FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**HAV/45UH/MNR/2024/0638**
Property	**:**	**115 Broadwater Street East, Worthing, West Sussex BN14 9AP**
Applicant (Tenant)	**:**	**Mr Christian Wallis**
Representative	**:**	**None**
Respondent (Landlord)	**:**	**Hutchby & Collumbell Ltd**
Representative	**:**	**None**
Type of application	**:**	**Section 13(4) Housing Act 1988**
Tribunal members	**:**	**Mr Jagger MRICS** **Mr K Ridgeway MRICS**
Venue	**:**	**Worthing Law Courts**
Date of decision	**:**	**23 January 2025**

DECISION

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Decision of the tribunal

(1) Having heard evidence and submissions from the parties and considered all the documentation provided The Tribunal determines that the rent that the property in its current condition as at 25 November 2024 might reasonably be expected to achieve under an assured tenancy is **£156 per week.**

Background

1. The tenant has lived in the property as a weekly assured periodic tenant since the 1 November 1999 under a Statutory Periodic Tenancy. During the hearing both parties agreed that a written tenancy agreement did not exist and this was a verbal agreement between the parties at a weekly rent of £100 as confirmed by the entries in the rent book. This matter is considered in greater detail in this decision.

2. The accommodation comprises two bedrooms, living room, kitchen, bathroom with lavatory. All mains' services are provided to the property except for gas. The tenant confirms he provided all white goods, carpets and curtains. Heating is provided by dated electric storage heaters.

3. On 22 October 2024 the landlord served a notice pursuant to section 13(2) of the Housing Act 1988 seeking to increase the rent from £100 per week to £175 per week, being an increase of £75 effective from 1st July 2024.

4. By an application dated 30th May 2024, the tenant referred that notice to the Tribunal for a determination of the market rent. The Tribunal issued Directions for the conduct of the matter on the 25 November 2024.

The Evidence

5. The detailed bundle of evidence includes a background to the case, the application, two completed Rent Appeal Statements, photographs and comparable evidence of 117 Broadwater Street East provided by the landlord. During the hearing, the tenant refereed to 113 Broadwater Street East. However, it was confirmed this was a protected tenancy under the Rent Acts 1977 and therefore very little weight can be placed on this property as comparable evidence.

The Inspection

6. The Tribunal inspected the property on the morning of the 23 January 2025 in the presence of Christian Wallis the tenant. David and Robert Hutchby also attended the property in order to carry out a joint

inspection. They were, however denied access to the property and the Tribunal inspected alone with Mr Wallis

7. The property is a two storey mid terrace Victorian house with rendered elevations under a pitched and slate roof. There is an enclosed overgrown rear garden with four sheds. Parking is provided on the roadside and a resident's parking scheme operates in the area. Internally, the kitchen and bathroom fittings were installed by the tenant. The softwood single glazed windows are suffering from rot infestation. The tenant has provided the Tribunal with a comprehensive schedule of improvements he has carried out during the term of the tenancy. Overall, the fabric of the property has been neglected over the years and substantial general maintenance and repairs are required. There is no gas supply nor central heating provided. Basic heating is supplied by dated electric storage heaters.

8. The property is located in an established road in a residential area amongst dwellings of a similar type and age, convenient to local amenities. Each of these factors must be reflected in the rental valuation figure.

The Hearing

9. The hearing took place at 11.30am following the inspection. It was attended by the tenant and the landlord. At the hearing each party was provided with the opportunity to outline their respective cases. The supporting documents set out a chronology of events which on the whole was generally agreed between the parties and the Tribunal does not propose to provide the details in this decision.

"The Tenants case"

10. The tenant's principal argument is that he was originally a tenant of the landlord's father, Malcolm Hutchby at 85 Sutton Road in 1985 with a verbal agreement at a "fixed rent" He then moved to the subject property in 1999 once again with a verbal agreement at a "fixed" rent of £100 for the duration of the time he resides at the property. He alleges this was the intention of the parties and during that time Malcolm Hutchby and subsequently his son accepted this rent on a weekly basis. For these reasons the rent should be restricted to the originally agreed rent between the parties at £100.

11. The tenant states that when he moved into the property some 25 years ago, was in a very basic condition and over the years have undertaken significant improvements to the property. The Tribunal has considered all of these matters which include: replacement kitchen and sanitary fittings, general repairs internally, carpets and curtains and white goods. Externally, the tenant has provided boundary fencing and sheds. The

tenant claims that during the term of the tenancy it is himself that has preserved the building with his maintenance and improvements over the years. The tenant states the subject property has suffered neglect from the landlord and requires significant refurbishment.

12. **"The Landlords case"**

13. The proposed rental figure of £175 per week (£758 per month) for the property is considered significantly below market value and reflects the improvements made by the tenant and the general condition of the property. In order to be fair to the tenant the landlord wishes to stagger any future increases rather than immediately seek a market rent. The landlord states that his company have tried to contact the tenant on several occasions in order to arrange an inspection and to discuss a future rent increase and to carry out necessary repairs and safety checks. The tenant failed to engage with these requests. The landlord's agent Michael Jones has confirmed that rental values in the area for similar properties in reasonable condition range from £1,300-£1,400, although, there is no written evidence to confirm this. In addition, the landlord owns the neighboring property 117 Broadwater Street East which was recently let at £1050 per month. Therefore, the landlord considers the proposed rent increase to £175 per week to be more reasonable.

The Law

14. The rules governing a determination are set out in section 14 of the Housing Act 1988. In particular, the Tribunal is to determine the rent at which the property might reasonably be expected to be let in the open market by a willing landlord under an assured tenancy, subject to disregards in relation to the nature of the tenancy (i.e. it being granted to a "sitting tenant") and any increase or reduction in the value due to the tenant's improvements or failure to comply with the terms of the tenancy. In the absence of any evidence to the contrary, the Tribunal has proceeded on the basis that the landlord is responsible for repairs to the structure, partial exterior and any installations pursuant to section 11 of the Landlord and Tenant Act 1985 and the tenant for interior decoration and rainwater fittings.

The Determination and Valuation

15. The crucial first question for the Tribunal to determine is in connection with interpretation of the verbal tenancy agreement. Mr Wallis states agreement was at a "fixed " rent" at £100 for the duration of his residency.

16. The tenant's next argument was that the landlord's conduct implied he was content with the rental value of £100. Insomuch, that the landlord

accepted the weekly rent payment. In essence, the tenant is raising the argument *Estoppel by Convention*. This is the principle under which parties who have acted on a common assumption, relating to a contract between them or otherwise, that a given state of facts is true, may be prevented (estopped) from resiling from that assumption and from asserting, as against the other party.

17. Essentially, the tenant argues that the verbal agreement was perpetual at the original rent. However, there is no evidence whatsoever to support this claim.

18. It is the job of the Tribunal to determine what was in the minds of the parties at the outset of the agreement. In normal circumstances the written agreement must be the primary source of evidence as to the intention of the parties to that agreement. Although, there was no written agreement the Tribunal adopts the guidance given to it by the Supreme Court:

Arnold v Britton and others [2015] UKSC 36 Lord Neuberger:

> "15. When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean", to quote Lord Hoffmann in Chartbrook Ltd v Persimmon Homes Ltd [2009] UKHL 38, [2009] 1 AC 1101, para 14. And it does so by focusing on the meaning of the relevant words, in this case clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease,
> (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and
> (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions".

19. On the balance of the evidence before it, the Tribunal is of the opinion that there is insufficient evidence to conclude that the parties intended the rent to stay fixed for the duration of the agreement. Hutchby & Collumbell were landlords of a portfolio of 17 properties, and it would have made no business or commercial sense whatsoever to agree to a concessionary rent that could be fixed for 25 years or more. Therefore, the Tribunal determines that rent in the agreement can be varied.

20. Having carefully considered all of the evidence provided from the parties, and using its knowledge and experience in the Worthing area, the Tribunal considers that the rent that would be achieved in good condition with refurbished kitchen and bathroom fittings, a good standard external maintenance, internal renovation, modern services, and carpets, curtains and white goods supplied by the landlord would be approximately **£312** per week. (£1350 per month)

21. That however is the rent that would be achieved if the property was let in good condition with all modern amenities. In order to determine a rental value, the Tribunal must disregard any increase in rental value attributable to the tenant's improvements, unless they are carried out under an obligation to the landlord. The parties have confirmed that this was a verbal tenancy agreement, and a written agreement does not exist. Therefore, the Tribunal must assume the verbal agreement incorporates the usual repair obligations.

22. Based upon the evidence provided to the Tribunal it considered that that the rent should be reduced by **£156** (50%) to reflect the need for internal refurbishment and a lack of white goods and carpets provided by the Landlord, lack of central heating, the majority are rot infested single glazed windows and the tenants repairs. The Tribunal's deduction reduces the rent to a figure of **£156** per week. It should be noted that this figure cannot be a simple arithmetical calculation and is not based upon capital costs but is the Tribunal's estimate of the amount by which the rent would need to be reduced to attract a tenant.

23. Therefore, the Tribunal determines the market rent in accordance with Section 13(4) of the Act to be **£156** per week.

24. The Tribunal received no evidence of hardship from the tenant and, therefore, the rent determined by the Tribunal is to take effect from **25 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 should be made on Form RP PTA available at https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber

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. Please note that if you are seeking permission to appeal against a decision made by the Tribunal under the Rent Act 1977, the Housing Act 1988 or the Local Government and Housing Act 1989, this can only be on a point of law.

If the First-tier Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).