



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

Case reference	:	CHI/00HE/MNR/2023/0214
Property	:	16 Whitworth Close, St Agnes, Truro, Cornwall, TR5 0UW
Applicant Tenants	:	Mr T & Mrs C Maltwood
Representative	:	Stephens Scown LLP – written submissions only
Respondent Landlord	:	Mr D Stait
Representative	:	None
Type of application	:	Determination of a Market Rent Sections 13 & 14 Housing Act 1988
Tribunal members	:	Mrs J Coupe FRICS Mr M Woodrow MRICS
Date of hearing	:	8 January 2024 at Truro Magistrates Court, Mitchell Hill, Truro, TR1 1HZ
Date of decision	:	15 January 2024

REASONS

Decision of the Tribunal

On 15 January 2024 the Tribunal determined a Market Rent of £940.00 per month to take effect from 1 September 2023.

Background

1. By way of an application received by the Tribunal on 31 August 2023, the Applicant tenants of 16 Whitworth Close, St Agnes, Truro, Cornwall, TR5 0UW (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 21 July 2023, proposed a new rent of £1,350.00 per month in lieu of a passing rent of £650.00 per month, to take effect from 1 September 2023.
3. The property was let to the tenants in November 1994 on a verbal agreement. There is no written tenancy. The tenants have been in continual occupation since such date.
4. The tenants state that the Respondent has been the landlord throughout the tenancy. Reference was made to a Rent Book in the Respondent’s name. The Rent Book was not adduced in evidence.
5. The Respondent states that up until 1999 the property was held in his former wife’s sole name and that the verbal agreement with the tenants was between his then wife and the tenants. Following separation from his wife in 1999 the property transferred into his name and he duly became the tenant’s landlord. No evidence on this point was put before the Tribunal.
6. On 1 January 2020 the parties purportedly entered an Assured Shorthold Tenancy agreement, a signed and witnessed copy of which was provided.
7. On 27 September 2023 the Tribunal issued Directions advising the parties that it considered the matter suitable for determination on the 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.
8. The Directions required the landlord and tenant to submit their completed statements to the Tribunal by 11 October 2023 and 25 October 2023 respectively, with copies to be sent to the other party. Both parties complied.
9. Having reviewed the submissions, the Tribunal identified various factual disputes between the parties and concluded that the matter was no longer suitable of being determined fairly, justly and efficiently on the papers, consistent with the overriding objective of the Tribunal. Accordingly, the matter was set down for an inspection and hearing at Truro Magistrates

Court.

10. 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 the Tribunal's view, it considers fundamental to the application.

Law

11. 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.
12. 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

13. The Tribunal inspected the property on the morning of 8 January 2024 in the presence of Mr Maltwood and Mr Stait. Also, in attendance at both the inspection and the hearing was Mr Stait's wife, who took no part in the proceedings. For the avoidance of doubt, Mr Stait's former wife was not in attendance. Neither party were represented at either the inspection or the hearing.
14. The property is a detached bungalow built in about 1974 of cavity block construction with mainly stucco-rendered and part stone-faced elevations under a pitched roof clad in tiles. The property is located in an established residential area, convenient for local facilities and public transport.
15. Accommodation comprises an entrance porch, kitchen, living room, two bedrooms, box room/study, bathroom/WC, utility area, cloakroom/WC.
16. During the hearing both parties agreed that the size of the box room prohibited the Tribunal from valuing the room as a third bedroom, despite at times it being occupied as such.
17. Heating is provided by Economy 7 electric heaters. There is also an open fire in the living room with a back boiler that has been decommissioned. Hot water is provided by an electric immersion heater. Windows are predominantly double glazed, except for the box room and front porch, which retain the original timber framed single glazed units. Carpets, curtains, a cooker and fridge were originally provided by the landlord but have since been replaced by the tenants.
18. The property has a garage and off-road parking for two/three vehicles in tandem. There are gardens to the front and rear. Part of a dilapidated shed remains insitu.

19. During the inspection, the Tribunal were shown areas of extensive black mould and surface dampness behind furniture throughout the property and in the corners of the accommodation. Damage to kitchen units, defective windows, broken window furniture, timber decay, and an uneven drive surface were also pointed out to the Tribunal.

Submissions – Tenant (summarised)

20. Occupation of the property is by way of an Assured Tenancy. The landlord did not serve the tenants with a Section 20 Notice pursuant to the Housing Act 1988.
21. The Assured Shorthold Tenancy (“AST”) relied upon by the landlord and dated 1 January 2020 was provided in April 2023. Under duress, that being the threat of eviction, the tenants signed the agreement. However, unwilling to be a party to a potentially fraudulent document the signatures provided, and those of their witness, were fabricated. Accordingly, the AST has no legal standing and must be disregarded.
22. The proposed rent increase is above the market rental price. Comparables relied upon demonstrate that similar properties in the area, but with better EPC ratings, let on the open market rent at £850.00 - £950.00 per month. The adjacent bungalow, that being a larger property also let on a long-term tenancy, achieves a monthly rent of £650.00 per month.
23. Throughout the tenancy the tenants have undertaken several improvements to the property and works of repair and maintenance. The costs of such works are estimated at £14,000 and include:
- i. Replacing garden posts and fences
 - ii. Purchasing and fitting wooden gates
 - iii. Replacing door frames, doors, and window sills to porch
 - iv. Replacing roof tiles
 - v. Maintaining and repairing exterior walls, fascia boards and guttering
 - vi. Replacing electrical fuse box
 - vii. Repairs to the back boiler
 - viii. Replaced immersion heater
 - ix. Repaired hot water leak and associated damage
 - x. Repaired garage door and fascia
 - xi. Removed dilapidated outhouse
 - xii. Redecoration following water leak
 - xiii. Repair and repainting exterior guttering and walls.
24. Initially, the landlord paid for materials and the tenants supplied the labour for any works of repair and maintenance. However, over recent years most costs have been borne by the tenants.
25. The Energy Performance Certificate rating is E.
26. There is no Electrical Installation Condition report on the property.

27. Works of repair outstanding include:
 - i. Inadequate heating - the economy 7 electrical heating is outdated; inefficient and requires replacement
 - ii. Refurbishment of the double glazed window units
 - iii. Upgrading of the roof insulation
 - iv. Cavity wall insulation
 - v. Electrical Installation Condition report.
28. Surface mould, evident throughout the property, is treated every two - three months but reoccurs shortly thereafter.

Submissions – Landlord (summarised)

29. The landlord does not dispute that in April 2023 he asked the tenants to sign a six-month AST agreement backdated to July 2020 in order to assist with an immigration matter.
30. The landlord accepts that his preferred style of property management, and one he suggests has worked well for many years, is to leave the tenants “in peace”, relying on the tenants to notify him of any works or repair and maintenance required.
31. The landlord explained that he lived overseas for extended periods of time throughout the tenancy and, as such, it was more convenient for the tenants to either undertake or instruct any works required, for which he would either reimburse them or make a deduction from the rent. By way of example, the landlord referred to the replacement bathroom suite which he funded.
32. More significant works or repairs would be subject to an insurance claim, for which the tenants held the insurance cover details and were authorised persons (disputed by the tenants).
33. During cross examination the landlord accepted that the property was in want of general repair and maintenance. The landlord acknowledged that the property was suffering from extensive black mould, surface dampness, damaged kitchen units, failed double glazed window units and window furniture, joinery deterioration, and an uneven drive surface. However, he stated that prior to the inspection earlier that day, he was unaware of the condition of the property but did concede that regular inspections weren't undertaken. The landlord advised that all works would be completed once the Tribunal determined the monthly rent.
34. In support of the proposed rent the landlord relies upon five comparable properties supplied by Goundry's Estate Agents, four of which are bungalows and one mid-terraced house, ranging in asking prices from £1,300 - £1,600.00 per month. All comparables were sourced from the online letting platform *Rightmove* and each was marked as Let Agreed.

Determination

35. The Tribunal has carefully considered all the submissions before it.

36. During cross examination it was established that the AST purportedly agreed in 2020 was only provided to the tenants in 2023 and backdated. It was further stated by the tenant that the tenants' signatures to that agreement and that of their witness were fabricated.
37. Determination as to the validity of that agreement is outside the jurisdiction of this Tribunal. Should the issue remain in dispute the parties will be required to refer the matter to the County Court for determination.
38. However, it was common ground between the parties that the tenants uninterrupted occupation of the property commenced in 1994. The Tribunal proceeds with the rental determination on such basis.
39. 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 locality. The Tribunal has no regard to the current rent and the period 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.
40. 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.
41. 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.
42. Both parties relied upon comparable evidence, although the tenant explained in cross examination that his comparables were compiled by his solicitor. Some of the links provided to the tenant's comparables were time expired, whilst others directed the Tribunal to a page of multiple properties with the comparable unidentified. Other comparables failed to include the letting asking price. Accordingly, the Tribunal were unable to derive any assistance from such evidence.
43. In both submissions and oral evidence, the tenant referred to the letting of an adjacent bungalow. However, the Tribunal advised the tenant during the hearing that without evidence of the terms of that tenancy, the accommodation, condition of the property or a statement from the tenant, the Tribunal would consider such evidence to be hearsay and would be unable to attribute to it any significant weight.
44. The four bungalow comparables provided by the landlord provided useful background information for the Tribunal. However, without full details of the accommodation, facilities, condition, and terms of tenancy, the Tribunal were unable to rely entirely on such evidence. The mid-terraced house comparable was included in the landlord's evidence by way of

illustration as to the level and type of accommodation available within the price bracket. From the limited information provided on each comparable the Tribunal was able to establish that each property provided three bedroom accommodation and that each was in a superior condition to the subject property, with modernised accommodation.

45. Weighing the parties' evidence against its own expert knowledge as a specialist Tribunal, the Tribunal determined that the open market rent of the property in good tenable condition is £1,250.00 per month.
46. 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.
47. On initial letting, the property was provided with carpets, curtains, a cooker and a fridge. During thirty years of occupation the tenants replaced at their expense most of the carpets/flooring, curtains, and white goods. The landlord argued that had the tenants requested replacements these would have been provided. However, the Tribunal finds that thirty years is a significant period, during which the landlord would have anticipated that renewal was required without relying on notification from the tenants. Furthermore, had the landlord carried out even occasional inspections such would have been apparent.
48. Having regard to the level of general disrepair and want of maintenance, poor EPC rating, lack of efficient central heating, significant surface mould and dampness, defective windows and deteriorating joinery, and the tenant's provision of carpets, curtains and white goods, the Tribunal has no hesitation in finding that the standard of the property falls short of that required by the market.
49. For reasons already stated but worth repeating, the Tribunal do not accept the landlord's argument that the tenants failed to notify him of such work. In cross examination it was accepted by the landlord that his style of property management was "hands-off", that his attention to paperwork was lacking and, that due to multiple periods of extended absence abroad, he was regularly out of contact.
50. In reflection of such differences, the Tribunal makes a deduction of 25% (twenty five percent) from the hypothetical rent to arrive at an adjusted, and rounded, open market rent of £940.00 per month.
51. The rent of **£940.00 per month will take effect from 1 September 2023**, that being the date stipulated within the landlord's notice.
52. The parties were invited by the Tribunal to make oral submissions on any potential hardship. However, both parties declined to do so.

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.