



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference : CAM/26UL/MNR/2024/0079

HMCTS code : P:PAPERREMOTE

Property : 31 Salisbury Hall Drive, Hatfield,
AL10 9GJ

Applicant (Tenant) : M Walker

Respondent (Landlord) : Peabody Trust

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 : 14 November 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

These proceedings concerned matters in respect of the Housing Act 1988. In this regard, the Tribunal determined a Market Rent of £230 per week as understood in the context of that Act and exclusive of service charges.

This represents the maximum rent payable and the Landlord may be subject to requirements to cap the rent payable rent in line with the Rent Standard as issued by the Regulator of Social Housing. The Tribunal understands that the capped net rent is £114.51 per week which is less than the Market Rent.

The Tribunal was unable, under these proceedings, to determine the service charge payable in addition to the rent as, to do so, would require a separate application and proceedings in accordance with the Landlord and Tenant Act 1985.

Reasons

Background

1. On 20 February 2024 the Landlord served notice under section 13 (2) of the Housing Act 1988 to increase the passing rent from £120.59 per week to £153.01 per week with effect from 1 April 2024.
2. This rent is stated to be exclusive of Council Tax and Water Charges but inclusive of fixed service charges.
3. The Tenant made an application to the Tribunal in reliance on section 13 (4) of the Housing Act 1988 on 23 March 2024.
4. The Tribunal issued directions on 8 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.
5. Amended directions were issued on 12 August 2024 in light of the lack of response from the Landlord.

The Property

6. The Tribunal have relied upon the evidence provided by the Tenant together with information in the public domain including Google Earth Pro.

7. The Property comprises a first floor flat within a purpose build three storey block of flats and provides a single bedroom, lounge, bathroom and living room.
8. The Property benefits from central heating, double glazing and off-road car parking.

The Tenancy

9. The Tenant advised that they no longer have a copy of the original lease and have sought a copy from the Landlord but without success.
10. The Tribunal requested a copy of the lease from the Landlord but this has not been provided.
11. In the circumstances, the Tribunal has assumed that the original lease fully complied with statutory requirements.
12. In the absence of any evidence 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

13. 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”

14. 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.”*
- 15. 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.”*
- 16. 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.”*
- 17. 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

18. The Tenant stated:

“...there is a huge increase in the service charge element. This latter (sic) was first queried with Peabody back in October 2023. They responded a month later, conceding an error, and with an assurance the corrected amount would be used in the S.13. In the event, no such correction was made. A further service charge query was ignored.

More recently Peabody have been asked to raise a formal complaint with regard to the above, but have failed to cooperate.”

19. No comparable rental evidence or opinion of rent was provided.

Representations – The Landlord

20. The Landlord did not make any representations nor comply with the requests of the Tribunal to provide a copy of the Lease.

Determination

21. 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.
22. 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.
23. 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.
24. 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.
25. 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.
26. 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.

27. In the absence of any rental evidence having been provided by either the Landlord or Tenant, the Tribunal has relied upon its own knowledge and experience of the market and considers that the Market Rent that would be payable in the absence of any other provisions would be in £1,000 per month which equates to £230 per week.
28. However, the Tribunal notes that the Landlord comprises a Registered Social Landlord such that the Rent Standard applies as issued by the Regulator of Social Housing. This provides that the rent may not increase by more than CPI +1% in any year. The current prescribed Rent Cap limit is 7.7% comprising 6.7% in respect of CPI plus 1%.
29. The appropriate calculation of the net rent calculated by the Landlord and payable from 1 April 2024 is therefore (£120.59 less £14.26) multiplied by 1.077 which equals £114.51 per week which equates to £496.21 per month.
30. The Tribunal is therefore satisfied that the net rent payable of £114.51 per week has been correctly calculated by the Landlord from a mathematical perspective and is below the Market Rent.
31. The Tribunal does not have any jurisdiction under these proceedings to make any determination in respect of the service charges which appears to be the main concern of the Tenant. A separate challenge in respect of the service charge element would therefore need to be made by the Tenant in accordance with section 27A of the Landlord and Tenant Act 1985. The Tribunal makes no observations, at this stage, in respect of the merits or otherwise of such challenge.
32. The relevant application form is available at:

<https://www.gov.uk/government/publications/form-leasehold-3-application-for-a-determination-of-liability-to-pay-and-reasonableness-of-service-charges>
33. The Tribunal therefore determines the net Market Rent in the absence of any Rent Cap limit at £230 per week. The rent payable may not therefore exceed this amount.
34. However, as set out above, the Landlord appears to be subject to the Rent Cap limit set by the Regulator of Social Housing in which case the net rent contended for of £114.51 per week would appear to have been correctly calculated albeit, for clarity, the Tribunal has no jurisdiction to formally determine this point.
35. The Tribunal is unable to make any determination in respect of the additional service charge element of £38.49 per week unless a separate application is submitted as set out above.

36. The revised rent is effective from 1 April 2024.

Name: Peter Roberts FRICS CEnv

Date: 14 November 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

31 Salisbury Hall Drive, Hatfield,
AL10 9GJ

The Tribunal members were

Mr P Roberts FRICS CEnv

Landlord

Peabody Trust

Address

45 Westminster Bridge Road, London, SE1 7JB

Tenant

M Walker

1. The rent is:£

230

Per

week

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

2. The date the decision takes effect is:

1 April 2024

3. The amount included for services is

not
applicable

Per

4. Date assured tenancy commenced

Not known

5. Length of the term or rental period

Not known

6. Allocation of liability for repairs

s11 LTA 1985 applies

8. Furniture provided by landlord or superior landlord

N/A

9. Description of premises

The Property comprises a first floor flat within a purpose build three storey block of flats and provides a single bedroom, lounge, bathroom and living room.
The Property benefits from central heating, double glazing and off-road car parking.

Chairman

P Roberts

Date of Decision

14 November
2024