



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

Case reference : **LON/00BF/MNR/2022/0197**

Property : **140 Henley Avenue, Cheam, Sutton,
Surrey, SM3 9SA**

Applicant : **Ms Wang Ching Wong & Mr Wei Ming
Leung**

Representative : **In person (written representations)**

Respondents : **Mr David Bruce Dean**

Representative : **In person (written representations)**

Type of application : **Sections 13 and 14, Housing Act 1988**

Tribunal members : **Mr Charles Norman FRICS
Valuer Chairman
Mr Oliver Dowty MRICS**

Date of Decision : **2 May 2023**

Date of Reasons : **17 June 2023**

REASONS

Background

1. On 28 November 2022, the tenants of the above property referred to the Tribunal a notice of increase of rent served by the landlord under section 13 of the Housing Act 1988 (“the Act”).
2. The landlord’s notice, which proposed a rent of £1,700 per month is dated 27 October 2022. The notice proposed a starting date for the new rent of 30 November 2022. The rent passing was stated as being £19,200 per annum which equates to £1,600 per month.
3. The tenancy is an assured periodic tenancy. From the tenant’s application, the assured tenancy commenced on 30 October 2021. A copy of the tenancy agreement of that date was provided.
4. On 19 January 2023, the Tribunal issued directions to the parties. The application was set down for a determination on the papers without a hearing, unless either party requested one, which neither did. The landlord was directed to complete a reply form giving details of the property, further comments, and any documents upon which the Tribunal was to rely, by 9 February 2023. The tenant was directed to do likewise by 23 February 2023. The landlord was entitled to submit a reply by 2 March 2023. The tenants requested an inspection.
5. On 2 May 2023, the Tribunal determined the rent at £1,665 per month with effect from 30 November 2022. Subsequently, the tenant requested Reasons.

The Tenant’s Case

6. The tenants’ case may be summarised as follows. The landlord required the whole of the 12-month tenancy rent to be paid at the commencement of the tenancy as the tenants did not have an established credit record. The tenant submitted that after moving in, various disrepairs arose including damp penetration, mould, window lock disrepair, window seal failure and leaking around kitchen sink. The porch was also leaking. There was flaking paint from the bathroom ceiling and around the bathroom window. No inventory was carried out at the commencement of the tenancy. On 15 September 2021 the landlord issued a section 21 notice. Renewal negotiations continued. Disrepair issues had been drawn to the attention of the Environmental Health Officer who had visited on 13 October 2022. Photographs were appended.
7. As to comparables, the tenant referred to the adjacent property, 142 Henley Ave which they said was currently let at £1,600 per month.

8. The tenants also requested that their details be anonymized in any publication of the Tribunal's decision. This was said to be for security reasons.

The landlord's Case

9. The landlord's written submission may be summarised as follows. The property comprised two living rooms, kitchen, three bedrooms and bathroom. There was also a garage and private gardens. The property was let with central heating, double glazing, carpets/curtains, and white goods. The property was let in good condition, newly painted with new carpet on stairs and landing and good quality laminate elsewhere. The landlord had had the property rented for 12 years and never had previous issues with mould prior to the present tenants. The tenants use tarpaulin to block the light and do not ventilate or heat the house correctly. The house passed its EPC.
10. The landlord submitted that the rent sought was well within the current market rent and possibly £300 less. He also referred to comparables as follows. A three-bedroom semi-detached house in Hamilton Ave, Cheam/Sutton was let at £2,000 per month. A house in Watson Ave, Cheam, Sutton was let at £1,900 per month. Brief property details from websites were included, but not full particulars.

Inspection

11. The Tribunal inspected the property on 2 May 2023 in the presence of both applicants and Mr Dean. The Tribunal found the property to be a three-bedroom mid-terrace house of traditional construction under pitched roofs and dating from the interwar period.
12. The ground floor comprises an external porch, hallway and through lounge with open plan kitchen with integrated appliances. A new Glow Worm boiler is fitted to the outside wall of the kitchen. This serves a central heating system with all rooms having radiators. The tenant pointed out areas of damp on the walls, condensation within double glazing units and a leak below the sink.
13. At first floor, the bathroom is tiled with a modern suite and shower over bath, with a linoleum floor. The tribunal noted some wear and tear and also peeling paint around the window and on the ceiling. There are two double bedrooms and one single bedroom. At the rear bedroom, the tenants pointed out misting to the fanlight windows and some staining to plasterwork below the window. They also pointed out an absence of blackout blinds and pointed out that the bedroom door was too short. In the front bedroom the tenant pointed out that the seals around the double-glazed units were loose causing drafts. The bedrooms all had laminate floors.

14. To the rear of the property is a long garden. The front of the property comprised a brickwork and off-street driveway. Henley Avenue is in Cheam about one mile from West Sutton Station.

The law

15. The law as to the Tribunal's approach is given at section 14 of the Act which insofar as relevant is as follows:

(1) Where, under subsection (4)(a) of section 13 above, a tenant refers to a Tribunal a notice under subsection (2) of that section, the Tribunal shall determine the rent at which, subject to subsections (2) and (4) below, the Tribunal consider that the dwelling-house concerned might reasonably be expected to be let in the open market by a willing landlord under an assured tenancy—

(a) which is a periodic tenancy 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 the rent) are the same as those of the tenancy to which the notice relates;

[...].

Findings

16. The Tribunal considered that each of the landlord's comparables were better properties being semi-detached rather than terrace. The Tribunal did not have details of the date when the adjacent property was said to have been let, or any documentary evidence, to rely upon that. Taking the above factors into account the Tribunal considered that had the subject property been in full repair, the monthly rent would have been £1,850. However, the Tribunal considered that there was significant disrepair. The Tribunal found that many of the windows were suffering from seal failure giving rise to condensation. In addition, some window locks were not working properly. The Tribunal considered that these matters required an adjustment of 5%. In addition, the Tribunal considered, based on its appearance, that damp at ground floor level was on the balance of probabilities caused by water ingress, for which the landlord was responsible. However, the Tribunal found that the bathroom damp and damp below windows in the bedrooms were on the balance of probabilities caused by a failure to ventilate by the tenants. Taking these findings into account the Tribunal made a 5% adjustment in respect of damp. Therefore, in aggregate the Tribunal considered that a 10% adjustment was required or £185 per month. The Tribunal did not consider that any further adjustments were needed in respect of other matters raised by the tenant. This therefore left an adjusted rent of £1,665 per month.
17. The Tribunal therefore determined that this rent should take effect from 30 November 2022, being the date specified in the landlord's notice of increase.

18. The Tribunal treated the application by the tenants for anonymisation as an application under rule 17 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“the rules”) (see below). It is a principle of open justice that Tribunal decisions are published, including the names of parties, unless an order under rule 17 is in force.
19. No evidence has been put forward in this case justifying an order under rule 17 and the application of the tenants to that effect is refused.

Mr Charles Norman FRICS
Valuer Chairman

17 June 2023

ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and these are set out below.
- If a party wishes to appeal against 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.

Rule 17

Prevention of disclosure or publication of documents and information

17.—(1) The Tribunal may make an order prohibiting the disclosure or publication of—

(a) specified documents or information relating to the proceedings; or

(b)any matter likely to lead members of the public to identify any person whom the Tribunal considers should not be identified.

(2) The Tribunal may give a direction prohibiting the disclosure of a document or information to a person if—

(a)the Tribunal is satisfied that such disclosure would be likely to cause that person or some other person serious harm; and

(b)the Tribunal is satisfied, having regard to the interests of justice, that it is proportionate to give such a direction. [...]