



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

Case reference : CHI/00HE/MNR/2023/0071

Property : 4 Penmere Place, Falmouth, Cornwall,
TR11 2QG

Applicant Tenant : Miss E Barnes & Mr S Knox

Representative : None

Respondent Landlord : Ms S Kersley

Representative : Dr J Kersley

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

Tribunal member(s) : Mrs J Coupe FRICS
Mr S Hodges FRICS
Mr M Woodrow MRICS

Date of decision : 4 July 2023

REASONS

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Decision of the Tribunal

On 4 July 2023 the Tribunal determined a Market Rent of £950.00 per month to take effect from 1 April 2023.

Background

1. By way of an application received by the Tribunal on 27 March 2023 the Applicant tenants of 4 Penmere Place, Falmouth, Cornwall, TR11 2QG (hereinafter referred to as “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 13 February 2023, proposed a new rent of £1,100.00 per month in lieu of a passing rent of £900.00 per month, to take effect from 1 April 2023.
3. By an agreement in writing made 6 February 2019 between Dr Jonathan Kersley (the landlord) and Miss Emma Barnes and Mr Stephen Knox (the tenants), the property was let to the tenants for a period of 12 months from 1 March 2019 under an Assured Shorthold Tenancy. A copy of the tenancy agreement was provided.
4. On 19 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 3 May 2023 and 17 May 2023 respectively, with copies to be sent to the other party. Both parties complied. The tenants’ submissions included reference to an inspection of the property having recently been undertaken by Cornwall Council, the findings of which were awaited.
6. On 26 May 2023 the Applicants received a copy of a Housing Health and Safety Rating System Assessment (HHSRS) and copies of Notices served on the Respondent pursuant to the Housing Act 2004, Part 1, by Cornwall Council. On 30 May 2023 the tenants submitted a case management application to the Tribunal seeking permission to rely on the findings of the HHSRS and associated Notices.
7. The original application and the subsequent case management application came before the Tribunal on 1 June 2023 who, having carefully considered the matter, granted permission for the tenants to rely on the findings of the documentation referred to. However, the Respondent was to be afforded an opportunity to comment on the HHSRS findings and the Notices served and their impact on the rental application before this Tribunal, by submitting representations to the Tribunal, copied to the Applicants, by 15 June 2023. The Respondent duly replied and those submissions form part of this decision.

8. Following receipt of the additional representations made, the Tribunal reviewed the application and concluded that the rent remained capable of being determined fairly, justly and efficiently on the papers, consistent with the overriding objective of the Tribunal.
9. 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

10. 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.
11. 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

12. In accord with current Tribunal policy, the Tribunal did not inspect the property but did view it externally from publicly available online platforms.
13. The property is a two-storey mid-terraced house of rendered masonry construction with a slate roof. The property has a single storey extension to the rear. The original part of the building is believed to date from around 1906. The property is located in central Falmouth, close to Penmere railway station, public transport and local amenities.
14. The accommodation comprises – Ground floor: hall, living room, dining room, kitchen, bathroom/wc. First floor - three bedrooms. There is a garden to the rear. On-street parking is available.
15. The property has gas central heating and double glazing. White goods, carpets and curtains are provided by the landlord.
16. 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 76m².

Submissions – Tenant (summarised)

17. The tenants stated that the landlord has failed to meet the landlord's obligations regarding repair and maintenance of the property. The tenants rely on a schedule of works they claim to have undertaken to the property over four years which include regular redecoration, general maintenance,

repairs and other works. During the course of the tenancy, the tenants claim to have incurred costs of £909.00 on materials and provided a costs assessment of their own time estimated at £6,550.00.

18. The tenants further rely upon a schedule of alleged outstanding repairs including, but not limited to, items such as penetrating dampness and surface mould, loose floorboards, un-swept chimney, general maintenance, trip hazards, worn carpets and others which they state the landlord has failed to address.
19. The tenants are supported in their application by a tenants' union who, in a letter dated 17 March 2023 to the Respondent, complain of disrepair, request immediate remedial action and, on behalf of their member, demand £5,000.00 by way of compensation.
20. The tenants also refer to the findings of a Housing, Health and Safety Rating System Assessment pursuant to the Housing Act 2004, Part 1, following which Cornwall Council, on 26 May 2023, issued the Respondent with the following Notices:
 - i. Section 29 Hazard Awareness Notice – Category 2 hazard – Excess Cold
 - ii. Section 12 Improvement Notice – Category 2 hazards:
 - Falling on the level surfaces etc
 - Falling on stairs etc
 - Falling between levels
21. By way of evidence the tenants submitted a series of helpful photographs showing the alleged disrepair.
22. The tenants included a number of comparable three bedroom rental properties advertised as available to let in and around Falmouth at close to the relevant date, with asking prices between £950.00 per month and £1,100 per month.

Submissions – Landlord (summarised)

23. The Respondent stated that the property is well located for local amenities and public transport and that the rent has not increased since 2019. The Respondent submitted a schedule of maintenance and improvements undertaken to the property between 2013 and 2023, although no evidence of such works or receipts were provided.
24. The Respondent claimed that he was unaware of any outstanding repair issues, none having been brought to his attention, and that previously notified problems had always been remedied in a timely order.
25. The Respondent disputed the findings of the HHSRS Assessment and the decision by Cornwall Council to issue a Hazard Awareness Notice and Improvement Notice. Such Notices are now the subject of a separate appeal application to the Tribunal.

26. The Respondent did not include within his submissions any comparable rental evidence but, instead, noted that there are no three bedroom properties advertised as available to rent in Falmouth centre at asking prices of less than £1,100 per month.

Determination

27. The Tribunal has carefully considered all the submissions before it.
28. 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 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.
29. 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.
30. 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 a tenantable condition that is considered usual for such a market letting.
31. The Tribunal had regard to the parties' evidence on letting values and, weighing this against its own expert knowledge as a specialist Tribunal, determined that a figure of £1,100 per month is reasonable.
32. Once the 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, albeit the Tribunal acknowledges that this is a period property, in excess of 100 years old. The Tribunal finds that the property is in want of some general repair and maintenance, the bathroom and kitchen are dated and, in part, the carpets appear worn.
33. To reflect such differences, the Tribunal makes a deduction of £150.00 per month from the hypothetical rent to arrive at an adjusted open market rent of £950.00 per month.
34. The Tribunal notes that the Respondent stated that the alleged disrepair had not been brought to the attention of the landlord. The Tribunal further takes note of Section 3.5.11 of the tenancy agreement requiring the tenants to notify the landlord immediately when any repairs or other matters falling within the landlord's obligations come to their attention.

35. No evidence that the landlord had been so notified was put before the Tribunal. However, the Tribunal is required to value the property in the condition as at the valuation date and, accordingly, the Tribunal adjusts the assessment of the rent as per paragraphs 32-33 above.
36. The Tribunal acknowledges the Hazard Awareness Notice and Improvement Notice (“the Notices”) served by Cornwall Council on the Respondent but does not propose to make a further rental adjustment, since to do so would constitute double counting as the Tribunal has already reflected the condition of the property in the deduction awarded.
37. The Tribunal makes no findings of fact on either the HHSRS Assessment or the Notices served on the Respondent. The Respondent’s appeal against the Notices will, subject to validity, come before a separate Tribunal sitting under jurisdiction different to that applicable to this rent determination.
38. The tenants 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 **£950.00 per month will take effect from 1 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 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.