



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

Case reference : CHI/00HH/MNR/2023/0188

Property : Garden Flat, 4 Wellesley Road, Torquay,
Devon, TQ1 3BS

Applicant Tenant : Mr R Scull

Representative : Duncan Lewis Solicitors

Respondent Landlord : Mr T Dykes

Representative : Wollens Solicitors

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

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

Date of inspection : 2 October 2023

Date of decision : 20 October 2023

REASONS

Decision of the Tribunal

On 20 October 2023 the Tribunal determined a Market Rent of £437.50 per month to take effect from 28 July 2023.

Background

1. By way of an application received by the Tribunal on 26 July 2023, the Applicant tenant of the Garden Flat, 4 Wellesley Road, Torquay, Devon, TQ1 3BS (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 8 June 2023, proposed a new rent of £575.00 per month in lieu of a passing rent of £400.00 per month, to take effect from 28 July 2023.
3. The tenant occupies the property by way of an Assured Shorthold Tenancy granted for an initial term of 6 months, commencing 28 September 2009. A copy of the agreement was provided.
4. On 11 August 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 advised that no inspection would be undertaken. No objections were received.
5. On 13 September 2023 the tenant submitted a case management application seeking the Tribunal’s permission to rely on an expert report and requesting an extension of time for submission of a statement of case. The landlord objected to both requests.
6. Having regard to the guidance of the Upper Tribunal in *Rouphina Chinws Onyiliagha v You Move Lets Ltd* [2023] UKUT 199 (LC) and the overriding objective of the Tribunal to deal with matters fairly and justly, the Tribunal determined that an inspection of the property was required, which was duly set down for 2 October 2023.
7. In view of the Tribunal’s decision that an inspection of the property was required and, as the expert report upon which the tenant sought to rely was considered too historic to assist, the tenant’s case management application to rely on such report was refused. The Tribunal provided a short extension of time for the tenant to submit his statement of case.
8. The tenant attended the inspection and provided access throughout the property.
9. The landlord’s representative, Ms Robson, was in the vicinity of the property when the Tribunal arrived at the scheduled time. Ms Robson declined an opportunity to accompany the Tribunal on its internal inspection of the property. The Tribunal delayed the inspection by 5 minutes whilst Ms Robson spoke to the landlord’s solicitor by telephone.

Ms Robson left immediately thereafter and took no part in the inspection. For the record, the tenant raised no objection to Ms Robson entering the property, should she have chosen to.

10. In accordance with the Directions and further Directions issued by the Tribunal, both parties submitted representations and it is upon those representations and the findings of the inspection that the Tribunal makes its determination.
11. 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, are fundamental to the determination.

Law

12. 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.
13. 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

14. With the benefit of an inspection of the property, the Tribunal arrived at the following conclusions and found as follows.
15. The property is a self-contained lower ground floor/garden flat within a three storey mid-terraced Victorian house, built circa. 1900. The upper floors of the house are converted into a two-storey maisonette and the lower ground floor is converted into the subject property, with an extension to the rear. Neither the date of conversion or extension was provided but neither are considered recent.
16. The main building is of traditional rendered masonry construction with a pitched roof clad in artificial slates. The extension is of rendered construction with a flat roof covered in mineral felt.
17. There is only pedestrian access to the flat, via an unmade and unlit path serving the rear of 1-10 Wellesley Road. The path is rough underfoot, with greenery either side. To access this path, a pedestrian must either ascend flights of steps from Waterloo Place or descend flights of steps from Wellesley Road. Both flights of steps are uneven and worn. A 'Footpath Closed' sign was sited where the steps join the access path to the property however there was no indication as to whether the sign related to the upper or lower flight of steps.
18. There is no vehicular access.

19. The property is located within close proximity of local facilities and public transport, and a short distance from Torquay seafront.
20. Accommodation comprises an entrance lobby, kitchen, bathroom and two rooms. On the day of inspection, it was evident that the rear room, that fronting Wellesley Street, was being used as a bedroom. Light and ventilation to this room is provided by a window and lightwell with a fixed steel grid at street level.
21. There is outdoor patio/garden space at the rear which also includes a door that leads to the upper floor maisonette. There is a dilapidated timber shed.
22. Permit parking is available on Wellesley Road and adjacent roads.
23. There is a gas-fired central heating system with a wall-mounted boiler in the kitchen. Windows and external doors are double glazed. Carpets are provided by the landlord however the tenant has also laid rugs. Curtains are provided by the landlord however the tenant has hung some curtains of his choice. With the exception of a cooker, white goods are provided by the tenant.
24. The property has an Energy Performance Certificate (EPC) Rating of D and a recorded floor area of 45m² (National Energy Performance Register).

Submissions – Tenant (summarised)

25. The tenant states that the property is in want of repair throughout and submits a series of undated photographs allegedly showing disrepair and demonstrating the access path to be overgrown and strewn with detritus.
26. The tenant states that the property should be valued as a studio, as opposed to a one-bedroom flat, on the basis that the room currently utilised as a bedroom is positioned at lower ground level with no means of escape in the event of fire, the lightwell being considered too small to facilitate escape and the street level grid above being firmly secured.
27. The tenant complains of damp and mould throughout and denies the landlords' suggestion that the property has fallen into disrepair as a consequence of his failure to maintain the accommodation in a tenable condition.
28. The tenant denies refusing access to contractors to effect remedial works or failing to notify the landlord of disrepair. The tenant accepts that the landlord has carried out some notified repairs, including to the electrics and that a replacement cooker has recently been supplied.
29. The above is a broad summary of the representations submitted by the tenant. The Tribunal reminds the reader of its comments at paragraph 11 above, in that these reasons form a summary of submissions and do not rehearse each point advanced.

30. In challenging the proposed rent the tenant relies upon advertisements of studio accommodation available to let within the locality at asking prices ranging from £425.00 to £500.00 per month. Furthermore, the tenant refers the Tribunal to the Local Housing Allowance rate of £448.76 for a one bedroom flat or studio, a sum said to be considerably less than that proposed by the landlord.

Submissions – Landlord (summarised)

31. The landlord describes the property as a ground floor rear garden flat with a lounge and bedroom within the original building and a kitchen, hallway and bathroom within the extended part. The property is said to be conveniently located for facilities and public transport.
32. The tenant is said to have occupied the property since 28 September 2009 and the previous tenant was stated to be a mother and young child.
33. Between taking occupation of the property and June 2020 the tenant is alleged to have made no report of disrepair or notified the landlord of any issues with the property.
34. In February 2019 a surveyor, instructed by the landlord to inspect the property for the purpose of preparing a valuation for marketing purposes reported that the tenant had *“allowed both the inside and outside of the property to fall into remarkably unclean, dirty and unmaintained condition”*, allegedly to such an extent that the property was unfit for marketing.
35. In June 2020 the tenant reported a defect with the gas boiler. Upon instruction from the landlord, British Gas attended and rectified the issue.
36. In June 2021 the tenant reported a roof leak which was repaired in a timely manner. The contractor who attended subsequently notified the landlord that he was unwilling to undertake further works within the property due to the condition. A copy of said letter was appended.
37. Since 2021 the tenant refused access to the landlord or his appointed representative. In October 2021 and pursuant to Housing Act 1988 (as amended), the landlord served a Section 8 Notice seeking possession of the property.
38. In April 2022 the tenant reported an electrical fault. An electrician, instructed by the landlord, attended and reported unhygienic conditions at the property. A copy of his email was appended.
39. In October 2022 the tenant reported a number of alleged defects to the property including damp and mould; broken bathtub and toilet; faulty light fittings; exposed wiring; cracked render; water ingress and lack of heat, fire and smoke alarms. Each allegation is either denied or has since been rectified by the landlord, or, in the alternative, the landlord alleges is damage caused by the tenant.

40. In February 2023 an electrician refused to undertake works in the property due to its condition.
41. The landlord states that when defects are reported by the tenant these are rectified in a timely manner. He says the landlord is not responsible for disrepair which has not been reported and nor is the landlord responsible for damage caused by the tenant. Furthermore, the landlord says that *“the absence of any reports by the tenant for at least a decade indicate either that there were no issues in the property, or there were issues and the tenant failed to report them in breach of contract, causing the property to deteriorate.”*
42. The landlord states that the proposed rent increase is the first increase in 14 years.
43. The landlord refers to the condition of the property as at the last inspection in August 2022. The inspection found the property to be in need of repair as a consequence of damage said to be caused by the tenant failing to maintain the property in a tenable condition.
44. In support of the proposed rent the landlord relies upon a basket of comparable properties, each advertised as available to let and found within a ten mile radius of the property. The comparable asking prices range from £530.00 – £900.00 per month.
45. Furthermore, the landlord applies the Bank of England online inflation calculator to the passing rent of £400.00, as set in 2009, and finds the equivalent as of today to be £604.86 per month.
46. The landlord considers that demand for similar properties is currently high, stating that *“Such flats are particularly in demand by single persons, couples, older persons”*. Furthermore, the landlord states that asking prices for house-shares range from £390.00 - £650.00 per month and concludes that the current rent of £400.00 per month is substantially low when considered in this context.
47. The landlord states that a rent increase to £610.00 – £650.00 would have been *“entirely justified”* however the landlord has, instead, chosen to propose a lesser rent of £575.00 per month.

Determination

48. The Tribunal found as a matter of fact that the notice served by the landlord was a Notice under section 13 of the Act as prescribed by statute.
49. 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 immediate locality. **The Tribunal has no regard to the current rent and the period of time which that rent has been charged**, nor does the Tribunal take into account the percentage increase which the proposed rent represents to the passing rent.

50. The legislation makes it clear that the Tribunal is unable to take into account the personal circumstances of either the landlord or the tenant in determining the rent.
51. The Tribunal assesses the rent for the property as at the date of the landlord's Notice, whilst ignoring any market increase or decrease since such date and on the terms of the existing tenancy. 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.
52. 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 the condition that is considered usual for such a market letting.
53. In doing so, the Tribunal considered the evidence relied upon by the parties and weighed such evidence against its own knowledge and experience as an expert Tribunal.
54. Stating that the property should be valued as studio accommodation, the tenant relies upon advertisements of such accommodation available to let at asking prices ranging from £425.00 - £500.00.
55. Based on an inspection of the property the Tribunal values the accommodation as extending to two rooms, a kitchen, bathroom and hallway, and with the tenant having use of an outside space which is subject to a shared right of access.
56. The tenant further relies upon the Local Housing Allowance rate for studio and one-bedroom accommodation, currently £448.76 per month. The tenant states that *"The LHA rate is worked out on the basis of the 30th percentile when assessing market rents in a broad rental market area. In other words 30% of rents will be at that rate or cheaper and 70% will be more expensive"*.
57. The Tribunal is required to determine the open market rent of the property as at the pertinent date and, in doing so, draws no assistance from an averaged figure of unknown property over a *"broad rental market area"*. As a specialist Tribunal with, in this instance, two experienced Valuer members, the Tribunal prefers to rely on the comparable evidence provided and its own specialist knowledge of local rental values.
58. The landlord relies upon a broad variety of comparable asking prices which include flats, house-shares, a house, a bungalow and retirement properties, with a range of asking prices from £530.00 - £900 per month, with the comparables spread over a wide geographical area. Accordingly, the Tribunal found that although such properties provided useful background information they were of limited assistance in this matter.
59. However, the landlord did opine that a rent of £610.00 - £650.00 per month could be justified but that a reduction to £575.00 was proposed to reflect the *"tenant's mischief and the condition of the property"*.

60. Having regard to all submissions and comparable evidence, and the Tribunal's expertise, the Tribunal determined an open market rental of £625.00 per month, a figure sitting within the landlord's own range for a property in reasonable condition.
61. Once the hypothetical rent in good condition 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.
62. In this instance the Tribunal determined that the subject property falls considerably short of the standard required by the market.
63. The Tribunal agrees with the parties that the property is in want of repair and refurbishment. The landlord alleges the disrepair to be as a direct result of the tenant's failure to maintain the property in a tenable condition, to report disrepair to the landlord and to allow access for remedial works. The tenant refutes such claims.
64. Upon inspection of the property it was evident to the Tribunal, from patch repairs to the rendered walls and the like, that the landlord had carried out some works of repair and maintenance. Furthermore, it was common ground that the landlord had instructed gas safety testing and engaged contractors to carry out remedial works on occasion. Such works, however, are either statutory requirements or were effected in response to defects reported by the tenant.
65. The landlord adduced no evidence of any regular inspections of the property and, instead, appeared to rely solely on the tenant to report any issues. It was disappointing that the landlord chose not to include in submissions the surveyors report commissioned in 2019.
66. The Tribunal finds that not all of the disrepair identified can be attributed to the tenant's lifestyle, for example, the penetrating or rising dampness evident within the property. Furthermore, although it's admitted by the tenant that access for the landlord was denied in 2022, the tenant appears to have granted entry to some contractors as evidenced by invoices contained within the landlord's submissions.
67. By chance, the landlord's representative was cutting back greenery bordering the access path to the property on the morning of the inspection. As the work was so recent, the Tribunal was able to gauge the considerable extent of the greenery freshly cut.
68. With the benefit of an inspection of the property the Tribunal formed the following conclusions:
 - i. Access is exceptionally poor. There is only pedestrian access to the property via an unmade and unlit path which is itself accessed via flights of uneven steps. Access to the property for the elderly, persons with restricted mobility or with pushchairs would be nigh on impossible, thereby restricting the pool of tenants for which such accommodation is suitable.

- ii. The kitchen is dated, unmodernised and lacks adequate food storage units.
 - iii. The bathroom is dated and unmodernised.
 - iv. The room fronting Wellersley Road lacks natural light.
 - v. Carpets are worn.
 - vi. Landlord's curtains are poor.
 - vii. With the exception of a cooker, all white goods are tenant's fittings.
 - viii. Cleanliness was adequate.
 - ix. The property is in want of some repair and would benefit from refurbishment.
69. The inclusion of general condition of the property in paragraph 68 above is to record the property as inspected by the Tribunal. The Tribunal makes no finding of fact on whether either party are in breach of their obligations under the tenancy agreement. The Tribunal's jurisdiction in this matter extends to the market value of the property only, having regard to the requirements of paragraph 51 above.
70. In reflection of the differences between the standard of property required by the market and the property as inspected, the Tribunal made a deduction of 30% from the hypothetical rent to arrive at an adjusted rent of £437.50 per month.
71. No submissions were made to the Tribunal in regard to delaying the effective date of the proposed rent on the grounds of hardship and the determined rent of **£437.50 per month will therefore take effect from 28 July 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.