



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

Case Reference : **CAM/12EU/MNR/2024/0059**

Property : **2 Ermine Way, Sawtry, Huntingdon
PE28 5UQ**

Applicant (Tenant) : **Emma Jane O'Dare**

Respondent (Landlord): **Dinas Sinkevicious**

Type of Application : **Determination of a market rent under
Section 13 of the Housing Act 1988**

Tribunal Members : **Judge JR Morris
Mr GF Smiths MRICS FAAV**

Date of Decision : **13th May 2024**

DECISION

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DECISION

1. The Tribunal determined that a market rent for the Property in its present condition is £1,100.00 per calendar month to take effect from 25th April 2024.

REASONS

THE PROPERTY

2. The Property is a two-storey semi-detached house of brick elevations under a pitched concrete tile roof probably constructed in the 1970s. The front elevation has feature timber panels between the ground and living room window and between the living room window and the first-floor bedroom window. The front and back doors are upvc as are the windows frames with double glazed units. The rainwater goods are upvc. There is an attached garage to the front of the house with a drive affording hard standing. There is a gated side access to the rear garden which is enclosed by a timber fence with a gate to the road at the rear of the Property. There is a small garden area at the side of the house at the front.

Accommodation

The Property comprises, on the ground floor, an entrance hall (1.80 x 1.50 m), a cloakroom with wash hand basin and w.c. (2.18 x 0.79 m), a through living room

with stairs rising to the first floor (lounge area 3.93 x 2.42 m; dining area 3.68 x 2.42 m), a kitchen (3.00 x 2.60 m) with a pantry (0,6 x 0.6 m) and a conservatory (5.00 x 3.00 m). On the first floor there is a landing (3.35 x 1.81 m) off which are three bedrooms (3.02 x 3.28 m; 3.91 x 3.26 m; 2.20 x 2.53 m) and a bathroom with an over bath shower, sink and w.c. (1.96 x 1.81 m). There is a single garage (5.00 x 3.00 m) which also contains the electrical consumer box.

Services

Space and water heating is by a gas fired central heating system. The Property has mains electricity, gas, water, and drainage.

Furnishing

The Property is let unfurnished. Floorcoverings are provided by the landlord and are laminate except in the bathroom which is vinyl and the conservatory which is tiled. There is an integrated oven and hob. Other white goods are provided by the Tenant.

Location

The Property is situated in a residential area of Sawtry off the A1.

THE TENANCY

3. The Tenancy commenced as a contractual monthly periodic Assured Shorthold Tenancy on 25th July 2022 for a period of 12 months at a rent of £900.00 per calendar month and continued thereafter as a statutory tenancy on the same terms. Section 11 of the Landlord and Tenant Act 1985 applies in respect of the Landlord's repairing obligations. There is a provision in the Tenancy which states that the Council Tax is paid to the Landlord.

THE REFERRAL

4. The current rent is £900.00 per calendar month. By a notice in the prescribed form dated 8th March 2024 the Landlord proposed a new rent of £1,300.00 per calendar month from 25th April 2024. The Notice also referred to a sum of £125.00 per month for Council Tax as being included in the rent. From the Parties representations it appears that the Council Tax payment is not included in the existing rent of £900.00 and proposed rent of £1,300.00 but is a separate payment.
5. On 12th March 2024 the Tenant referred the notice proposing a new rent to the Tribunal. Directions were issued on 19th March 2024 informing the parties that the Tribunal did not intend to hold an oral hearing unless a request was made by 16th April 2024. Neither party made a request for a hearing. The Parties completed the Reply Form attached to the Directions. An inspection took place on 13th May 2024.

THE LAW

6. The relevant law is in section 14 of the Housing Act 1988 which is summarised below.
7. By virtue of section 14 (1) Housing Act 1988 the Tribunal is to determine a rent at which the dwelling-house concerned might reasonably be expected to be let in the open market by a willing landlord under an assured periodic 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 subject Tenancy
8. By virtue of section 14 (2) Housing Act 1988 in making a determination the Tribunal shall 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) Housing Act 1988) carried out by a tenant otherwise than as an obligation; and
 - (c) any reduction in the value of the dwelling-house due to the failure of the Tenant to comply with any terms of the subject Tenancy.
9. By virtue of section 14 (3A) and (3B) where a Landlord is liable to pay Council Tax for a building of which the dwelling is a part and the Council Tax is included in the rent, e.g. a House in Multiple Occupation, the determination shall include the Council Tax in the rent.
10. By virtue of section 14 (5) Housing Act 1988 where any rates (i.e. Council Tax) in respect of the dwelling-house concerned are paid by the landlord, whether under the tenancy or by separate agreement, the tribunal shall make its determination on the rent alone.
11. Nothing in section 14 affects the right of the landlord and the tenant under an assured tenancy to vary by agreement any term of the tenancy (including a term relating to rent).

CONDITION

12. The Tribunal inspected the Property on 13th May 2024 with the Tenant.
13. Externally, the Property is in fair condition.
14. Internally, the Tribunal accepted the dimensions provided by the Landlord on the Reply Form as these were not disputed by the Tenant.
15. The kitchen and bathroom are modern.
16. The stairs had open risers through which a 100mm sphere could pass. The riser should be enclosed or restricted.
17. The Tribunal noted:
- There were signs of water ingress around the roof light in the cloakroom;
 - There was evidence of significant water ingress in the boiler cupboard on the landing possibly from the boiler flue or header tank.
 - The radiators did not have thermostatically controlled valves and it was not clear whether the hot water system is cylinder or constant.
 - There were areas of mould growth in the living room and around the reveal of the bedroom window possibly caused by a lack of insulation behind the feature timber panelling to the front of the house and the lack of trickle vents in the window frames.

- Mould was also forming on the bathroom ceiling due to condensation caused by the lack of an extractor fan.
 - The seal of the double-glazed unit has failed in bedroom 3.
18. The decoration was in good condition as were the floor coverings and corresponded to the photographs provided by the Landlord taken immediately prior to the Property being let to the Tenant.
19. The garage was being used by the Landlord for storage contrary to the Tenant's right of exclusive possession.

REPRESENTATIONS

20. The Parties made written representations and the Landlord provided photographs of the Property taken immediately prior to it being let to the Tenant.

Tenant's Representations as to Security of Tenure

21. The Tenant included in her representations, documents relating to issues that she had raised with the Police and Local Authority concerning allegations regarding security of tenure and harassment. The Tribunal only decides the rent based on the condition of the Property. It does not consider any other disputes between, or complaints raised by, the parties.

Tenant's Representations as to Condition

22. The Tenant said:
- The roof light in the cloakroom w.c. was leaking.
 - The conservatory roof leaked from the joins in the polycarbonate panel.

Landlord's Representations as to Condition

23. The Landlord said that the laminate flooring was new and the Property had been redecorated. It was said that the garden had new fencing to one side and gates. The Landlord enclosed photographs of the Property following its purchase on 6th May 2022 just prior to the tenant taking occupation.

Tenant's Representations as to Council Tax

24. The Tenant said that she now paid her own Council Tax to the Local Authority. She alleged that she had been over charged by the Landlord in the past. She said that she had been charged £150.00 per month over a 12-month period and not 10 months which is the period charged by the Council.

Landlord's Representations as to Council Tax

25. The Landlord said that the Tenant was not correct in saying that he had charged £150.00 per month over a 12-month period. He said that he had only required her to pay £125.00 per month over 10 months. The Landlord provided a bank statement showing payments of £900.00 per month for March and February 2024 and of £1,025.00 on 1st February which was £900.00 rent and £125.00 Council Tax. He said that since that payment the Tenant had paid the Council Tax for the

Property directly to the Council.

Tribunal's Response to Council Tax

26. Pursuant to Section 3(5) of the Housing Act 1988 the Tribunal determines the rent alone, irrespective of whether a tenant pays Council Tax directly to the Local Authority or the Landlord pays the Tax and recharges the amount to a tenant. The payment of the Tax is a separate agreement between the parties and not a matter for the Tribunal in this instance.

Landlord's Representations as to Rental Value

27. The Landlord said that the Property was being let below market rent. He enclosed two advertisements for what he said were similar sized properties. The one was in Church Walk, Farcet with an asking rent of 1,300.00 per calendar month and the other was in Hansell Road, Brampton with an asking rent of £1,450.00 per calendar month. He also enclosed an advertisement for the same type of property but without a conservatory on the same street which was marketed for £1,200.00 per calendar month in April 2023.
28. The Landlord submitted that the rent increase proposed was reasonable. He also said it was necessary to allow him to pay his new fixed mortgage rate, which had increased due to higher interest rates. The Tribunal is not able to take this latter point into account as it is a personal circumstance of the Landlord. A tribunal bases its determination only on market rents which may or may not reflect changes in interest rates.

DETERMINATION

29. The Tribunal determines a market rent for a property by reference to rental values generally and to the rental values for comparable properties in the locality, in particular. The Tribunal does not take into account the present rent or the period of time for which that rent has been charged, nor does it take into account the percentage increase which the proposed rent represents to the existing rent.
30. The Tribunal only has jurisdiction to determine the rent. The Tribunal cannot take into account the personal circumstances of either a tenant or landlord. Therefore, the Tribunal cannot consider either the affordability of the rent for a particular tenant nor whether the rent reflects a rise in interest rates and its effect on an individual landlord's mortgage repayments.
31. In accordance with section 14 (5) the Tribunal considers the rental value alone. The payment of the Council Tax in this instance is a separate arrangement between the parties.
32. The Tribunal also cannot consider whether an eviction notice under Section 21 of the Housing Act 1988 has or has not been served or any allegations regarding harassment. Its sole jurisdiction under this Application is to determine a market rent for the Property.
33. The Tribunal considered the properties which the Landlord submitted as being comparable to the Property. The Tribunal found that the rental values of the two houses in villages to the north and south of Sawtry provided a guide as to rental

values generally in the area. Both were of a different style of house to the Property and in a different location which may be more or less desirable. Both appear to be larger than the Property. Hansell Road, Brampton in particular appeared to be more substantial justifying the asking rent of £1,450.00 per calendar month. The most helpful comparable was that of Ermine Street with an asking rent of £1,200.00 per calendar month in April 2023. If the Property was in good condition, then a rent in the region of £1,300.00 per calendar month might be reasonable. However, the water ingress, the lack of thermostatically controlled radiators, the areas of mould growth, the lack of a bathroom extractor fan and the failure of the double-glazed unit, and the use by the Landlord of the garage lead the Tribunal to determine a reasonable rent of £1,100. per calendar month for the Property.

34. Therefore, the Tribunal determined that a market rent for the Property in its present condition is **£1,100.00 per calendar month to take effect from 25th April 2024.**

Judge JR Morris

Caution: The Tribunal inspected the Property for the purposes of reaching this decision. The inspection was not a structural survey and any comments about the condition of the Property in this statement must not be relied upon as a guide to the structural or other condition of the property.

APPENDIX - RIGHTS OF APPEAL

1. If a party wishes to appeal the 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.
2. 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.
3. 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.
4. 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.