



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

Case reference : **CAM/00KC/MNR/2024/0080**

HMCTS code : **P:PAPERREMOTE**

Property : **38 Linden Road, Dunstable, LU5
4NZ**

Applicant (Tenant) : **Kirsten Rose**

Respondent (Landlord) : **Carl Garner**

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 : **2 August 2024**

DECISION

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 £1,350 per calendar month effective from 2 May 2024.

Reasons

Background

1. On 26 March 2024 the Landlord served notice under section 13 (2) of the Housing Act 1988 to increase the passing rent from £693.33 per calendar month (pcm) to £1,450 per month with effect from 1 May 2024.
2. This rent is stated to be exclusive of Council Tax, Water Charges and fixed service charges.
3. The rent of £693.33 pcm was first payable from 2 December 2013.
4. The Tenant made an undated application to the Tribunal in reliance on section 13 (4) of the Housing Act 1988.
5. The Tribunal issued directions on 7 May 2024, 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

6. The Tribunal inspected the Property on 1 July 2024 accompanied by the Tenant.
7. The Property comprises a two-storey semi-detached house of brick and tile with a pitched roof providing a porch, hallway, lounge, kitchen and bathroom together with three bedrooms. There is also a flat roofed garage to the side together with a driveway and gardens to front and rear.
8. The Tribunal noted that the Property is in a fair state of internal repair and decoration. Such repairs that have been carried out recently are of a poor standard of workmanship.

The Tenancy

9. The Tenant occupied the Property by virtue of an Assured Shorthold Tenancy that commenced 2 September 2013 and expired on 1 September 2014.

10. The initial rent under this Tenancy was £693.33 pcm.
11. The Property is defined as:
“38 Linden Road Dunstable LU5 4NZ.”
12. The Tenant’s repair obligations are set out at clause 8.1 which states:
“The Tenant shall keep the interior of the Property clean, tidy and in the same condition as at the start of the Tenancy (except for fair wear and tear.”
13. Clause 8.1 should be read together with clause 8.6 which states:
“The Tenant shall not make any alteration, addition, or redecorate the Property [without the prior consent of the Landlord (such consent not to be unreasonably withheld)].”
14. The Landlord covenants at clause 10.5 to:
“Keep in repair the structure and exterior of the property (including drains, external pipes, gutters and external windows.

Keep in repair and proper working order, the installations in the Property for the supply of water, gas, electricity and 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

Keep in repair and proper working order the installations in the Property for space heating and heating water.”
15. Clause 10.6 states:
“The Landlord shall not be required to:
 - a) *Carry out any works or repairs for which the Tenant is liable by virtue of this agreement; or*
 - b) *Keep in repair or maintain anything which the Tenant is entitled to remove from the Property.”*
16. Clause 10.7 states:
“The Landlord shall keep in repair the cooker, washing machine, tumble dryer, fridge, freezer and dishwasher (if these appliances are at the Property and provided by the Landlord).”
17. In the absence of a new Tenancy being entered into, an Assured Periodic Tenancy pursuant to Section 5 (2) of the Housing Act 1988 (the 1988 Act) has arisen such that Sections 13 and 14 of the Act now apply.

The Law

18. 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”

19. 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.”

20. 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.”

21. 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.”*
22. 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

23. The Tenant provided a Statement which was received by the Tribunal on 5 April 2024. This Statement is summarised as follows:
- a. The Tenant has lived in the Property for 10 years during which there has been no inspections by the Landlord
 - b. The Landlord’s responses to identified issues was that the Tenant could move out
 - c. The Landlord had kept the rent low but at the cost of maintaining the Property
 - d. The Landlord has commissioned various repairs but the workmanship has been poor. There remains:

“Broke old kitchen cabinets, carpets over 10 years old, balding. Bath and sink chipped and old. Wallpapers and tiles and lino ripped off when sorting areas like radiators and boiler. And these are only the obvious to the naked eye issues. There are also the ongoing issues of a leaking garage, bad water pressure and a boiler that is temperamental”

- e. The Tenant considered that the Property was not in a commensurate state of repair and decoration to properties on the market.
24. The Tenant did not provide any evidence of rental values

Representations – The Landlord

25. Mr Wilkin, on behalf of the Landlord, provided a covering email to the Reply Form dated 24 May 2024 which provided links to Zoopla and Rightmove in respect of asking rents.
26. The Landlord’s Reply Form set out various comments which are summarised as follows:
- a. *“At the outset of the tenancy, the house was provided in pristine condition, with new paint and new carpets throughout”*
 - b. The Landlord considers the Tenant to be *“...a serial complainant.”*
 - c. The Tenant has made complaints in respect of issues that *“...are not genuinely disrepair...”* and the Tenant *“...also fails to recognise that she has an obligation under clause 8.1 of the tenant agreement to keep the interior of the property clean, tidy and in the same condition as at the start of the tenancy (except for fair wear and tear).”*
 - d. The Landlord considers in respect of the Tenant that *“...the way in which she manages the property is likely to promote issues with condensation.”*
27. The Landlord also attached a Rebuttal document within which he responded to the various photographs and statements provided by the Tenant in respect of the condition of the Property.

Determination

28. 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.
29. 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.

30. However, as set out above, the Tribunal is required to have regard to the obligations of the Landlord and Tenant in respect of the repair, maintenance and upkeep of the Property.
31. As set out above, section 14 (2) (c) of the 1988 Act requires the Tribunal to disregard any failure by the Tenant to comply with their lease obligations. However, the Tribunal is to have regard to matters that do not arise as a direct consequence of the Tenants' failure to comply with any of their obligations.
32. The Tribunal has inspected the Property and considers that, whilst it is apparent that some work has been carried out relatively recently, it is still only in a fair condition and would be unattractive to the market.
33. It appears from the Landlord's Reply Form that the Landlord is of the opinion that the current condition is due to the Tenant not keeping "*...the interior of the Property clean, tidy and in the same condition as at the start of the Tenancy (except for fair wear and tear)*". If the Landlord's argument was correct, the Tribunal would be required to ignore the actual condition of the Property and assess the rent as it existed on commencement of the Tenancy.
34. However, the Tribunal considers that there is disrepair that would have arisen irrespective of the Tenant's obligations pursuant to clause 8.1 such that this is to be taken into account in assessing the rent. Furthermore, clause 8.6 is also relevant to redecoration of the Property.
35. The Tribunal has therefore had regard to the Property as it actually existed as the date of its inspection rather than as at the commencement of the Tenancy notwithstanding that no evidence has been presented as to the condition of the Property when first let.
36. The Tribunal notes that the proposed rent is £1,450 per month which, had the Property been put into a market standard of repair and decoration, would not have been unreasonable. However, it is appropriate to apply a discount to account for the fact that an incoming tenant to the Property would not be prepared to pay the same for the Property as they would for an otherwise identical property that is in full repair and decoration.
37. The Tribunal therefore determines the market rental of the Property to be **£1,350 pcm**. The rent payable may not, therefore, exceed this figure. However, this does not prevent the Landlord from charging a lower figure.
38. This rent is to be effective from **2 May 2024**.
39. Whilst this may appear to be a large increase when compared to the current passing rent of £693.33 per month, the Parties should bear in mind that the rent has not been increased since 2 September 2013 (i.e., 10.75 years ago) since when rents have increased significantly.

Name: Peter Roberts FRICS CEnv

Date: 2 August 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 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).