



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

Case Reference : **CHI/00HP/MNR/2023/0106**

Property : **5 Harbour Court
67 West Quay Road
Poole
Dorset
BH15 1JZ**

Applicant Tenant : **Mr D O'Mahoney**

Representative : **None**

Respondent Landlord : **Stonewater (5) Limited**

Representative : **Ms Holly Edwards**

Type of Application : **Determination of a Market Rent sections
13 & 14 of the Housing Act 1988**

Tribunal Members : **Mr I R Perry FRICS
Mr N I Robinson FRICS
Mr M C Woodrow MRICS**

Date of Inspection : **None. Paper determination**

Date of Decision : **7th August 2023**

DECISION

Summary of Decision

1. On 7th August 2023 Tribunal determined a market rent of £191.54 per month to take effect from 3rd April 2023.

Background

2. The case concerned the determination of a market rent for the subject property following a referral of the Landlord's notice of increase of rent by the Tenant pursuant to sections 13 and 14 Housing Act 1988.
3. On 20th February 2023 the Landlord served a notice under Section 13(2) of the Housing Act 1988 which proposed a new rent of £163.39 per week which equates to £708.02 per month in place of the existing rent of £122.18 per week which equates to £529.45 per month to take effect from 3rd April 2023. The notice complied with the legal requirements.
4. On 31st March 2023 the Tenant applied to the Tribunal under Section 13(4) (a) of the Housing Act 1988.
5. The Tribunal does not consider it necessary and proportionate in cases of this nature to undertake inspections or hold Tribunal hearings unless either are specifically requested by either party or a particular point arises which merits such an inspection and/or hearing.
6. The Tribunal issued directions on 21st June 2023 informing the parties that, unless either party objected, the Tribunal intended to determine the rent based on written representations. The parties were invited to make submissions which could include photographs or videos.
7. Both parties submitted papers by the specified dates setting out their respective cases. The papers were also copied to the other party.
8. Neither party objected to the matter being determined without an oral hearing, so the Tribunal determined the case on 7th August 2023 based on the written representations received.

The Property

9. From the information given in the papers and available on the internet, the property comprises a 2nd floor flat in a generally commercial area close to Poole Harbour. There are supermarkets within a short distance of the property supplying most day-to-day needs and the property is said to be within walking distance of the local High Street.
10. The flat is within a modern purpose built block of similar properties with accommodation described as including a Living Room/Kitchen, Bedroom and Bathroom. There is access via a lift.

11. Heating is from electric night storage heaters, windows are double glazed and the Energy Performance Certificate for the property is 'B'.

Submissions

12. The initial tenancy began on 23rd March 2018. The Tenant provides carpets, curtains and white goods. The total rent is expressed as an assured rental element plus a service charge element which is fixed annually. The Tenant says there is no off-street parking.
13. The Tenant states that the external cladding to the property has been replaced over recent months during which time he was unable to use the balcony accessed from his Living Room. The cladding works have been completed but the Tenant considers that his balcony has been left with a trip hazard and is therefore unsafe to use. He also says that a 'supposed fire door' is not fitted properly and that the area suffers from drug users, the homeless, vandalism and theft. Photographs of the balcony and door formed part of his submission to the Tribunal.
14. The Landlord says that the floor area of the flat is 48 square metres, and that the property was built in 2005, that it was provided to the Tenant in good order and that the Tenant has full rights to decorate the property to his own tastes.
15. The Landlord provided the Tribunal with a valuation from a Chartered Surveyor based in the area which assesses a market rent for the property to be £1,000 per month.

The Law

S14 Determination of Rent by First-tier Tribunal

- (1) Where, under subsection (4) (a) of section 13 above, a tenant refers to a First-tier 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; and
 - (d) in respect of which the same notices, if any, have been given under any of Grounds 1 to 5 of Schedule 2 to this Act, as have been given (or have effect as if given) in relation to the tenancy to which the notice relates.
- (2) In making a determination under this section, there shall be disregarded-

- (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 carried out by a person who at the time it was carried out was the tenant, if the improvement-
 - (i) was carried out otherwise than in pursuance of an obligation to his immediate landlord, or
 - (ii) was carried out pursuant to an obligation to his immediate landlord being an obligation which did not relate to the specific improvement concerned but arose by reference to consent given to the carrying out of that improvement; and
 - (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.
- (3) For the purposes of subsection (2)(b) above, in relation to a notice which is referred by a tenant as mentioned in subsection (1) above, an improvement is a relevant improvement if either it was carried out during the tenancy to which the notice relates, or the following conditions are satisfied, namely-
- (a) that it was carried out not more than twenty-one years before the date of service of the notice; and
 - (b) that, at all times during the period beginning when the improvement was carried out and ending on the date of service of the notice, the dwelling-house has been let under an assured tenancy; and
 - (c) that, on the coming to an end of an assured tenancy at any time during that period, the tenant (or, in the case of joint tenants, at least one of them) did not quit.
- (4) In this section "rent" does not include any service charge, within the meaning of section 18 of the Landlord and Tenant Act 1985, but, subject to that, includes any sums payable by the tenant to the landlord on account of the use of furniture, in respect of council tax or for any of the matters referred to in subsection (1) (a) of that section, whether or not those sums are separate from the sums payable for the occupation.

Consideration and Valuation

- 16. The Tribunal first considered whether it felt able to reasonably and fairly decide this case based on the papers submitted only with no oral hearing. Having read and considered the papers it decided that it could do so.
- 17. The Tribunal is required to determine the rent at which the subject property might reasonably be expected to be let in the open market by a willing Landlord under an assured tenancy on the date the Tribunal is held, and that the Tribunal looks for evidence on the open market where rents are normally expressed on a monthly basis.
- 18. The personal circumstances of the Parties are not relevant to this issue.

19. Having carefully considered the representations from the parties and associated correspondence, and using its own judgement and knowledge of rental values in the Bournemouth and Poole area, the Tribunal decided that the market rent for the subject property if let today in a condition that was usual for such an open market letting would be £900 per month.
20. However, the property is not let in a condition that would be normal in the open market and a number of adjustments should be made to the monthly rent to reflect this.
21. Relying on its own expertise the Tribunal decided that this open market rent should be reduced by £30 per month to reflect the Tenant's provision of white goods, £20 per month for carpets, £10 per month for curtains and £10 per month to reflect the condition of the balcony.
22. Accordingly, the monthly rent is assessed at £830 per month which equates to £191.54 per week.
23. The Tribunal notes that this figure is higher than the rent assessed by the Landlord, but there is no compunction for the Landlord to charge this higher rent.
24. The Tribunal did not consider that the increase in rent taking effect from the date within the notice should cause undue hardship.

Determination

25. The Tribunal therefore decided that the rent at which the subject property might reasonably be expected to be let in the open market by a willing Landlord under the terms of this assured tenancy was £191.54 per week.
26. The Tribunal directed that the new rent of £191.54 per week should take effect from 3rd April 2023, this being the date specified in the Notice. The Landlord is not obliged to charge this higher rent.

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 to the First-tier Tribunal at the Regional office which has been dealing with the case. Where possible you should send your application for permission to appeal by email to rpsouthern@justice.gov.uk as this will enable the First-tier Tribunal Regional office to deal with it more efficiently.
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.