



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

Case reference : **CAM/00MC/MNR/2023/0077**

HMCTS code : **A:BTMMCOURT**

Property : **Flat 6, Lancaster Court, Newstead
Rise, Reading, RG2 8JX**

Applicant (Tenant) : **Gary Waddington**

Respondent (Landlord) : **Metropolitan Thames Valley
Housing Association**

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 : **15 August 2023**

The form of determination was a telephone hearing described above as **A:BTMMREMOTE**. 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 £1,050 per month effective from 1 June 2023.

Reasons

Background

1. The Landlord served notice on 6 April 2023 under section 13 (2) of the Housing Act 1988 to increase the passing rent from £750 per month to £895 per month with effect from 1 June 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 25 May 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.

The Property

6. The Property was described by the Parties as comprising a first-floor flat within a two-storey block. The Tribunal was provided with a floor plan for a similar unit from which it was apparent that the accommodation comprises two bedrooms, family bathroom, kitchen and lounge.
7. There is no central heating, but the windows are double glazed and the Property is carpeted. The oven and hob in the kitchen belong to the Landlord but all other “white goods” have been supplied by the Tenant.
8. The EPC certificate expired on 23 August 2018 such that, unless an exemption applies, the letting of the Property currently breaches the Domestic Minimum Energy Efficiency Standard Regulations. However, the Tribunal has no reason to doubt that a new certificate could be secured to enable lawful letting.
9. The Tribunal understands the Property extends to 51.4 sqm.

The Tenancy

10. The Tenant first took occupation pursuant to an Assured Shorthold Tenancy commencing 1 February 2021 for a term of 12 months.

11. The initial rent under this Tenancy was £675 per month subject to increase “...on giving the Tenant one month’s notice in writing of the increase or decrease.”
12. Clause 2 (3) of the AST required the Landlord:
“To keep in good repair the structure and exterior of the Premises including(iv) internal walls, floors and ceilings, doors and door frames, door hinges and skirting boards but not including interior painting or decoration”.
13. Clause 2 (4) obliged the Landlord:
“To keep in good repair and proper working order any installations provided by the Landlord for space heating, water heating and sanitation and for the supply of water, gas and electricity including...”
14. Clause 3 (10) of the AST required the Tenant:
“To keep the interior of the premises in a good and clean condition and to keep any communal areas shared with other tenants clean and tidy and free from obstruction and not to decorate the interior parts of the premises but to ensure they are kept in good order. At least one month before the termination of the tenancy whether terminated by the Tenant or the Landlord to decorate the premises to the reasonable satisfaction of the Landlord.”
15. Clause 3 (15) of the AST prohibits the Tenant from assigning.

The Law

16. 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”

17. 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.”*
18. 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.”*
19. Examples of a tenant’s failure to comply with the terms of the lease may include, for example, a lack of redecoration.
20. 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.”*
21. 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

22. The Tenant had set out detailed representations within the Reply Form and supporting emails which the Tribunal had read prior to the Hearing. The main points can be summarised as follows:
 - a. Lack of decoration due to the lease provisions
 - b. No windows to the kitchen or bathroom
 - c. Restricted size of the Property
 - d. Flooding issues to the external areas
 - e. Lack of estate maintenance
 - f. Other than the oven and hob, the lack of white goods
 - g. Whether or not the Property is classed as a social property
 - h. Lack of engagement by the Landlord
23. During the Hearing, the Tenant expanded on these points, but the main area of debate concerned the valuation approach adopted by the Landlord and an alleged lack of comparability.
24. In this regard, the Tenant provided details of four properties as follows:
 - a. Lamorna Crescent – 1 bedroom house (57.5 sqm) @ £1,095 pm
 - b. Castle Hill – 1 bedroom flat @ £980 pm
 - c. Lysander Close – 1 bedroom property @ £1,100 pm
 - d. School Road (82 sqm) – 2-bedroom terraced bungalow @ £1,100 pm
25. The Tenant considered that *“...in terms of size, quality and even location they are markedly superior properties, which for me highlights that the proposed rent for my flat is excessive.”*

Representations – The Landlord

26. The Landlord did not submit any documentation to the Tribunal prior to the Hearing.

27. The Landlord was represented at the Hearing by Mr Maris who the Tribunal understand is employed by the Landlord and is responsible for the setting of rents across their portfolio.
28. Mr Maris advised that he had not inspected the Property and therefore had no first-hand knowledge thereof.
29. He advised that Newstead Rise had been purchased from a private landlord and that the individual flats have been let on AST terms on expiry of which the intention is to convert each flat to intermediate/shared ownership tenure.
30. He also advised that the rent had not been increased for a number of years and that rental levels had been held at below market value.
31. The stated rent had been decided upon by relying upon online Hometrack data and taking the 30th percentile of the spread of rents in the Reading location. A further 11% deduction was then made to account for the Property not being fully up to modern standards.
32. Mr Maris was unable to direct the Tribunal to any comparable market rent lettings but advised that everyone in the Newstead Rise had been subject to rent increases to at least £895 per month with increases in April 2022 to £925 per month.

Determination

33. 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.
34. 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.
35. 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.
36. It was noted during the Hearing that the AST is unclear as to the ability of the Tenant and requirement to keep the Property in decoration. In this regard, clause 2 (3) (iv) excludes the Landlord from any obligation to carry out “...*internal painting or decoration*” whilst clause 3 (10) states that the Tenant is “*not to decorate the interior parts of the premises but to ensure that they are kept in good order.*”

37. However, whilst the AST is unclear as to who is responsible for decoration during the term of the AST, if anyone, the second paragraph of clause 3 (10) is clear that *“At least one month before the termination of the tenancy... ..to decorate the premises to the reasonable satisfaction of the Landlord.”*
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. It is logical to assume that the Property can only be let if it is vacant which can only be achieved if the previous tenant has been terminated. The termination of that lease would therefore be assumed to trigger the second paragraph of clause 3 (10) of the AST.
39. The relevant date is 1 June 2023 hence the Tribunal has assumed that, as at that date, the Tenant’s lease had been brought to an end so that the Property was available to let and the Tenant had complied with the second paragraph of clause 3 (10) of the AST by decorating the premises to the reasonable satisfaction of the Landlord.
40. In effect, the Property is assumed to have been vacated, fully redecorated and be available on the market for occupation by an incoming tenant.
41. The Tribunal understands the basis of the approach taken by the Landlord in setting the rent and, to a certain extent, this evidence is helpful in that the resultant rents appear to have been accepted by other Tenants without challenge.
42. However, these rents have resulted from rent reviews rather than new lettings hence they have not resulted from a period of marketing on a vacant and to let basis.
43. In this context, the statutory basis of valuation assumes that the Property is available to let on the open market and that the Landlord would accept the highest bid submitted by competing prospective tenants. These tenants would bid having regard to the availability of alternative premises offering similar accommodation.
44. However, there is no evidence of any rents arising from new lettings of flats within Newstead Rise and, it is therefore necessary to consider the rents of flats in other developments.
45. The Tenant had provided details of four properties as set out above, but these are located some distance from the Property and three of them only provide a single bedroom whereas the Property provides two bedrooms.
46. Having applied its own expertise and knowledge whilst also taking into account the evidence provided to it, the Tribunal determines the

market rental of the Property as at the effective date to be **£1,050 pcm**. The rent payable may not, therefore, exceed this figure.

47. **However, this does not prevent the Landlord from charging a lower figure.**

Name: Peter Roberts FRICS CEnv

Date: 15 August 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

Flat 6, Lancaster Court, Newstead Rise,
Reading, RG2 8JX

The Tribunal members were

Mr P Roberts FRICS CEnv

Landlord

Metropolitan Thames Valley Housing Association

Address

The Grange
100 High Street
Southgate
N14 6PW

Tenant

Gary Waddington

1. The rent is: £ 1,050 Per month (excluding water rates and council tax but including any amounts in paras 3)

2. The date the decision takes effect is:

1 June 2023

3. The amount included for services is

not applicable

Per

4. Date assured tenancy commenced

1 February 2021

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

A second-floor flat within a two-storey block- the accommodation comprises two bedrooms, family bathroom, kitchen and lounge.
There is no central heating, but the windows are double glazed and the Property is carpeted. The oven and hob in the kitchen belong to the Landlord but all other “white goods” have been supplied by the Tenant.

Chairman

P Roberts

Date of Decision

15 August 2023