



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

**Case Reference** : BIR/00CN/MNR/2023/0200

**Property** : Flat 4, Naden Green, 74-76 Middleton Hall Rd., Birmingham,  
B30 1DG

**Applicant** : Andrew McLaren

**Respondent** : Julie Rogers

**Type of Application** : Appeal against a Notice proposing a new rent under an Assured Periodic Tenancy under section 13(4) of the Housing Act 1988 and subsequent requests by Applicant for the Tribunal to alter the effective date of increase on grounds of hardship and for permission to appeal, and by the Respondent for clarification of the date of increase and the right to further increase the rent to cover water charges.

**Tribunal Members** : I.D. Humphries B.Sc.(Est.Man.) FRICS  
M. Alexander B.Sc. MRICS

**Date and Venue of Hearing** : 17 January 2024

**Date of Decision** : 17 January 2024

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**REASONS AND REVISED DECISION**

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- 1 The rent is determined at £625 (Six Hundred and Twenty Five Pounds) per calendar month from 17 January 2024.

## **REASONS**

### **Introduction**

- 2 The Applicant holds an Assured monthly tenancy that commenced 11 May 2018.
- 3 On 6 September 2023 the Respondent served notice of increase under section 13(2) of the Housing Act 1988 ('the Act') proposing a new rent of £700 per calendar month in place of the previous rent of £440 per calendar month, to take effect on 11 October 2023. The form stated the rent did not include Council Tax, water charges or service charges.
- 4 On 10 September 2023 the Applicant applied for the rent to be determined by the First-tier Tribunal (Property Chamber).
- 5 On 17 January 2024 the Tribunal determined the rent at £625 per calendar month with effect from 11 October 2023 which was relayed to the parties by email on 25 January 2024.
- 6 On 25 January 2024, the day the Decision was published, the Tribunal received requests from both parties:
  - 1) From the Applicant, Mr McLaren,
    - a) requesting Reasons;
    - b) requesting permission to appeal the Tribunal Decision and
    - c) advising that he was in receipt of Universal Credit and asking for the effective date of rent increase to be deferred, instead of back-dated to the date specified in the landlord's notice (11 October 2023).
  - 2) From the Respondent, Miss Rogers,
    - a) requesting confirmation that the rent increase could be back-dated to the date specified in the notice (11 October 2023) and
    - b) asking whether the rent could be increased to reflect the cost of water charges.
- 7 There are effectively three points;
  - 1) a request by both parties for Reasons for the original Decision issued by email 25 January 2024;
  - 2) a request to alter the effective date which the Tribunal treats as a request to review its Decision and
  - 3) a request by Mr McLaren for permission to appeal.

The Tribunal combines these requests in the following Revised Decision.

### **The Law**

- 8 In respect of the determination of rent, Section 14 of The Housing Act 1988 states:

*'(1) Where, under subsection (4)(a) of section 13 above, a tenant refers to a rent assessment committee a notice under subsection (2) of that section, the committee shall determine the rent at which, subject to subsections (2) and (4) below, the committee*

*consider that the dwelling-house concerned might reasonably be expected to be let in the open market by a willing landlord under an assured tenancy -*

- (a) which is a periodic tenancy 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 the rent) are the same as those of the tenancy to which the notice relates;...'*

*'(2) In making a determination under this section, there shall be disregarded -*

- (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 carried out by a person who at the time it was carried out was the tenant, if the improvement-*
  - (i) was carried out otherwise than in pursuance of an obligation to the immediate landlord ...*
- (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.'*

Section 14(7) of the Housing Act 1988 provides:

*'(7) 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) 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 committee may direct.'*

- 9 The jurisdiction of the Rent Assessment Committee was transferred to the First-tier Tribunal (Property Chamber) on 1 July 2013.
- 10 In respect of the requests to review the Decision and permission to appeal, the relevant regulations are in Part 6 of the Tribunal Procedure (First-tier Tribunal) Property (Chamber) Rules 2013 ('the Rules').
- 11 Rule 53(1) of the Rules provides that on receiving an application for permission to appeal, a Tribunal must first consider, taking into account the over-riding objective in Rule 3, whether to review the decision in accordance with Rule 55 (review of a decision).
- 12 Rule 55(1) provides that a Tribunal may only undertake a review of a decision -
  - (a) pursuant to rule 53 (review on an application for permission to appeal); and
  - (b) if satisfied that a ground of appeal is likely to be successful.
- 13 As a preliminary point, having received information advising that the tenant Mr McLaren was in receipt of Universal Credit after the date of the Hearing, the Tribunal finds it would have taken this into account when making its Decision had it been raised at the time. Accordingly, the Tribunal finds a ground of appeal is likely to be successful and reviews its original Decision as follows.

## **Facts Found**

- 14 The Tribunal inspected the property on 17 January 2024 in the presence of Mr McLaren, the Applicant tenant. Miss Rogers, the Respondent landlord did not attend.
- 15 The flat comprised a self-contained first floor flat with ground floor entrance lobby, stairs and landing with living room, bedroom, kitchen and bathroom with bath, hand basin, w.c. and electric shower unit. It had been let with various furnishings left by previous tenants but the tenant provided his own bed and for valuation purposes was treated as unfurnished. White goods had been provided at the landlord's expense.
- 16 The flat had electric panel space heaters and a hot water cylinder.
- 17 The flat was part of a large converted Victorian / Edwardian house converted to flats in a pleasant residential suburb of south Birmingham about three miles from the city centre. The surrounding area had a range of accommodation including detached and semi-detached housing of various ages, 1960s low rise flats and some terraced housing. It was within walking distance of local shops in Cotteridge, King's Norton Railway Station and convenient for access to the University and Queen Elizabeth Hospital. It was a popular residential area with high demand for flats and housing generally.
- 18 The subject property was a three storey brick and tile house set behind trees on the corner of Middleton Hall Road and Station Road. It had private tarmac parking on-site. Flat 4 had its own front door at ground level to the side of the house.
- 19 At the time of inspection the interior was in poor condition, the electric panel heaters were not working, there was no hot water other than from the bathroom shower, the hand basin was blocked and there was mould on plaster. The decorations were in poor condition.

## **Hearing**

- 20 A Hearing was held at the Tribunal office after the inspection with both parties present.

## **Submissions**

### 21 Applicant

Mr McLaren emphasised the condition of the flat drawing attention to the lack of space or water heating, surface mould, the poor state of the decorations and a lack of repair by the landlord. He said the bathroom hand basin blocked frequently and his only supply of hot water was from a kettle. He said the flat was in EPC Band F and there was no Electrical Installation Condition Report or PAT certificate. He denied having refused access to the landlord's contractors for work to be carried out.

- 22 Mr McLaren said he had brought a French bulldog to the flat but after it died, he replaced it with an English bulldog.

- 23 After the initial Decision had been published, Mr McLaren wrote to the Tribunal to say he was in receipt of Universal Credit and asked for the increase to be deferred.

### 24 Respondent

Miss Rogers brought a copy of a Schedule of Condition prepared when the previous tenant left on 10 May 2018, the day before the flat was let to Mr McLaren. The photographs showed it in good condition and well decorated at the time which was not disputed by Mr McLaren.

- 25 Miss Rogers said she had tried to have work carried out on several occasions but Mr McLaren had consistently refused to allow access to her contractors. For example, in one email in the bundle submitted to the Tribunal dated 11 September 2023, a contractor said '... Andrew is clearly creating as much obstruction as possible to prevent the works being completed ...' and in another from Miss Roger's agents on 24 July 2023, '... As your tenant is unable to provide us access on the 26<sup>th</sup> July ...'
- 26 She said the problems at the flat were largely due to the tenant's occupation and that he had brought a dog to the flat without her consent. She said she had reports from other tenants in the building that it had been barking and had received complaints that it had been causing a nuisance.
- 27 For comparison, she referred to two other flats in the building; Flat 6 let at £775 pcm and Flat 11 let at £850 pcm.
- 28 After the Decision was published, Miss Rogers wrote to the Tribunal to say the Decision indicated the rent was exclusive of water charges, but as she paid for the water, she enquired whether the cost could be added to the rent.

## **Decision**

- 29 **Rent**  
In terms of rent, the Tribunal was given very little evidence by the parties. Miss Rogers referred to two other flats in the building but were not given sufficient information on their accommodation or location to form a view or when they had been let.
- 30 The Tribunal comprised two experienced Chartered Surveyors, both familiar with the area and in our experience this is a desirable area where flats would normally let quickly due to high demand. We therefore relied on our own general experience and found the market rental value of the flat would be £625 pcm in fair condition. This would not be fully refurbished condition with the latest equipment, new carpets and curtains but fair condition to a standard reasonably expected by the type of tenants likely to be in the market.
- 31 Having seen the flat and evidence, we find the condition largely reflects the tenant's occupation and particularly the bulldog which at the time of our visit was in a cage in the living room. There was evidence that Miss Rogers had instructed contractors and that Mr McLaren had refused to let them carry out work and although this was denied by Mr McLaren, we found Miss Roger's evidence and copy emails more compelling. The effects of the tenant's occupation are disregarded by Section 14(2)(a)/(c) of the Act.
- 32 The photographic schedule presented to the Tribunal at the Hearing showed the flat in good condition the day before it had been let to Mr McLaren and accordingly, we determined its rental value at £625 pcm.
- 33 **Water Charges**  
After publication of the initial Decision, Miss Rogers asked whether the cost of water rates could be added. Neither party had been able to provide a copy of any executed formal tenancy agreement but Miss Rogers' evidence said she paid for water charges separately and the section 13 Notice indicated that water charges were not included in the rent. We find this conclusive evidence that the cost of water charges cannot be added to the rent and passed on to Mr McLaren.

34 **Effective Date**

Having seen the subsequent email from Mr McLaren advising that he was in receipt of Universal Credit, the Tribunal finds it would have been taken into account had it been raised in correspondence or at the Hearing before we made our Decision. The Tribunal finds that confirming the effective date as the date of landlord's notice which is the default position in the Housing Act 1988, would be likely to cause undue hardship to Mr McLaren.

35 We therefore alter the date of our initial Decision to be effective from the date of Hearing, 17 January 2024.

36 **Request for Permission to Appeal**

For the Reasons above, the Tribunal concludes there are no grounds in the application for permission to appeal which lead it to consider that permission to appeal should be granted. Furthermore:

- (a) Despite the assertion of the Respondent, it cannot reasonably be shown:
  - i that the Tribunal has wrongly interpreted or wrongly applied the law; or
  - ii that the Tribunal has mis-interpreted or disregarded a relevant principle; or
  - iii that the Tribunal has taken into account irrelevant considerations or failed to take account of relevant considerations; or
  - iv that there was a procedural defect.
- (b) There are no exceptional circumstances;
- (c) No issue is involved which is of general importance or which, in the public interest, should be examined by the Upper Tribunal;
- (d) The costs of an appeal would be disproportionate to the outcome of the appeal.
- (e) An appeal would involve re-examination of the oral evidence of the primary facts and
- (f) The Tribunal has not exceeded its jurisdiction.

The Applicant's application for permission to appeal is accordingly refused.

I.D. Humphries B.Sc.(Est.Man.) FRICS  
Chairman

**Appeal**

If either party is dissatisfied with this decision an application may be made to this Tribunal for permission to appeal to the Upper Tribunal, Property Chamber (Residential Property) on a point of law only. Any such application must be received within 28 days after the decision and accompanying reasons have been sent to the parties (Rule 52 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).