



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

<b>Case reference</b>	:	<b>CAM/42UH/MNR/2023/0018</b>
<b>Property</b>	:	<b>288 Church Road, Kessingland, Lowestoft, Suffolk NR33 7SB</b>
<b>Applicant</b>	:	<b>Patricia Anne Perry</b>
<b>Respondent</b>	:	<b>John Osborne (as executor of the estate of the late Jacqueline Stanners)</b>
<b>Type of application</b>	:	<b>Determination of a market rent under section 14 of the Housing Act 1988</b>
<b>Tribunal members</b>	:	<b>Judge K Seward Mr G F Smith MRICS FAAV</b>
<b>Date of decision</b>	:	<b>4 July 2023</b>

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**DECISION AND REASONS**

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**Decision of the Tribunal**

- (1) The Tribunal determined a rent of **£540.00** per calendar month to take effect from 4 July 2023.

**REASONS**

**Background and the Referral**

1. It is apparent from the submissions of both sides, that the landlord for many years was Jacqueline Stanners, now deceased. The Respondent, Mr Osborne, identifies himself as the brother of Ms Stanners and one of three executors of her estate.
2. By a notice in prescribed form dated 3 February 2023, the Respondent (acting as landlord) proposed a new rent of £800 per month with effect from 1 April 2023 in place of the existing rent of £400 per month. On 8 February 2023 the tenant referred the notice to the Tribunal.
3. Directions were issued by the Tribunal on 14 February 2023 inviting the parties to submit any further representations (including any photographs and details of rentals for similar properties) they wished the Tribunal to consider. Reply forms, photographs, further details and submissions were provided by the parties.
4. Paragraph 1 of the Directions stated that the application would be determined by written representations unless either party requested a hearing. As neither party has requested a hearing, this case has proceeded by way of written representations and inspection.
5. A site inspection was scheduled to take place on 17 April 2023. This was cancelled pending clarification of whether there had in fact been a rent increase from May 2022. The stay on proceedings was lifted when it emerged that reference to a 'rent review' concerned entitlement to housing benefit from the local authority. It has no bearing on the application before the Tribunal. The Tribunal inspected the Property on 29 June 2023 in the presence of Ms Perry, the tenant, and Janet Jones, her friend/carer who has assisted in these proceedings.

### **The Property**

6. The property is a semi-detached two-storey brick cottage located along Church Road, a main throughfare to the beach. No on-street parking is available.
7. The accommodation comprises a kitchen, living room, shower room with WC, separate WC, two bedrooms, a 'box room' and a conservatory. It has central heating and mains electricity, gas, water and drainage. The windows are double glazed except for the downstairs WC. There is a single glazed panel in the front door.
8. There are front and rear gardens.

### **The Inspection**

9. The Tribunal's decision is based upon the condition of the property on the date of inspection.
10. We observed that the cottage is in a good location only a few minutes' walk away from the beach. There are various amenities in the area.
11. The property has a small enclosed front garden with side access to the rear where there is a relatively long garden. The tenant has erected a timber summerhouse. It is understood that the shed was jointly purchased. At the rearmost part is a secluded sunken garden.
12. The front door has single glazed panels. It appears to be in poor condition and the doorframe has rotted at low level. The front door opens directly into the lounge. The Tribunal gathers that the landlord originally supplied carpets, but they have since been replaced by the tenant. The lounge leads into the kitchen. The kitchen units have apparently not been replaced since the tenancy began. There was no kitchen floor covering before the tenant laid tiles. The kitchen appliances belong to the tenant.
13. A small cloakroom is located off the kitchen with a single glazed window. Paintwork to the ceiling looks to be incomplete. The kitchen door leads into a small conservatory.
14. The stairs are very steep and narrow without a banister. Off the narrow landing there is one double bedroom and one single sized bedroom. Originally there would have been a third bedroom where there is a step down into the 'box room'. There is now a larger bathroom which was converted into a wet room with the benefit of a grant.
15. Whilst there are signs of damp internally, this appears most likely attributable to a lack of ventilation. The tenant has fitted cupboards and radiators are obscured by furniture and personal belongings.
16. The double glazing is very old and showing signs of failure with condensation between the panels. External paintwork and repairs are also patchy in places
17. The accommodation is very dated throughout and in need of major refurbishment. It does not have any parking provision, and none is available on the street.

## **The Law**

18. Sections 13 and 14 of the Housing Act 1988 (“the 1988 Act”) make provision for the increase of rent under an assured periodic tenancy.
19. For the purpose of securing an increase in the rent, the landlord may under section 13(2) serve on the tenant a notice in the prescribed form proposing a new rent to take effect at the beginning of a new period of the tenancy specified in the notice, being a period beginning not earlier than:
  - (a) The minimum period after the date of the service of the notice, being: (i) six months in the case of a yearly tenancy; (ii) one month in the case of a tenancy where the period is less than a month; (iii) in any other case, a period equal to the period of the tenancy.
  - (b) (except in the case of a statutory periodic tenancy) 52 weeks from the date of which the first period of the tenancy began; and
  - (c) 52 weeks from the date on which the last increase took effect

Where a notice is served a new rent specified in the notice shall take effect as mentioned in the notice unless, before the beginning of the new period specified in the notice, — (a) the tenant by an application in the prescribed form refers the notice to the appropriate tribunal; or (b) the landlord and the tenant agree on a variation of the rent which is different from that proposed in the notice or agree that the rent should not be varied.

Nothing in this section (or in section 14) affects the right of the landlord and the tenant under an assured tenancy to vary by agreement any term of the tenancy (including a term relating to rent).

20. Under section 14 (1) of the 1988 Act, the Tribunal is to determine a rent at which the dwelling-house concerned might reasonably be expected to be let in the open market by a willing landlord under an assured periodic 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 subject tenancy
21. In making a determination, the Tribunal shall by virtue of section 14(2) 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)) carried out by a tenant otherwise than as an obligation; and (c) any reduction in the value of the dwelling-house due to the failure of the tenant to comply with any terms of the subject tenancy.

## **Representations - Tenant**

22. The tenant refers to a 2-bedroomed house opposite becoming available to let at a monthly rent of £675. The tenant considers it to be a similar sized house to her own. Images and particulars from the website are provided. This property at High Path was added to the website on 5 April 2023. It is advertised as a modern, 2-bedroom townhouse with off-road parking, sea views, new fitted carpets and fully enclosed rear garden. It is let unfurnished.
23. The tenant points to the marketed property being in good condition whereas her property has not been updated at all and does not have any parking. The tenant submits that this example indicates that £800 per month rent is too high.
24. A further example is supplied of a social rented house in Kessingland where the rent is said to be set at the maximum local housing allowance. The tenant considers that, taking into account the condition of her property and her personal circumstances, a reasonable rent would be nearer to the local housing allowance of £503.62 per month.
25. Other examples are provided of different types and sizes of advertised properties to rent in Lowestoft and Carlton Carville where the rents vary between £575- £750 pcm.
26. In describing the accommodation at the application property, the tenant states that the gable end of the house is damp, with plaster falling off. The tenant has lived at the property for nearly 29 years and there has always been a problem with damp. The previous landlord, Ms Stanners was alerted to the problem but did not take action.
27. The single glazed front door opens directly into the living room causing heat loss and condensation requiring the use of a dehumidifier.
28. The kitchen units are said to be over 30 years old. Some drawers and doors are loose and there is evidence of damp to the ceiling. The largest bedroom (3m x 3m) has signs of damp on the ceiling near to the gable end. The second bedroom (3m x 2m) is similarly cold and damp. The tenant has to use dehumidifiers in these bedrooms 'all the time'.
29. The tenant calls the third bedroom as a 'box room' measuring 2m x 1.5m as it is not large enough for a bed. There is a step down into this room which also provides access to the shower room.
30. The original bathroom was converted into a level access shower room in 2013 with the benefit of a Council grant and at no cost to the landlord. needs to be used all the time.
31. The downstairs WC has an old single-glazed window. There is damp around the window and to the ceiling.

32. The tenant considers that the property is not in the condition currently expected of a rental property and the rent should reflect this.

### **Representations - Landlord**

33. Mr Osborne says that he is reliably informed that there has been no increase in rent since 2009.
34. As executor of the estate for the late Ms Stanners, he has no detailed knowledge of the property.

### **The Determination**

35. The first question for the Tribunal is whether it has jurisdiction to determine the application.
36. Neither party has provided a copy of the tenancy agreement. The Applicant says that the tenant's copy was destroyed when the house was flooded many years ago. One of the executors, Lindsey Hughes, confirmed that 'none of the landlords' have a copy of the tenancy agreement and it has been lost.
37. For a section 13 application to be made, the tenancy must be assured. A tenancy can only be assured if it was granted on or after 15 January 1989. According to the Applicant, the tenancy began in August 1994. This is undisputed by the Respondent. In a letter dated 1 April 2022, Ms Hughes thanked the Applicant for being such a good tenant for over 30+ years. Whilst the duration does not wholly correspond with the commencement date given by the Applicant, it is thereabouts. The Applicant would be in the best position to know when her occupation began. In all likelihood the tenancy began after the relevant date in 1989.
38. There is a tenancy of a dwellinghouse, which has been let as a separate dwelling. The tenant is an individual. There is no suggestion that the tenant occupies the dwelling as anything other than as their only or principal home. Nor is there any suggestion that any of the statutory exceptions apply as set out in Schedule 1 to the 1988 Act.
39. The Tribunal is satisfied that the conditions are met within section 1 of the 1988 Act and the application is made in respect of an assured tenancy (which can include an assured shorthold tenancy).
40. The next consideration is whether the application is valid. Section 13 allows a landlord to increase the rent of an assured tenancy, without terminating the tenancy first, in two circumstances. Firstly, under section 13(1)(a) if the tenancy is a statutory periodic tenancy (i.e., at the

end of a fixed term). Secondly, under section 13(1)(b) if the tenancy is a periodic tenancy which does not contain a binding provision under which the rent may be increased.

41. In the absence of any documentation, there is nothing before the Tribunal to indicate this is an assured shorthold tenancy or statutory periodic tenancy. Indeed, no details were forthcoming when Suffolk Law Centre enquired of the executors on the tenant's behalf to establish if requisite notice for an assured shorthold tenancy was served on the tenant before the tenancy began.
42. Notice to increase the rent has been served by the Respondent on the basis that this is an assured periodic tenancy. The tenant also indicates it is an assured tenancy. There is no suggestion from the Respondent that the tenancy agreement contained provisions for the increase in rent. There is also no evidence to indicate the period of the tenancy other than rent being paid monthly.
43. On the evidence available, the Tribunal concludes that this is a monthly assured periodic tenancy. As such, the minimum period after the date of service of the notice that a new rent could take effect is one month (section 13(3)). More than one month's notice was given. The Tribunal is satisfied that the application was valid.
44. Turning to the valuation. The Tribunal's decision is based upon the condition of the property on the date of inspection.
45. The Tribunal must assess the rent for the property by reference to the market rent for comparable properties, ignoring the effect of any of the tenant's improvements. In making the assessment, account is taken of the impact on rental value of any disrepair which is not due to a failure of the tenant to comply with the terms of the tenancy.
46. The Tribunal cannot consider the personal circumstances of either the landlord or the tenant in determining the market rent. Personal circumstances are only relevant in relation to the starting date for the rent, which can be determined to take effect at a date later than the date specified in the notice, if undue hardship to the tenant would otherwise be caused.
47. The Tribunal does not take into account the present rent and the period of time during which that rent has been charged. Nor does it take into account the amount of increase which the proposed rent represents.
48. Consideration has been given to the letting details provided by the tenant, including the 2-bedroom property located nearby in High Path. These are of limited assistance as they are more modern dwellings or





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).