



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

Case reference : CHI/29UQ/MNR/2023/0262

Property : 5A York Road, Tunbridge Wells,
Kent, TN1 1JX

Applicant Tenant : Miss J Quinnell

Representative : None

Respondent Landlord : Mr M Streek

Representative : None

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

Tribunal member(s) : Mrs J Coupe FRICS
Ms C Barton MRICS
Mr N Robinson FRICS

Date of decision : 29 December 2023

REASONS

Decision of the Tribunal

On 29 December 2023 the Tribunal determined a Market Rent of £1,200.00 per month to take effect from 2 December 2023.

Background

1. By way of an application received by the Tribunal on 4 November 2023 the Applicant tenant of 5A York Road, Tunbridge Wells, Kent, TN1 1JX (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 30 October 2023, proposed a new rent of £1,350.00 per month in lieu of a passing rent of £1,280.00 per month, to take effect from 2 December 2023.
3. By an agreement in writing between the parties made 29 September 2020 the property was let to the tenant for a period of 12 months from 2 October 2020 under an Assured Shorthold Tenancy. A copy of the tenancy agreement was provided.
4. On 15 November 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 also advised that no inspection would be undertaken. No objections were received.
5. The Directions required the landlord and tenant to submit their completed statements to the Tribunal by 29 November 2023 and 13 December 2023 respectively, with copies to be sent to the other party. Both parties complied.
6. Having reviewed the submissions the Tribunal concluded that the matter remained capable of being determined fairly, justly and efficiently on the papers, consistent with the overriding objective of the Tribunal.
7. These reasons address in **summary form** the key issues raised by the parties. They do not recite every point referred to in submissions but, instead, concentrate on those issues which, in its view, it considers fundamental to the application.

Law

8. 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.

9. 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

10. In accord with current Tribunal policy, the Tribunal did not inspect the property, but did view it externally via information obtained from publicly available online platforms.
11. The property is a basement flat within a bay-fronted, mid-terraced, converted Victorian building of traditional masonry construction with rendered elevations. The property is located in an established residential area convenient for local facilities and public transport.
12. Access to the property is via a private entrance leading to accommodation comprising: living room, kitchen, bathroom/WC; two bedrooms and a small outdoor space, measured by the tenant as 13ft x 4ft.
13. Heating and hot water is provided by a gas fired system. Windows are single glazed. White goods are provided by the landlord. Carpets and curtains are provided by both the landlord and tenant.

Submissions – Tenant (summarised)

14. A series of undated photographs were included within the tenant's statement of case.
15. The tenant states that, as a consequence of the flat being located on the lower ground floor, natural light within the accommodation is limited. A photograph of the elevated street level, as viewed from the main bedroom, was provided.
16. The second bedroom is a single bedroom in size.
17. Condensation prevents use of a wardrobe in the main bedroom. Dampness is evident in the living room. A dehumidifier provided by the landlord has proven inadequate. Photographs appearing to show dampness to the inside surface of a wall, mould damaged clothing and an empty wardrobe were provided.
18. The tenant relies upon comparable evidence of similar properties within a quarter mile radius and which include a two-bedroom flat on York Road advertised on the online platform Rightmove at an asking price of £1,200.00 per month. The comparable is a ground floor flat with period features, appearing to be in a superior condition. A two-bedroom flat on Norman Road, described as "beautifully presented" and recently redecorated is available at an asking price of £1,200.00 per month. Three additional two-bedroom comparables are relied upon, with asking prices ranging from £1,100.00 - £1,195.00 per month.

Submissions – Landlord (summarised)

19. The property is located in a quiet residential area, close to amenities and public transport.
20. The landlord describes the property as being in a “good condition with modern bathroom, new tap on sink, clean carpets and flooring”. The age of the kitchen and bathroom fittings are unknown to the landlord however he considers them to be “in working order with modern fittings”.
21. The landlord refers to the installation of a new boiler in July 2023, a replacement bathroom tap and provision of a de-humidifier to combat condensation dampness which, he contends is caused by the tenant’s lifestyle and a lack of ventilation, as referenced in a report by Gulliver Timber Treatments Ltd dated 3 March 2023. The landlord further suggests that he offered to pay the running costs of the de-humidifier.
22. Service charges of approximately £2,000 per annum are paid by the landlord.
23. In support of the proposed rent the landlord relies upon five comparable properties ranging in asking or let prices from £1,275.00 - £1,550.00 per month, the latter described as a basement flat in York Road.

Determination

24. The Tribunal has carefully considered all of the submissions before it.
25. 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 it take into account the percentage increase which the proposed rent represents to the passing rent. In addition, the legislation makes it clear that the Tribunal is unable to account for the personal circumstances of either the landlord or the tenant.
26. The Tribunal assesses the rent for the property as at the date of the landlord’s Notice. 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.
27. 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.
28. Both parties relied upon comparable evidence. The tenant’s evidence was sourced within a quarter mile radius of the property whilst, with the exception of one property in York Road, the landlord’s comparables were located within 0.8 – 2.6 miles from the subject and were therefore considered of less assistance to the Tribunal. Furthermore, the landlord

chose not to provide any substantive details of the comparable at Flat 1, 7 York Road, other than the property being a basement flat with the same layout as the subject and let at £1,550.00 per month. The Tribunal were therefore unable to ascertain whether the condition, facilities, degree of modernisation or accommodation were comparable to the subject. The tenant relied upon five two-bedroom flats advertised as available to let at asking prices ranging from £1,100.00 - £1,200.00 per month, one of which was located in York Road. Information provided shows this property to be in a superior condition and located on an upper floor.

29. Weighing the parties' evidence against its own expert knowledge as a specialist Tribunal and having regard to the size of the second bedroom, the galley-style kitchen, the lower ground floor location and single glazing, the Tribunal determined that the open market rent of the property in good tenable condition is £1,280.00 per month.
30. Once the hypothetical rent 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.
31. The Tribunal had regard to the report prepared by the landlord's independent expert, Gulliver Timber Treatments Ltd, which refers to the condensation issues and contributing factors, but also identifies dampness and defective plaster in the living room for which a quotation of £650.00 + VAT was provided.
32. Accordingly, the Tribunal determine that whilst condensation dampness may be indicative of a converted lower ground floor property in a Victorian building, and for which the Tribunal in this instance makes no deduction, the presence of additional dampness within the living room does fall short of the rental standard required by the market.
33. In reflection of such differences, the Tribunal make a deduction of £80.00 per month from the hypothetical rent to arrive at an adjusted open market rent of £1,200.00 per month.
34. The rent of **£1,200.00 per month will take effect from 2 December 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.