



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

Case reference : **CAM/00MF/MNR/2022/0105**

HMCTS code : **P:PAPERREMOTE**

Property : **7 Sadlers Lane, Winnersh, RG41
5AJ**

Applicant (Tenant) : **Abigail Green**

Respondent (Landlord) : **Iftikhar Shehzad**

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 : **26 April 2023**

DECISION

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 hearing 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 £900 per calendar month effective from 1 January 2023.

Reasons

Background

1. On 25 November 2022 the Landlord served notice under section 13 (2) of the Housing Act 1988 to increase the passing rent from £1,100 per calendar month (pcm) to £1,350 with effect from 1 January 2023.
2. This rent is stated to be exclusive of Council Tax, Water Charges and fixed service charges.
3. The Tenant made an undated application to the Tribunal in reliance on section 13 (4) of the Housing Act 1988. This was acknowledged by the Tribunal on 16 January 2023.
4. The Tribunal issued directions on 16 January 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.
5. Neither Party requested a hearing, and the matter has been determined on the papers.

The Property

6. The Tribunal inspected the Property on 17 March 2023 accompanied by the Tenant.
7. The Property comprises a ground floor flat within a purpose-built apartment block of four flats constructed in the late 1990s. The accommodation comprises a living room, kitchen, bathroom and two bedrooms. There is off-street car parking, but the Tenant advised that this was not available to them and a shared open space to the front.
8. There is central heating and UPVC double glazing which, according to Google Street View appears to have been replaced in 2019/20.
9. The Tribunal notes that the EPC banding is D and that the stated assumed floor area is 66 sqm.
10. The Council Tax band is C.
11. The Tribunal noted the following matters during the inspection:
 - a. There is extensive damp and mould on the walls throughout the Property.

- b. The flooring in the hallway is uneven and loose.
- c. The kitchen units are in disrepair.
- d. The Tribunal was informed that the boiler is faulty – the cupboard was wet and mouldy.
- e. The rear bedroom floor was damp and mouldy.
- f. There were two rabbits living in the front lounge, and an empty fish-tank.
- g. The extractor fans to the kitchen and bathroom were in working order.

The Tenancy

- 12. The Tenant occupied the Property by virtue of an Assured Shorthold Tenancy dated 12 March 2017 for a period of 12 months subject to a mutual break after month 4 subject to 2 months' notice.
- 13. The rent under this Tenancy was £950 pcm.
- 14. The Property is defined as “*The dwelling known as: 7 Sadlers Lane, Winnersh, RG41 5AJ.*”
- 15. The Tenant’s repair obligations are set out at clause 3 of the lease whilst the Landlord is required to comply with section 11 of the Landlord and Tenant Act 1985 as further set out below.
- 16. In the absence of a new Tenancy being entered into, an Assured Periodic Tenancy pursuant to Section 5 (2) of the Housing Act 1988 (the 1988 Act) has arisen such that Sections 13 and 14 of the Act now apply.

The Law

- 17. 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”

18. 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.”*
19. 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.”*
20. Examples of a tenant’s failure to comply with the terms of the lease may include, for example, a lack of redecoration.
21. 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.”*
22. 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.”

Other Documents

23. The Tribunal was provided with a number of additional documents by the Parties which are listed below:
 - a. Letter dated 25 March 2022 from Wokingham Borough Council addressed to the Landlord pursuant to Housing Act 2004. This letter required, amongst other matters, the following remedial works:
 - i. *Ensure the mechanical extraction in the bathroom to be vented externally*
 - ii. *Install Mechanical extraction in the bathroom to be vented externally*
 - iii. *Repair broken tiling around the toilet in the bathroom and install bath panels around bath & install a water screen-shower curtain to prevent water escape*
 - iv. *Remove (using a fungicidal wash) all black mould from window surrounds and hallway ceiling entrance. Should a mould wash not remove the mould then remove affected paintwork/plaster, re-plaster and repaint affected areas leaving in good order*
 - v. *Adjust (or repair or replace) guttering at front to ensure it are (sic) functioning and all outlets are not blocked and run freely*
 - b. Email from David Bridle to the Landlord dated 8 November 2022
 - c. Further email exchanges between David Bridle and the Landlord
 - d. Electrical Installation Condition Report
 - e. Expert Witness Report and Scott Schedule of Proposed Reinstatement Works prepared by Mr Mason MRICS (Phoenix Legal Limited) dated 9 January 2023. This raises a number of points including the following:

- i. Defective guttering, blocked rainwater outlets and defective waste drainage
- ii. Penetrating damp in a number of locations
- iii. Leaking cistern and boiler pipes
- iv. Lack of shower screens and broken bathroom tiling
- v. Extensive black mould
- vi. Uneven and/or mouldy floors
- vii. Deficient electric and gas safety certification
- viii. Incorrectly positioned carbon monoxide alarm

Representations – The Tenant

24. The Tenant raised a number of issues as set out below.
 - a. The existence of damp
 - b. Leaking windows
 - c. Water leak in kitchen
 - d. Broken WC
 - e. Water leaks
 - f. Broken boiler – lack of heat and flooding
 - g. Personal health
25. No evidence was provided in respect of the quantum of rent contended for.

Representations – The Landlord

26. The Landlord completed the Reply Form but did not set out any specific comments or evidence in respect of the rent.
27. The Tribunal notes that the Landlord has stated that car parking space is provided.

Determination

28. In determining the market rent, the Tribunal has regard to prevailing levels of rent in the general locality and achieved rental values in respect of other properties of comparable accommodation and

provision that would be likely to be considered by a prospective tenant. The current rent and the period that has passed since that rent was agreed or determined is not relevant.

29. The legislation requires the Tribunal to have regard to market demand assuming that the landlord is willing. The Tribunal is therefore unable to have any regard to the personal circumstances or identities of the actual landlord and tenant in assessing the level of rent.
30. Whilst the Tribunal understands and has sympathy with the personal circumstances of the Tenant, these are not matters that can be taken into account in determining the rent payable. However, in circumstances where the condition of the Property is such that there is a perceived or actual health hazard to a hypothetical occupier, this can be taken into account in assessing rent payable.
31. It is apparent that the Property is in significant disrepair and requires significant work before it could achieve a market rate and be considered to be fully habitable.
32. The Tribunal has no information as to the status of the Housing Act 2004 proceedings other than as set out in the correspondence provided. In any event, the Tribunal places limited weight on that correspondence and has, instead, relied upon its own inspection albeit assisted by the Expert Report prepared by Mr Mason which the Tribunal notes includes the statements required by CPR Part 35.
33. In this regard, condensation requires cold and damp conditions which, in domestic properties, typically results from a lack of heating and ventilation. In this regard, it is apparent that the heating provision is unreliable and that, as recently as the letter dated 25 March 2022 (as referred to above at paragraph 24) there was limited mechanical ventilation such that damp air would have been trapped in the property. It is also apparent, that there is penetrating damp and water leaks within the property due to faults in the drainage and lack of external repair.
34. It is therefore the case that whilst Mr Bridle refers, in the email correspondence, to the Tenant's living habits as a potential cause of the damp and mould, the Tribunal prefers to rely on its own experience and the evidence of Mr Mason. It is apparent from this that, notwithstanding the Tenant's use of the Property, the real issue is disrepair on the part of the Landlord.
35. The Tribunal has therefore assumed that the Tenant has fully complied with their lease covenants but had regard to the actual failure of the Landlord in respect of its obligations pursuant to section 11 of the 1985 Act.
36. In the absence of any evidence to support or challenge the rent being contended for, the Tribunal has relied upon its own experience and knowledge of the market whilst making its own enquiries.

37. In this regard, the Tribunal is aware that 5 Sadlers Lane, which is a first floor flat in the same development, sold for £237,500 on 11 April 2022. Having reviewed the online Sales Particulars, it is apparent that this has been kept to a much higher standard of repair and decoration than the Property.
38. If it was to be assumed that the Property would attract a similar price if it was in the same condition and disregarding that the Property is on the ground floor, the Landlord's quoted rent of £1,350 per month for the Property would equate to a yield of 6.8% which, in the Tribunal's opinion is not realistic.
39. In this regard, the Tribunal is aware that a top-floor two bedroom apartment in Winnersh Grove is currently on the market at £1,400 per month. Even if the Property was in full repair and decoration, the Winnersh Grove property would be far more attractive in the market.
40. In addition, the Tribunal is aware that a brand new luxury one bedroom flat in Wokingham is available at £1,050 per month. It is appreciated that the Property provides two bedrooms but, having taken account of the relative sizes, a prospective tenant would balance the relative advantages and bid accordingly.
41. The Tribunal is of the opinion that an incoming tenant would require a significant discount to cover the cost and inconvenience of rectifying matters and making the Property habitable.
42. It is therefore the Tribunal's opinion that the current market rental value of the Property as it actually exists and on the assumption that the Tenant had complied with their covenants would be **£900 per month**.
43. The Tribunal directs that the revised rent is to be effective from **1 January 2023**.

Name: Peter Roberts FRICS CEnv

Date: 26 April 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).

Notice of the Tribunal Decision and Register of Rents under Assured Periodic Tenancies (Section 14 Determination)

Housing Act 1988 Section 14

Address of Premises

7 Sadlers Lane, Winnersh, RG41 5AJ

The Tribunal members were

Mr P Roberts FRICS CEnv

Landlord

Iftikhar Shehzad

Address

52 Anderson Avenue
Earley
Reading
RG6 1HB

Tenant

Abigail Green

1. The rent is: £ 900 Per month (excluding water rates and council tax but including any amounts in paras 3)

2. The date the decision takes effect is:

1 January 2023

3. The amount included for services is

not applicable

Per

4. Date assured tenancy commenced

12 March 2017

5. Length of the term or rental period

12 months

6. Allocation of liability for repairs

Tenant liable for internal repairs

8. Furniture provided by landlord or superior landlord

N/A

9. Description of premises

The Property comprises a ground floor flat within a purpose-built apartment block of four flats constructed in the late 1990s. The accommodation comprises a living room, kitchen, bathroom and two bedrooms.

Chairman

P Roberts

Date of Decision

26 April 2023