.
25. The tenant stated that, as a supported housing affordable retirement scheme, the location of the property should make no difference to the rental value applied.
26. The tenant provided no comparable market evidence.

**Representations – Landlord** (summarised)

27. The landlord refers to ‘the scheme’, by which it is presumably referring to Pembroke House, undergoing substantial investment in the past few years, none of the costs for which were passed on to the tenants.
28. The rent includes a fixed service charge of £130.39 per week, the uplift, in part, attributable to the rising costs of electricity.
29. The landlord is aware of the ongoing disrepair concerning water ingress above a window and remedial works have been authorised. Being a Grade II listed building, the landlord is restricted as to what work it may undertake to the fabric of the building.
30. The kitchen and bathroom are due for cyclical replacement in 2024 and 2032 respectively. Both are currently *“functioning and in working condition with no issues.”*
31. The rent for the property is based upon the target/formula rent set down by rent standards, which itself was based on a 1999 valuation. All service charges are calculated on invoices and the cost of delivery of services to the scheme. No information was provided.
32. Stonewater procure electricity for the scheme centrally, which is distributed to tenants via a heat network. As a commercial tariff, the charges have not benefited from the same support received by domestic customers, resulting in an increase in electricity costs of 467%.
33. No comparable evidence was submitted.

## **Determination**

34. The Tribunal has carefully considered all the submissions before it.
35. 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.
36. 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.
37. The landlord stated that the service charges are fixed. Accordingly, they are treated as part of the market rent determined by the Tribunal.
38. The Tribunal assesses the rent for the property as at the date of the landlord's Notice. 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.
39. 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 and with the provision of services noted.
40. Neither party submitted any comparable evidence for consideration. Accordingly, the Tribunal relied upon its own expert knowledge as a specialist Tribunal and, in doing so, determined that a figure in the region of £875 per month, inclusive of fixed service charges, is reasonable.
41. Whilst the Tribunal accepts that utility prices, in particular those for electricity and gas, rose significantly following various world events and that developments such as Pembroke House are likely to be classified as commercial customers and therefore exempt from any domestic price cap, the Tribunal must assess the rental value of the subject property by comparison to similar accommodation in the locality, which include like services. Relying on our experience and knowledge as a specialist Tribunal we are satisfied that the open market would find the landlord's equivalent figure of £1,175.00 per month, inclusive of fixed charges, for one bedroom accommodation, albeit in Pembroke House, unrealistic.
42. Once that hypothetical rent 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 falls short of the standard required by the market. The property requires some general repair and maintenance; the electric heaters are, in the main, original and therefore likely to be less efficient than central heating; the kitchen and bathroom are dated; the carpets, curtains and white goods are provided by the tenant.

43. In reflection of such differences, the Tribunal make a deduction of 15% from the hypothetical rent to arrive at an adjusted, and rounded, open market rent of £745 per month, that being £171.92 per week. Such figure inclusive of fixed service charges of £130.39 per week and based on rent being paid 52 weeks per annum.
44. Although the tenant makes reference to the increased cost of living, no specific point was taken concerning delaying the effective date of the revised rent on grounds of hardship. In the event, the Tribunal's determined rent is lower than the passing rent, due primarily to the condition of the property and the issue of hardship therefore falls away. Accordingly, the rent of **£171.92 per week, inclusive of service charges, will take effect from 3 April 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.