



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

Case reference : **CAM/22UH/MNR/2023/0036**

HMCTS code : **P:PAPERREMOTE**

Property : **23 Robert Daniels Court, Thrifts
Mead, Theydon Bois, Epping,
Essex, CM16 7NE**

Applicant (Tenant) : **Lorraine Gibson**

Respondent (Landlord) : **Homegroup Limited**

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

Tribunal members : **Mr P Roberts FRICS CEnv**

Date of Determination : **27 June 2023**

This has been a remote determination on the papers which the parties are taken to have consented to, as explained below. The form of determination was a paper determination described above as P:PAPERREMOTE. The documents that the Tribunal was referred to are in bundles from the Applicant and the Respondent. The Tribunal has noted the contents and the decision is below.

Decision

The Tribunal determined a market rent of £103 per week effective from 3 April 2023.

Reasons

Background

1. On 3 February 2023 the Landlord served notice under section 13 (2) of the Housing Act 1988 to increase the passing rent from £177.71 per week to £199.52 per week with effect from 3 April 2023.
2. This rent is stated to be exclusive of Council Tax but inclusive of Water Charges and fixed service charges.
3. The Tenant made an application dated 2 March 2023 to the Tribunal in reliance on section 13 (4) of the Housing Act 1988.
4. The Tribunal issued directions on 20 April 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.

Preliminary Matters

5. The Landlord's Section 13 (2) Notice states a proposed rent of £199.52 per week which it states is inclusive of water charges of £1.23 per week and "fixed" service charges of £84.32 per week which total £85.55. The net rent is therefore £113.97 per week.
6. The Tribunal understands that the "fixed service charge" comprises a housing service charge and a personal service charge with the water charges included within the personal service charge.
7. Paragraph 1.3 of the Lease defines rent in the following terms:
"In this Agreement the term "Rent" refers to the sum of the net rent and the service charge and water charge set out above or as varied from time to time in accordance with this agreement."
8. Whilst the Lease refers to "Service Charge" at paragraph 1.2 there is no definition and no further details provided other than a reference to a handbook.
9. As this reference to the Tribunal relates to the service of a section 13 (2) of the Housing Act 1988 Notice, the Tribunal's jurisdiction in this

matter is derived from sections 13 and 14 of the Housing Act 1988. These sections are not relevant to the assessment of service charges.

10. Sections 18 to 30 of the Landlord and Tenant Act 1985 govern the calculation and payment of service charges subject to defined exceptions. However, the Tribunal has not received any notices to trigger proceedings in accordance with this Act.
11. It is therefore the case that the current proceedings only relate to the proposed net rent of £113.97 and, in the absence of any reference pursuant to the Landlord and Tenant Act 1985, the Tribunal does not have jurisdiction under the current proceedings to make any determination in respect of the fixed service charges, housing service charge or personal service charges.
12. The Tribunal has therefore only been able to take account of service charge matters to the extent that they would influence the rental bid of a knowledgeable prospective tenant.
13. This Decision therefore only considers the net rent in the context of paragraph 1.1 of the Lease.
14. In this context, the Tribunal is aware that a number of residents have made significant improvements to their flats including the complete refitting of kitchen and bathroom units.
15. The Tribunal has noted that such improvements fall under paragraph 4.7 of the Lease and are therefore disregarded in assessing the net rent.
16. The Tribunal has therefore had regard to the Property as it existed prior to any improvements or alterations being carried out by the Tenant.

The Property

17. The Tribunal inspected the Property on 12 June 2023 accompanied by the Tenant. The Landlord did not attend.
18. The Property comprises a first floor flat within a two-storey retirement housing complex of 34 one-bedroom flats with a lift, lounge, resident management staff and guest facilities constructed in 1970.
19. The accommodation comprises a living room/kitchen, bathroom and a single bedroom. There is central heating and UPVC double glazing.

The Tenancy

20. The Tenant occupies the Property by virtue of an Assured Non-Shorthold Tenancy dated 19 August 2019.
21. The initial Net Rent under this Tenancy was £96.82 per week.

The Law

22. Section 5 (3) of the Act provides that the periodic tenancy arising on expiry of the Assured Shorthold Tenancy is one:

“(a) taking effect in possession immediately on the coming to an end of the fixed term tenancy;

(b) deemed to have been granted by the person who was the landlord under the fixed term tenancy immediately before it came to an end to the person who was then the tenant under that tenancy;

(c) under which the premises which are let are the same dwelling-house as was let under the fixed term tenancy;

(d) under which the periods of the tenancy are the same as those for which rent was last payable under the fixed term tenancy; and

(e) under which, subject to the following provisions of this Part of this Act, the other terms are the same as those of the fixed term tenancy immediately before it came to an end, except that any term which makes provision for determination by the landlord or the tenant shall not have effect while the tenancy remains an assured tenancy”

23. Section 14 of the 1988 Act provides that the Tribunal is required to determine the rent at which the Property might reasonably be expected to let in the open market by a willing landlord under an assured 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 existing tenancy.”

24. Section 14 (2) of the 1988 Act requires the Tribunal to 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) of the Act) otherwise than as an obligation;

c. Any reduction in the value of the dwelling-house attributable to a failure by the tenant to comply with any terms of the tenancy.”

25. Examples of a tenant's failure to comply with the terms of the lease may include, for example, a lack of redecoration.
26. Section 11 of the Landlord and Tenant Act 1985 (the 1985 Act), provides that the Tribunal is to imply a covenant by the Landlord:
 - a. *"to keep in repair the structure and exterior of the dwelling-house (including drains, gutters and external pipes),*
 - b. *to keep in repair and proper working order the installations in the dwelling-house for the supply of water, gas and electricity and for sanitation (including basins, sinks, baths and sanitary conveniences, but not other fixtures, fittings and appliances for making use of the supply of water, gas or electricity), and*
 - c. *to keep in repair and proper working order the installations in the dwelling-house for space heating and heating water."*
27. Section 14 (7) of the 1988 Act states:

"Where a notice under section 13(2) above has been referred to the appropriate tribunal, then, unless the landlord and the tenant otherwise agree, the rent determined by the appropriate tribunal (subject, in a case where subsection (5) above applies, to the addition of the appropriate amount in respect of rates) shall be the rent under the tenancy with effect from the beginning of the new period specified in the notice or, if it appears to the appropriate tribunal that that would cause undue hardship to the tenant, with effect from such later date (not being later than the date the rent is determined) as the appropriate tribunal may direct."

Representations – The Tenant

28. The Tenant raised a number of points within the Reply Form. All these points have been taken into account by the Tribunal to the extent that they apply to the assessment of the net rent.

29. Representations – The Landlord

30. The Landlord did not make any submissions and did not challenge the Tenant's submissions.

Determination

31. This is one of seven applications made to the Tribunal by tenants of Robert Daniels Court and listed on the same Hearing date. The Tribunal has therefore taken into account all matters raised within all of these applications to ensure a uniformity of approach in the interests of fairness.
32. As set out above, the Tribunal is unable, as part of this hearing, to make any judgement as to whether the service charge is correct and

appropriate. Notwithstanding this point, the quantum of service charge is a matter that would be taken into account by a potential incoming tenant when comparing this Property with comparable properties.

33. In this regard, the Tribunal notes, from the evidence provided by the Tenant together with the tenants of flats 27 and 30, that both the net rent and the current service charge is significantly higher than those incurred by tenants of any of the comparable properties provided to the Tribunal.
34. It would therefore be reasonable to expect that an incoming Tenant would have regard to the overall liability comparative to other available options and not merely compare the rental values.
35. In this regard, Parsonage Court, for example, is located 2.6 miles away from the Property, has similar proximity to public transport but was constructed in 1986 and the current rent is £91.43 per week. This indicates that the proposed net rent of £113.97 per week is excessive.
36. Furthermore, the service charge is £41.92 per week (excluding water charges of £0.51 per week) which is roughly half of the service charge payable in respect of the Property.
37. It is therefore significant that tenants at Parsonage Court have a total liability of £133.86 per week for an arguably more attractive property.
38. However, it is also the case that incoming tenants to the Property have, agreed to enter into leases and pay initial rents of to £100 per week. In this regard, it is a principle of valuation that actual open-market transactions are prima facie evidence and, in the absence of compelling evidence to indicate that there was any element of coercion to the tenants agreeing to such rents, this evidence must be given weight.
39. Having taken all relevant matters into account, the Tribunal is therefore of the opinion that the market rental value of the Property (i.e., the net rent) as at the effective date of 3 April 2023 was **£103 per week**.

Name: Peter Roberts FRICS CEnv

Date: 27 June 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).