



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

Case reference : **CAM/00KF/MNR/2024/0102**

HMCTS code : **P:PAPERREMOTE**

Property : **60 North Avenue, Southend-on-Sea, SS2 5HU**

Applicant (Tenant) : **Mrs B M Juszcak**

Respondent (Landlord) : **Mr M Stapleton C/O Reed Residential Limited**

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 : **22 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 £1,450 per calendar month effective from 7 June 2024.

Reasons

Background

1. On 16 April 2024 the Landlord served notice under section 13 (2) of the Housing Act 1988 to increase the passing rent from £1,300 per calendar month (pcm) to £1,550 per month with effect from 7 June 2024.
2. This rent is stated to be exclusive of Council Tax, Water Charges and fixed service charges.
3. The Tenant made an undated application to the Tribunal in reliance on section 13 (4) of the Housing Act 1988.
4. The Tribunal issued directions on 28 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

5. The Tribunal has not inspected the Property but has relied on the documents provided by the Parties together with information in the public domain including Google Images and Land Registry.
6. The Property comprises a two-storey mid terraced house of brick and tile with a pitched roof providing a living room, dining room and kitchen on the ground floor with three bedrooms and a bathroom on the first floor. It benefits from central heating, double glazing, carpets & curtains and a cooker. There is a garden to the rear.
7. The Tenant stated within the Reply Form that she had decorated the living room, dining room, hallway, landing and two of the bedrooms. In addition, the tenant had provided a new carpet to the living room, landing and hallway.
8. The Tribunal was provided with internal and external photographs for which the Tribunal is grateful.

The Tenancy

9. The Tenant occupied the Property by virtue of an Assured Shorthold Tenancy that commenced 7 September 2014 and expired on 6 September 2015.
10. The initial rent under this Tenancy was £975 pcm.
11. The Tenant's repair obligations are set out within the Tenancy. Clause 2.4 states that the Tenant is:

"To be held liable for the fair net costs involved in carrying out repair and maintenance to the premises or its fixture or fitting where such action is required as a result of negligence, or significant breach of this agreement or mis-use, (sic) by the tenant or his invited guests or visitors."
12. Clause 2.35 provides that the Tenant is:

"To take reasonable and proper care in the use of the premises, its fixture and fittings and not to deliberately damage or alter the premises, its décor, fixtures and fittings either internally or externally."
13. There is no stated obligation on the Tenant to decorate or replace carpets.
14. Clause 3.3 requires the Landlord:

"To comply with the requirements of section 11 of the Landlord and Tenant Act 1985 which imposes obligations on the landlord to repair the structure and exterior..."
15. 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

16. 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”

17. Section 14 (1) 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.”*

18. 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.”*

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’s representations concerned the extent to which the rent had increased over a period of 30 months.
22. In addition, the Tenant advised that the Landlord had proposed £1,450 pcm but she felt that this was still unreasonable.

Representations – The Landlord

23. The Landlord submitted a copy of a Property Inspection Note dated 3 June 2024 together with details of various comparable properties and rents.

Determination

24. 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.
25. Previous changes in rent are not, therefore, relevant as the Tribunal is required to assess the rent that would be offered by a prospective tenant who has no knowledge of the existing or previous rents.
26. 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.
27. In that regard, it is irrelevant whether or not the Landlord requires the rent to be at a certain level to fund its repair obligations under the lease or whether the Tenant feels that the services provided by the Landlord are “value for money”. As such, the cost of property maintenance to the Landlord does not affect the rent that would be offered by a prospective tenant in the market and must be disregarded.
28. 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 and take into account the extent to which these obligations have been complied with.

29. 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.
30. Conversely, whilst the Tribunal assumes that the Tenant has complied with their obligations, it is required to ignore work that has been undertaken by the Tenant that is of value but which is above and beyond their obligations pursuant to the Tenancy. The Tribunal has therefore disregarded the installation of new carpets and decoration carried out by the Tenant and has, instead, assumed that the Property is in the state that would have existed had this work not been carried out.
31. In this context, the Tribunal would highlight that it would appear that the Landlord has not kept the exterior in full repair and decoration as evidenced by, for example, the damage to the front window ledge which, according to historic Google Street images, appears to have been neglected over a period of years. The Tribunal has also noted other items of disrepair as recorded on the photographs provided.
32. The Tribunal has been provided with evidence of other properties together with asking rents. However, the Tribunal considers that a discount is required in respect of the works undertaken by the Tenant without which the interior would be less attractive and the lack of exterior repair and decoration which falls to the Landlord. Furthermore, a number of the comparables are semi-detached or end-terraced whereas the Property is mid terrace.
33. The Tribunal therefore determines the market rental of the Property to be **£1,450 pcm**. The rent payable may not, therefore, exceed this figure. However, this does not prevent the Landlord from charging a lower figure.
34. This rent is to be effective from **7 June 2024**.

Name: Peter Roberts FRICS CEnv

Date: 22 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).

Notice of the Tribunal Decision and Register of Rents under Assured Periodic Tenancies (Section 14 Determination)

Housing Act 1988 Section 14

Address of Premises

60 North Avenue, Southend-on-Sea, SS2 5HU

The Tribunal members were

Mr P Roberts FRICS CEnv

Landlord

Mr M Stapleton

Address

C/O Reed Residential Limited
431-435 London Road
Westcliff
SS0 7HU

Tenant

Mrs B M Juszczak

1. The rent is:£

1,450

Per

month

(excluding water rates and council tax but including any amounts in paras 3)

2. The date the decision takes effect is:

7 June 2024

3. The amount included for services is

not applicable

Per

4. Date assured tenancy commenced

7 September 2014

5. Length of the term or rental period

12 Months

6. Allocation of liability for repairs

Tenant liable for internal repairs. LL to comply with s11 LTA 1985

8. Furniture provided by landlord or superior landlord

N/A

9. Description of premises

The Property comprises a two-storey mid terraced house of brick and tile with a pitched roof providing a living room, dining room and kitchen on the ground floor with three bedrooms and a bathroom on the first floor. It benefits from central heating, double glazing, carpets & curtains and a cooker. There is a garden to the rear.

Chairman

P Roberts

Date of Decision

22 August 2024