



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

**Case reference** : **CAM/00MF/MNR/2023/0160**

**HMCTS code** : **P:PAPERREMOTE**

**Property** : **14 Diamond Way, Wokingham,  
RG41 3TU**

**Applicant (Tenant)** : **Mr and Mrs Martin**

**Respondent (Landlord)** : **Mr Manson**

**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** : **19 February 2024**

This has been a remote determination on the papers which the parties are taken to have consented to, as explained below. The form of determination was a paper determination described above as **P:PAPERREMOTE**. 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 £1,400 per month effective from 15 November 2023.**

## **Reasons**

### **Background**

1. The Landlord served a notice dated 26 September 2023 pursuant to section 13 (2) of the Housing Act 1988 which states an increase in the passing rent from £1,185 per month to £1,300 per month with effect from 15 November 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 6 November 2023 to the Tribunal in reliance on section 13 (4) of the Housing Act 1988.
4. The Tribunal issued directions on 14 November 2023 inviting the Parties to submit any further representations (including any photographs and details of rentals for similar properties) they wished the Tribunal to consider.

### **The Property**

5. The Tribunal inspected the Property on 22 January 2024.
6. The Property comprises a semi-detached house of brick and tile providing a living room, “through” dining room, kitchen and conservatory and ground floor level and three bedrooms together with a bathroom at first floor level together with a single external garage and gardens to front and rear.
7. The Property benefits from UPVC double glazing albeit the windows in the bedrooms have “blown”. In addition, the kitchen window is single glazed as is the conservatory.
8. The Tribunal understands that the Property was originally let with white goods but these have been replaced by the Tenancy with the original units being stored in the garage.
9. There is mould above the windows in the bedrooms and round the window in the bathroom as well as the loft hatch.

## **The Tenancy**

10. The Tenant took occupation pursuant to an Assured Shorthold Tenancy commencing 15 June 2018 for a term of 12 months.
11. The initial rent under this Tenancy was £1,185 per month payable on the 15<sup>th</sup> of each calendar month.
12. Clause 9.7.1 confirmed that *“References to “the Premises” include reference to any part or parts of the Premises and the curtilage of the same together with the garden, garage, and parking space (if applicable) but excluding. (sic)”*
13. Section 7 of the Tenancy sets out the Tenant’s repair obligations including:

*“(7.2.1) To keep the interior of the Premises including any Fixtures and Fittings in the same decorative condition throughout the Term as at the start of the Tenancy, as noted in the inventory and Schedule of Condition. The Tenant is not responsible for the following:-*

- *Fair wear and tear*
- *Any damage caused by fire, unless that damage is caused by something done or not done by the Tenant or any other person permitted by the Tenant to reside, sleep in or visit the Premises*
- *Repairs for which the Landlord has responsibility as set out in this Agreement*
- *Damage covered by the Landlord’s insurance policy*

*(7.2.7) To notify the Landlord or his Martin & Co local office, whichever is stated in clause 9.3.2, immediately and in writing, as soon as any repairs and other matters falling within the Landlord’s obligations to repair the Premises or the Fixtures and Fittings, come to the notice of the Tenant.”*

14. The Landlord is required, pursuant to paragraph 9.3.1 of the Lease to, to comply with sections 11 to 16 of the Landlord and Tenant Act 1985 which *“...require the Landlord to keep in repair the structure and exterior of the Premises (including drains, gutters and pipes); keep in repair and working order the installations in the Premises for the supply of water, gas, electricity, sanitary appliances including baths, washbasins and sanitary conveniences and for space and water heating and carry out repairs within a reasonable time of being notified.”*

## **The Law**

15. 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”*
16. 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.”*
17. 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.”*
18. Examples of a tenant’s failure to comply with the terms of the lease may include, for example, a lack of redecoration.

19. 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.”*
20. 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**

21. The Tenant provided a copy of their letter dated 5<sup>th</sup> October 2023 as addressed to the Landlord. This letter raised a number of points including various allegations in respect of the legal standing of the lease, ARLA agency protection and handling of the deposit. The Tribunal does not have jurisdiction under this reference in respect of these matters and has therefore only been able to take these points into account to the extent that they are relevant to the determination of the rent.
22. The Tenant also raised the following points:
- a. *“Little insulation in property (small amount in loft. Doesn’t match last EPC).*
  - b. *There is a literal hole through the sitting room wall where a gas flue was removed which is covered with plastic board.*
  - c. *No double glazing in downstairs rear*
  - d. *Double glazing in all other windows is blown (exception on single back door).*

- e. *No white goods (All broken when moved in)*
  - f. *No full access to garage due to storage of landlord's broken white goods. Items stored in there become tainted with cannabis smell due to drug use in adjoining garage.*
  - g. *Collapsing soffits and gutters.*
  - h. *No fire egress from any upstairs point due to collapsing roof obstructing opener at front and single-paned conservatory under windows at rear.*
  - i. *Garden floods.*
  - j. *Suspected subsidence of conservatory and the single storey extension. (Cracks appearing in walls and repeated flooding is eroding conservatory base)*
  - k. *Mould coming through roof/loft into upstairs rooms.*
  - l. *Bedroom 3 is smaller than most most bedrooms advertised in 3 bedroom properties in this area. UK guidelines for a bedroom state it should have a minimum area of 50 sq/ft. Bedroom 3 is below this. Bedroom 2 is barely this. Shelter states any room smaller than 4.65 sq/m is not a room you can sleep in.*
  - m. *No inspections/upkeep by landlord since start of tenancy in 2018*
  - n. *Tenants had to, at start of tenancy – replace rotten fences, replace smashed sink, replace broken kitchen tap, repair shower, buy all new white goods.”*
23. The Tenant also drew the Tribunal's attention to the mould in the bedrooms and bathroom as evidenced by photographs.
24. The Tenant did not provide evidence of other lettings.

### **Representations – The Landlord**

25. The Tribunal was provided with a copy of an email dated 8 January 2024 from Mr Manson to the Tenants. The following points were raised.
- a. Martin & Co were engaged on a Tenant Finding only service.
  - b. The EPC was correct at the time of the letting
  - c. The Property was let rented out unfurnished
  - d. The Landlord provided a tumble dryer (2017), washing machine ((2015), new carpets and power shower (2017)

- e. Tenant has not raised any issues during the tenancy despite being required to do so
  - f. The Property was let in first class condition and had not previously suffered from mould.
  - g. The Property has deteriorated but is a modern three-bedroom house on a nice estate
  - h. The rent hasn't been raised for five years and is "*still at least £300 per month under the market rent for similar properties.*"
26. The Tenant responded to the Landlord by email on 8 January 2024 raising the following points:
- a. "*the house was in this condition when we first rented it. It was worse however as cats had been using the house while it was empty for months and there were broken taps and sinks, and shower. Issues were all pointed out to Martin & Co, who agreed it was a poor state.*"
  - b. "*All the appliances were untested and are stored in your garage as they are your broken belongings.*"
  - c. "*The downstairs carpet is over 20 years old. The upstairs carpet, I can confirm is not.*"
  - d. "*We have always had no fire egress, poor windows, no ventilation and damp. Do not forget that you also left the rental for 4 years without recarrying out gas safety checks, fire alarms installed and EICR. The EICR raised serious electrical faults.*"
27. No response or further evidence from the Landlord has been presented to the Tribunal. In this context, the Landlord has not provided any rental evidence to support the rent contended for.

### **Determination**

28. Whilst there is no compulsion upon Landlords to engage professional managing agents they are required to comply with their statutory as well as contractual obligations.
29. In this regard, section 11 of the Landlord and Tenant Act 1985 places obligations upon the Landlord regardless as to whether or not they are prompted by the Tenant. It is therefore incumbent upon the Landlord to ensure that they fully comply addressing the identified issues and ensuring that the Property is safe and compliant.
30. It is not a defence for the Landlord to argue that it is incumbent upon the Tenant to notify them of matters that fall within section 11 of the Landlord and Tenant Act 1985 as a defence for failing to comply

therewith. In this regard, it is reasonable to assume that a failure on the Landlord to make even basic inquiries of these matters is indicative of a lack of awareness and attention to these matters.

31. The Tribunal would therefore advise the Landlord to ensure that they are both fully aware of and compliant with both their statutory and contractual obligations.
32. The Landlord claimed that the Property did not previously suffer from mould, However, it was clear during the Tribunal's inspection that mould is present but is particularly prevalent along the top of the outer wall. In addition, the Tribunal was informed that the mould is more prevalent after times of heavy rain.
33. There is at least a possibility that there may be a connection between the position of the gutters and the source of the damp that has given rise to mould and it is not unknown for blocked or broken gutters to be the source of such problems, particularly if they haven't been attended regularly which appears probable in this case.
34. In addition, there is no fan to the bathroom to extract damp warm air and the prevalence of mould on the loft hatch suggests that a full inspection of the loft is required to ascertain the extent of ventilation thereto and insulation.
35. The position is not helped by the double glazing having "blown" such that there would naturally be increased condensation in cold and wet weather thereby introducing a further source of damp.
36. The Landlord should have made sure that they were aware of these issues through regular inspections of the Property albeit this does not totally absolve the Tenant from their obligation to bring such matters to the notice of the Landlord. The Tribunal advises both Parties to communicate and work together in the future to resolve these issues at the earliest opportunity.
37. Taking these points into account the Tribunal has therefore valued the Property as it actually exists on the basis that the Tenant appears to have complied with their repair obligations and that matters such as the failed double glazing, mould and defunct white goods are not matters that have arisen through a failure on the part of the Tenant.
38. 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.
39. 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. The Tribunal is therefore unable to take into account the Tenant's ability to pay the rent.

40. 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 exists on the relevant date of the proposed rent review having regard to the statutory assumptions.
41. 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.
42. Neither of the Party's have submitted any evidence of market rental values albeit the Landlord appears to be of the opinion that rent should be in the region of £1,600 per month.
43. In the absence of any evidence, the Tribunal has applied its own expertise and knowledge and considers that, if the Property was presented to a standard comparable to other properties available on the market, it would be capable of attracting a rent in the region of £1,650 per month.
44. However, as the Property stands, it does not meet comparable standards due to the identified matters and a lower rent would therefore be applicable.
45. The Tribunal therefore determines the market rental of the Property as at the effective date to be **£1,400 pcm.**
46. The Tribunal appreciates that this is a relatively large increase when compared to the current passing rent of £1,185 per month. However, the Parties should bear in mind that the rent has not been increased since June 2018 (i.e., 5.5 years ago) since when rents have increased significantly.
47. The fact that the rent has not been increased during the last 5.5 years is not relevant to considering the rent to be determined under these proceedings but hopefully this explanation is helpful in setting out the context.
48. **The rent payable may not exceed £1,450 per month. However, this does not prevent the Landlord from charging a lower rent.**

**Name:** Peter Roberts FRICS CEnv

**Date:** 19 February 2024

## **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 either party is dissatisfied with this decision, they may apply for permission to appeal to the Upper Tribunal (Lands Chamber) on any point of law arising from this Decision.

Prior to making such an appeal, an application must be made, in writing, to this Tribunal for permission to appeal. Any such application must be made within 28 days of the issue of this decision to the person making the application (regulation 52 (2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rule 2013).

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).