



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

Case reference : **CAM/33UG/MNR/2023/0098**

HMCTS code : **P:PAPERREMOTE**

Property : **24 Shakespeare Way, Taverham,
Norfolk, NR8 6SJ**

Applicant (Tenant) : **Mr and Mrs Brett**

Respondent (Landlord) : **Mr and Mrs Stolworthy
(represented by Mr Craven of
Iconic Estate Agents)**

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 : **25 September 2023**

Amended under Rule 50 on 16 October 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 £1,375 per month effective from 1 August 2023.

Reasons

Background

1. The Landlord served an undated notice pursuant to section 13 (2) of the Housing Act 1988 to increase the passing rent from £1,600 per month to £1,650 per month with effect from 1 August 2023.
2. This rent is stated to be exclusive of Council Tax, Water Charges and fixed service charges.
3. The Tenant made an application on 19 July 2023 to the Tribunal in reliance on section 13 (4) of the Housing Act 1988.
4. The Tribunal issued directions 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. The Tribunal did not inspect the Property and relied upon the evidence of the Parties in this regard together with independent investigations of publicly accessible information.

Preliminary Issues

6. Section 13 (2) of the Housing Act 1988 requires, for the purposes of securing an increase in the rent:

“...a notice in the prescribed form proposing a new rent to take effect at the beginning of a new period of the tenancy specified in the notice, being a period beginning not earlier than—

*(a) the minimum period after the **date of the service** of the notice.”*

7. In addition, the prescribed form provides a box for the insertion of a date and Guidance Note 13 states “You or your agent... ..**must** sign and **date this notice.**”

8. The section 13 (2) Notice was undated and it is therefore necessary for the Tribunal to consider whether it should proceed with this matter.
9. This Tribunal does not have jurisdiction to determine the validity of section 13 (2) notices and this is a matter for the County Court. However, paragraph 48 of the Court of Appeal Decision in *Mooney v Whiteland* [2023] EWCA Civ 67 states:

“That is not to say that a rent assessment committee may not sometimes need to take a view whether a notice is valid. If it considers that a notice is invalid, it may decline to proceed until the question has been determined by the court. Conversely, if it considers that a notice is valid and that objections are without substance, it may proceed to determine the appropriate rent, but its determination will not prevent a tenant from disputing the validity of the notice.”
10. The Tribunal understands from the Tenant that the section 13 (2) Notice was received on 27 June 2023 such it is not disputed that the Landlord has provided the requisite notice as required by statute.
11. The Tribunal is therefore of the opinion that, although the Landlord has not dated the section 13 (2) Notice as expressly required, it was, on the basis of the Tenant’s confirmation, served within the statutory timescales and the Tribunal can proceed.
12. However, as set out in the *Mooney* case, this does not preclude the Tenant from challenging the validity of the Landlord’s notice at the County Court should they decide to do so.

The Property

13. The Tribunal understands from the Parties’ representations that the Property comprises a modern detached house providing a kitchen/diner, WC, porch, office (external access) and lounge at ground floor level and **four** bedrooms with family bathroom at first floor level. There is also a garden to the rear and garage to the side with extensive open car parking at the front.
14. The Property benefits from underfloor heating, central heating, double glazing, carpets, modern bathroom suite and a full suite of white goods to the kitchen.
15. The Tribunal notes from Google images that there was previously a garage set back from the house and a car port in the position of the current garage. However, it appears from the on-line Rightmove Sales Particulars that the former garage was converted into the office and the former car port was converted into the garage.
16. There is no evidence of a planning application having been submitted to Broadland District Council (the Local Planning Authority) but, as far

as it is material to the immediate matter, the Tribunal has assumed that these alterations fell under permitted rights and/or are protected from enforcement due to the effluxion of time such that the Tenant is entitled to full lawful use thereof.

17. In addition, the Tribunal has, by comparing historic Google Images (i.e., July 2008) with the Rightmove Sales Particulars, concluded that the images and floor plans available on Rightmove do not relate to the previous sale but are more recent. However, the Tribunal also notes that the Property is shown in the photographs as being entirely vacant and devoid of furniture which suggests that the Tenant was not in occupation as at the date of these photographs.
18. The Tribunal has relied upon a combination of the statements made by the Parties to the Tribunal, the Rightmove details, Google images and the “as existing” floor plans submitted to the Local Planning Authority by the Landlord in 2016 in respect of a refused planning application for a single storey front extension (ref: 20161137).
19. The EPC rating for the Property is C with effect from 15 June 2020 and the assessed floor area is 144 sqm.

The Tenancy

20. The Tenant took occupation pursuant to an Assured Shorthold Tenancy commencing 1 September 2022 for a term of 6 months.
21. The initial rent under this Tenancy was £1,600 per month to be paid on the 29th of each month.
22. Clause 11.1 of the AST required the Tenant:

“To take reasonable steps to keep the interior of the Premises and the Fixtures and Fittings in the same decorative order and condition throughout the Term as at the start of the Tenancy as noted in the inventory and Schedule of Condition. The Tenant is not responsible for the following

- *fair wear and tear;*
- *any damage cause by fire...*
- *repairs for which the Landlord has responsibility (these are set out in clause 27.3 of this Agreement)*
- *damage covered by the Landlord’s insurance policy.”*

23. Clause 27.3 requires the Landlord:

“To comply with the obligations to repair the Premises as set out in sections 11 to 16 of the Landlord and Tenant Act 1985...”

The Law

24. 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”

25. 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.”

26. 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.”

27. Examples of a tenant's failure to comply with the terms of the lease may include, for example, a lack of redecoration.
28. 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."*
29. 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

30. The Tenant emailed the Tribunal on 30 August 2023 stating:
- "Upon careful analysis of the current property rental rates in our area, I've noticed a significant disparity between our current rental expenses and the prevailing rates in the market. This comparison is further underscored by the rental amount that the landlord is currently requesting from us.*
- As evident from the attached photos, the local property rental market seems to be offering rental properties at rates notably lower than what we have been paying. This trend indicates a potentially favorable opportunity for us to optimize our budget while maintaining a comfortable living arrangement."*
31. The Tenant's attachments set out the following evidence:
- a. Costessey Lane, Drayton – 4 bedroom house (188 sqm) - £1,250 pcm

- b. Lloyd Road, Taverham – 3/4 bedroom chalet (98.1 sqm)- £1,500 pcm
 - c. The Street, Ringland – 4 bedroom detached house - £1,350 pcm
32. The Landlord was not copied into this email as required by the Direction 2 as issued by the Tribunal on 25 July 2023. However, the Tenant has informed the Tribunal that this email was forwarded separately to the Landlord's agent.

Representations – The Landlord

33. Although Mr Craven of Iconic Estate Agents completed the Reply Form on behalf of the Landlord and his firm (Iconic Estate Agents) are currently advertising properties to let in the vicinity, no rental evidence was provided to the Tribunal either by or on behalf of the Landlord.
34. Similarly, Mr Craven did not respond to or comment in respect of the evidence provided by the Tenant despite the fact that the Lloyd Road property referred to by the Tenant is currently being marketed by his firm and the asking rent has recently been reduced from £1,500 pcm (as stated by the Tenant) to £1,400 pcm.

Determination

35. 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.
36. 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.
37. In addition, historic matters between the actual landlord and tenant are not relevant to the rent likely to be offered by a prospective tenant. The Tribunal can therefore only have regard to the Property as it actually exists on the relevant date of the proposed rent review having regard to the statutory assumptions.
38. As set out above, section 14 of the 1988 Act requires the Tribunal to determine the rent at which the Property might reasonably be expected to let with effect from the date specified for commencement of the new rent as set out in the section 13(2) Notice.
39. In effect, the Property is assumed to have been vacated, fully redecorated and be available on the market for occupation by an incoming tenant.

40. As set out above, the Landlord elected not to submit any evidence in support of the proposed rent of £1,650 pcm. In contrast, the Tenant submitted evidence in support of the contention that the proposed rent is excessive relative to other property but did not state what rent the Tribunal should determine in place of the Landlord's proposal.
41. The Tribunal has reviewed the evidence provided by the Tenant and has taken account of the fact that, as the reduction in the asking rent of the Lloyd Road property took place after the effective date of the proposed rent (i.e., 1 August 2023), this is not a matter that would have been known to a prospective tenant as at the valuation date.
42. However, the reduction in the asking rent is helpful to the extent that it is indicative of market conditions as at the valuation date.
43. The Tribunal understands that the Costessey Lane property extends to 188 sqm and the Lloyd Road property extends to 98.1 sqm. However, the Tribunal has no further information in respect of The Street property.
44. The Tribunal has taken the evidence submitted to it into account but also applied its own expertise and knowledge. In this regard, the Tribunal determines the market rental of the Property as at the effective date to be **£1,375 pcm**. The rent payable may not, therefore, exceed this figure.
45. **However, this does not prevent the Landlord from charging a lower figure.**

Name: Peter Roberts FRICS CEnv

Date: 25 September 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 either party is dissatisfied with this decision, they may apply for permission to appeal to the Upper Tribunal (Lands Chamber) on any point of law arising from this Decision.

Prior to making such an appeal, an application must be made, in writing, to this Tribunal for permission to appeal. Any such application must be made within 28 days of the issue of this decision to the person making the application (regulation 52 (2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rule 2013).

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

24 Shakespeare Way, Taverham,
Norfolk, NR8 6SJ

The Tribunal members were

Mr P Roberts FRICS CEnv

Landlord

Mr and Mrs Stolworthy

Address

C/O Iconic Estate Agents
297 Fakenham Road
Taverham
NR8 6LE

Tenant

Mr and Mrs Brett

1. The rent is:£

1,375

Per

month

(excluding water rates and council tax but including any amounts in paras 3)

2. The date the decision takes effect is:

1 August 2023

3. The amount included for services is

not applicable

Per

4. Date assured tenancy commenced

1 September 2022

5. Length of the term or rental period

6 months

6. Allocation of liability for repairs

Tenant liable for internal repairs subject to exclusions

8. Furniture provided by landlord or superior landlord

N/A

9. Description of premises

The Property comprises a modern detached house providing a kitchen/diner, WC, porch, office (external access) and lounge at ground floor level and four bedrooms with family bathroom at first floor level. There is also a garden to the rear and garage to the side with extensive open car parking at the front. It benefits from underfloor heating, central heating, double glazing, carpets, modern bathroom suite and a full suite of white goods to the kitchen.

Chairman

P Roberts

Date of Decision

**25 September
2023**