



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

**Case reference** : **BIR/OOCT/MNR/2023/0228**

**Property** : **11 Lowbrook Way  
Birmingham  
B37 5PY**

**Applicant** : **Ms Nicol McArdle**

**Representative** : **None**

**Respondent's** : **Mrs Bushra Saeed**

**Representative** : **Century 21**

**Type of application** : **Application under Section 13(4) of the  
Housing Act 1988 referring a notice  
proposing a new rent under an Assured  
Periodic Tenancy to the Tribunal**

**Tribunal members** : **Mr G S Freckelton FRICS  
Mr N Wint FRICS**

**Venue and Date of  
Determination** : **The matter was dealt with by a Paper  
Determination on 16<sup>th</sup> February 2024**

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**DETAILED REASONS**

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## **BACKGROUND**

1. On 23<sup>rd</sup> October 2023, the Applicant (tenant of the above property) referred to the Tribunal, a notice of increase of rent served by the Respondent (landlord of the above property) under section 13 of the Housing Act 1988.
2. The Respondent's notice, which proposed a rent of £1,600.00 per calendar month with effect from 1<sup>st</sup> November 2023, is dated 29<sup>th</sup> September 2023.
3. The date the tenancy commenced is stated on the Application Form as being on 1<sup>st</sup> November 2021 for an initial period of 12 months. At the expiration of the initial period (31<sup>st</sup> October 2022) the tenancy became an Assured Periodic Tenancy. The current rent is stated in the Application as being £1,350.00 per calendar month.
4. The Tribunal issued Directions on 27<sup>th</sup> October 2023. On 29<sup>th</sup> October 2023 the Applicant Tenant submitted an application for a Case Management or other Interim Order on the basis that the Tenancy Agreement contained a rent review clause limiting the increase in rental to between 3% - 7.5%.
5. On 15<sup>th</sup> December 2023 the Tribunal wrote to the parties informing them that the matter had been considered by a Procedural Judge and that it was the Judge's preliminary opinion that the Tribunal may not have jurisdiction to consider the matter as there was a rent review clause in the Tenancy Agreement.

## **THE PROPERTY**

6. Neither party requested either an inspection or hearing and the Tribunal has therefore determined the matter based on the papers provided to it.
7. The property is understood to be a detached house comprising entrance hall, cloakroom, lounge and dining kitchen on the ground floor. On the first floor the landing leads to four bedrooms (one having an en-suite shower room) and family bathroom.
8. The house is understood to have gas fired central heating and double glazing. Carpets and curtains are provided by the Landlord. The Landlord has provided the fridge and cooker and the tenant the washing machine.
9. There is a small open plan front garden and private rear garden. There is a single integral garage.

## **EVIDENCE**

10. The Tribunal received written representations from both parties which were copied to the other party.

## **THE APPLICANT'S SUBMISSIONS**

11. In summary, the Applicant submitted:
  - 1) That she had repainted the property throughout.
  - 2) That she had repaired the fence and added wicker fence panels to improve the fence. These have also been painted together with the garden shed.

- 3) That she had arranged for the block paving and gutters to be cleaned and the gutters unblocked.
  - 4) That the rental proposed was more likely to be achieved in a more affluent area of Birmingham, whereas the property was actually situated in one of the most deprived areas of the country.
12. However, the main point raised by the Applicant was that any rent increase was limited by clause 9.2.1 of the Tenancy Agreement which stated:

#### Rent Review

*It is agreed that the rent as defined in this agreement will be reviewed in an upwards only fashion on the anniversary of the tenancy and upon each subsequent anniversary in line with the Retail Price Index (RPI) increases for the previous 12 months and subject to a minimum of 3% and a maximum of 7.5%.*

The Applicant had calculated that the increase proposed amounted to some 18% which was considerably in excess of the maximum permitted.

#### THE RESPONDENT'S SUBMISSIONS

13. In summary, the Respondent submitted:
- 1) That rental levels had increased due to higher interest rates.
  - 2) That current rental levels supported even higher rentals than that proposed.
  - 3) That Clause 9.2.1 of the Tenancy Agreement permitting a maximum rent increase of 7.5% did not cover the present situation where costs and rental levels were rising considerably.
  - 4) That all repair works had been completed to the property when requested.
14. To support the proposed rental the Respondent provided details of various similar properties at rentals between £1,500.00 - £1,995.00 per month.

#### PRELIMINARY ISSUE

15. Before it can consider the rental value of the property the Tribunal decided that it must first determine whether or not it has jurisdiction, or whether Clause 9.2.1 of the Tenancy Agreement provides a mechanism for the rent review which would effectively mean that the Tribunal did not have jurisdiction and therefore the Landlords notice of Increase could not be enforced without an Order from the County Court (see *Mooney v Whiteland* [2023] EWCA Civ 67).
16. The statutory position is that on the expiry of a Shorthold Tenancy, a Statutory Periodic Tenancy arises. Where a Statutory Periodic Tenancy arises at the end of a fixed term tenancy, a rent review clause no longer has effect (*London Districts Property Management Ltd and others v Goolamy* [2009] EWCH 1367 (Admin)).
17. In this case the Shorthold Tenancy expired on 31<sup>st</sup> October 2022, after which the tenancy became a Statutory Periodic Tenancy. Therefore, the rent review provision contained in Clause 9.2.1 of the Tenancy Agreement no longer has an effect and the Tribunal does have jurisdiction to determine the rental value of the property.

## **THE LAW**

18. In accordance with the terms of section 14 Housing Act 1988 the Tribunal proceeded to determine the rent at which it considered that the subject property might reasonably be expected to be let on the open market by a willing landlord under an assured tenancy.
19. In so doing the Tribunal, as required by section 14(1), ignored the effect on the rental value of the property of any relevant tenant's improvements as defined in section 14(2) of that Act.

## **THE TRIBUNAL'S DECISION**

20. In the first instance the Tribunal considered the various comparables provided by the Respondent. These comprised of two 3-bedroom houses with a quoted rental of £1,500.00 per month, and four 4-bedroom houses at rentals between £1,800.00 - £1,995.00 per month. Only one of the comparables is quoted as having 2 bathrooms at a quoted rental of £1,750.00 per month. However, this is some 6 miles away from the subject property.
21. Having regard to the general level of rents in the area the Tribunal concluded that the rental value of the subject property is £1,550.00 per calendar month.
22. The Tribunal then considered the improvements carried out by the Applicant. The Tribunal determined that these were all of a minor nature and the Tribunal had no evidence of the condition of the property prior to them being carried out or even if they were essential. The Tribunal therefore determined that it was not appropriate to make any deduction for the items which the Applicant submits were carried out by her.
23. The Tribunal therefore determined that the rent at which the property might reasonably be expected to be let on the open market would be £1,550.00 per calendar month which is effective from 1<sup>st</sup> November 2023, being the date specified on the Respondents Notice of Increase.

## **APPEAL**

24. Any appeal against this Decision can only be made **on a point of law** and must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this Decision, (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

G S Freckelton FRICS  
Chairman  
First-tier Tribunal Property Chamber (Residential Property)