



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

Case reference : **CAM/38UB/MNR/2023/0061**

HMCTS code : **P:PAPERREMOTE**

Property : **6 Ridge Close, Banbury, OX16 9JB**

Applicant (Tenant) : **Hannah Gilkes and Wayne Barclay**

Respondent (Landlord) : **Amy Brennan-Rogers**

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 : **27 July 2023**

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 £1,150 per month effective from 1 June 2023.

Reasons

Background

1. The Landlord served notice under section 13 (2) of the Housing Act 1988 to increase the passing rent from £700 per month to £1,300 per month with effect from 1 June 2023.
2. This notice was undated.
3. This rent is stated to be exclusive of Council Tax but inclusive of Water Charges and fixed service charges.
4. The Tenant made an application to the Tribunal in reliance on section 13 (4) of the Housing Act 1988.
5. This Application was undated but was received by the Tribunal on 5 April 2023.
6. The Tribunal issued directions on 25 April 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.

Preliminary Matters

7. Section 13 (2) of the Housing Act 1988 (the “Act”) states:
*“...the landlord may serve on the tenant a notice in the prescribed form proposing a new rent to take effect at the beginning of a new period of the tenancy specified in the notice, being a period not earlier than – (a) the minimum period after the **date of the service of the notice;**”*
8. In this case the “prescribed form” was undated. It is not therefore possible to ascertain the beginning of the period referred to in section 13 (2) of the Act. The question therefore arises as to whether it is reasonable to conclude that the minimum period requirements have been satisfied.
9. The Tribunal does not have jurisdiction to determine the validity of such notices. However, paragraph 48 of the Court of Appeal Decision in *Mooney v Whiteland* [2023] EWCA Civ 67 states:

“That is not to say that a rent assessment committee may not sometimes need to take a view whether a notice is valid. If it considers that a notice is invalid, it may decline to proceed until the question has been determined by the court. Conversely, if it considers that a notice is valid and that objections are without substance, it may proceed to determine the appropriate rent, but its determination will not prevent a tenant from disputing the validity of the notice.”

10. In considering whether to proceed in this matter the Tribunal has noted that the Tenants’ Application was received by the Tribunal on 5 April 2023 which indicates that the Landlord’s notice was served prior to this date.
11. It therefore follows that, as the starting date for the new rent as set out in the Landlord’s Notice is 1 June 2025 and the Tenants’ Application was received by the Tribunal on 6 April 2025, it would be reasonable to assume that the Landlord’s notice was served more than one month prior to the date of the proposed rent increase.
12. Taking all these points into account, the Tribunal considers that, on balance, the Landlord’s notice can be accepted as being valid in these particular circumstances such that it may proceed to determine the appropriate rent.
13. However, as set out in the Mooney case, this does not preclude the Tenants from challenging the validity of the Landlord’s notice at the County Court.

The Property

14. The Tribunal inspected the Property on 13 July 2023.
15. The Property comprises a split level semi-detached house of brick and tile construction extending to circa 82.30 sqm (887 sq ft) providing a kitchen, lounge and conservatory at the rear lower ground floor level, entrance area and study/bedroom at the front ground floor level together with an integral garage and two bedrooms with a family bathroom at first floor.
16. There is central heating and UPVC double glazing and the Property appears to be in good internal order throughout.
17. The garden to the rear is tiered. Repairs are required and parts of the garden appear unsafe.

The Tenancy

18. The Tenants first took occupation pursuant to a stated Assured Shorthold Tenancy dated 1 August 2020 on a rolling monthly basis.

19. The initial rent under this Tenancy was £700 per month subject to increase “...upon providing to the Tenant such notice as required by the Act.”
20. The Tenant is required to “...keep the Property in good repair and condition and in good decorative order.”
21. The Tenancy is silent in respect of the Landlord’s repair obligations. However, as set out below, the Tribunal has had regard to the Landlord’s statutory obligations pursuant to section 11 of the Landlord and Tenant Act 1985.

The Law

22. 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”

23. 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.”

24. 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.”*
25. Examples of a tenant’s failure to comply with the terms of the lease may include, for example, a lack of redecoration.
26. 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.”*
27. 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

- 28. The Tenant made a number of representations in respect of decoration, fitting out works and electrical issues experienced during occupation.
- 29. In addition, the Tribunal’s attention was drawn to the safety issues arising as a result of the configuration and layout of the garden.
- 30. No opinion or evidence was submitted in respect of the rental value.

Representations – The Landlord

31. The Landlord set out a response in respect of the disrepair issues raised by the Tenant and advised that *“There are no outstanding issues with the property that I have been made aware of by the tenants at the date of this form.”*
32. The Tribunal were provided with a schedule of evidence prepared by Hortons. This comprised market summaries rather than expert evidence but has been taken into account by the Tribunal.
33. Whilst the Landlord has referred in email correspondence to a valuation having been undertaken by letting agent, no evidence was provided as to how that agent compared the Property with those set out in the schedule of lettings in reaching their conclusion.
34. In addition, there was no indication as to whether the agent had inspected the Property internally and/or viewed the garden. The Tribunal was therefore unclear as to whether the agent had provided a “desk-top” agency opinion, or a formal valuation based on a full inspection.

Determination

35. 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.
36. 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.
37. 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.
38. 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 **£1,150 pcm**. The rent payable may not, therefore, exceed this figure. However, this does not prevent the Landlord from charging a lower figure.

Name: Peter Roberts FRICS CEnv

Date: 31 July 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).