



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

Case Reference : MAN/00CJ/MNR/2023/0263

Property : 18 Carlton Terrace
Newcastle upon Tyne
NE2 4PD

Applicant : Joseph Stuart Teasdale and
Luke Richard Wiltshire

Respondent : Jonathan Shepherd and Meryl Shepherd

Represented By : Mike Rogerson Estate Agents

Type of Application : Housing Act 1988 Section 14 (the “Act”)

Tribunal Members : I Jefferson
K Usher

Date of determination : 18 September 2023

REASONS

Decision

1. The Market Rent for the Property is £2,400.00 per calendar month.

Background

2. The Applicant, the Tenant of the property, referred to the Tribunal by Application (the Application) notice of increase in rent (the Notice) by the Landlord of the property under Section 13 of the Housing Act 1988. In fact there appear to be two Notices. The first dated 29 June 2023 proposing a new rent of £2,500 pcm in place of the existing rent stated to be £2,225 pcm, with a start date for the new rent of 5 January 2024. This Notice was received by and put forward in written representations by the Applicant.
The Landlord's Representative furnished by way of written representations a slightly different Notice of even date. The difference was that at paragraph 2 of the Notice the correct existing rent of £2,250 pcm was shown. All other details remained as the other Notice.
3. The Applicants raised this discrepancy stating that they considered the Notice which they had received to be invalid. It was a matter of dispute as to whether the amended second Notice was received by the Applicant.

Inspection

4. The Parties were notified that the Tribunal would consider the matter on 18 September 2023. The Tenant requested a Hearing and in the event both parties attended. The Parties were notified that the Tribunal would like to undertake an internal inspection which was carried out in the presence of both Mr Teasdale and Mr Wiltshire. Neither the Landlord nor their Representative attended.
5. The property is a large mid-terrace house within a terrace which has two street names, namely Jesmond Road West and Carlton Terrace. Originally built around 1850 or so, probably originally as houses, later most converted to commercial office use, but in the last 15 years or so the vast majority have now been converted back to residential use. Each property is substantial, generally on 3 or 4 floor levels, some are thought to be owner occupied, others let out. Each property comprises brick elevations with stone detailing, generally sash windows, all under pitched slate roofs. Jesmond is a sought after residential suburb close to the City Centre.
6. The internal accommodation comprises entrance hall to upper ground floor level, mainly comprising 2 large reception rooms. At basement level there is a large well fitted out kitchen, open to a further large reception room with French windows to rear block paved courtyard. WC and utility to offshoot. At first floor master bedroom with en-suite, and bedroom 2. Second floor comprises three further bedrooms, two double, one single, and en-suite. Third floor comprises large attic bedroom 6 plus en-suite. Heating is by way of gas fired boiler to radiators throughout. Externally small front garden, rear courtyard to rear lane.
7. The Tenant raised various matters during the inspection namely many radiators did not function satisfactorily or at all, the fireplaces were not working fireplaces, the glazing particularly to the front elevation single glazed (note

conservation area) hence drafty, and that the Landlord was recalcitrant in undertaking repairs.

8. The Tribunal convened to hear this case at Newcastle Civil Courts and Tribunal Centre later in the day following inspection. Both Tenants appeared in person. Ms Kashka Morgan of Mike Rogerson, Estate Agents and Letting Agents represented the Landlord.

9. After a preliminary introduction by the Chairman the Parties were invited to address the Applicants preliminary issue concerning the validity of the Notice, or Notices, of even date. The Applicant contended that the error in stating that the current was £2,225 pcm rather than £2,250 pcm was fatal. The Landlord considered otherwise.

The Chairman outlined the case of *Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd* [1997] A.C. 749 to the Hearing and summed up stating that the reasonable recipient test applied. Should the Notice have incorrectly stated the proposed new rent, or the start date, or either the first, second, or third requirements set out at paragraphs 15, 16 or 18 of the Guidance Notes to the statutory Notice had not been complied with, and indeed some other possible errors then the Notice might indeed have been defective. However, the names of the Tenants were correct, the property address was correct, the proposed rent was clear, the start date of that rent clear and the Guidance Notes had been included and it was considered that the incorrect current rent stated was not fatal.

In any event the request by the Applicant for the Tribunal to consider the validity of the Notice was otiose for the following reason.

The Tenant did not reveal to the Tribunal during the inspection that they had received a further Notice. This was only revealed part way through the Hearing by the Tenant, and confirmed by the Landlord, that a further Notice had been served dated 30 August 2023, correcting the initial error, and that the validity of this Notice was not disputed by the Applicant. The effective start date was deferred in the new Notice to 5 March 2024.

Thus, the new Notice superseded the previous Notices, and the validity argument fell away. Having dispensed with this preliminary point the Tribunal then invited each party to put forward any evidence in respect of rental value, together with any other representations they wished to make to the Tribunal.

10. The Tenant wished to put forward a new piece of evidence relating to the asking rent for a property in St Mary's Terrace, close to the subject street. The Tribunal asked the Landlord whether they had any objection, they did not, and the Tribunal allowed this new evidence to be submitted.

The evidence consisted of the letting particulars from Rightmove by Sarah Mains, Letting Agent in Jesmond for a five Bedroom, four Bathroom Terraced House.

The Tribunal had viewed externally the St Mary's Terrace as part of their inspection. This street is the return of the main terrace and comprises four or five similar terraced properties. The one which is the subject of this new letting lies roughly in the middle, with the two on either side either fully commercial or part commercial, and the end terrace property was noted to be boarded up to the ground floor with an over grown front garden and appeared to have been in this state for some considerable time.

Jesmond Road West and Carlton Terrace are a relatively quiet street, a no-through road, with parking on one side. In contrast St Mary's Terrace is a busy pedestrian thoroughfare from Jesmond into the centre of Newcastle and the University. It also overlooks a dual carriageway, although set in a cutting. One advantage however the St Mary's property has over the subject property is off-street parking. The asking rent detailed in the particulars was £2,500pcm, the Applicant stated that he had contacted the agent who stated it had been let at a figure below the asking rent, but no independent evidence of the actual figure achieved was put forward. The Applicant stated that in their opinion it was superior to their own rented house. Having considered the extensive internal photographs of the Letting Particulars the Tribunal did not consider the internal appointment to be superior in any way to the subject property, indeed the appointment of the subject property is considered to be of a better standard, but were prepared to accept that a letting was achieved at a figure below the asking rent.

11. The Applicant set out the history of the marketing of the subject property. Namely it was listed at £2,500pcm and that the Landlord required a minimum 12 month tenancy fully furnished. They counter offered a lower figure and eventually the parties agreed £2,250pcm.
12. The parties did not agree on the condition of the property. The Applicant held that there were various defects as detailed earlier in this Decision, the Agents held that the property was in satisfactory order throughout, or if not repairs were effected on behalf of the Landlord, and that the Applicant had not thought to express their wish that the fireplaces should be working fireplaces prior to signing the Tenancy Agreement.
13. The Applicant held that the Landlord's Notice requiring an uplift in rent of £250pcm was unfair, unrealistic, and well above CPI. The Tribunal asked the Applicant what they considered a CPI uplift in rent would result in. The Tenant undertook a calculation and stated that CPI over the period was 8.9% uplift giving a new rent of £2,450pcm.
The Landlord detailed the previous rents at the property namely it had been rented out at £2,750pcm with effect from January 2022 and that both the passing rent and the proposed enhanced rent were both realistic and fair. The Applicant countered that the previous letting had been for 6 months only, during the summer, and there were no heating issues.
14. No other rental evidence was advanced by either of the parties (save the St Mary's Terrace rental already detailed above as advanced by the Applicant).
15. The Tribunal invited the Applicant to sum up. In so doing the Applicant stated that repairs were not done, there were various ongoing issues particularly in respect of radiators, other prospective tenants had offered only £2,000pcm, it was not an HMO and therefore enhanced rental was not relevant. The Tribunal queried how many properties the Applicant believed were HMOs and were informed only three out of around 30 similar properties in the street were HMOs.

The Law

16. The Tribunal first had to determine that the Tribunal had jurisdiction to hear the Application by reference to the correct form of notice to initiate the procedure to permit referral to the Tribunal so that the Tribunal had to determine that the landlord's notice under Section 13 (2) satisfied the requirements of that section and was validly served.
17. The Act provides in section 13(2) as amended by the Regulatory Reform (Assured Periodic Tenancies) (Rent Increases) Order 2003 that the date in paragraph 4 of the Landlord's notice (the date the new rent becomes payable) must comply with three requirements.
18. The first requirement is that a minimum period of notice must be given before the proposed new rent can take effect. That period in this case is one month.
19. The second requirement is that the starting date must not be less than 52 weeks after the date on which the rent was last increased using this procedure. (There are exceptions to this but they do not apply in this case.)
20. The third requirement is that the proposed new rent must start at the beginning of a period of the tenancy (see paragraph number 17 of the Guidance Notes forming part of the prescribed form of the Landlord's Notice).
21. Section 14 of the Act requires the Tribunal to determine the rent at which it considered the subject property might reasonably be expected to be let on the open market by a willing Landlord under an Assured Tenancy in so doing the Tribunal is required by Section 14 (1) to ignore the effect on the rental value of the property of any relevant tenants' improvements as defined in Section 14 (2) of the Act.
22. Only if a landlord's notice complies with each of the requirements referred to above does a Tribunal have jurisdiction to determine a rent under section 14 of the Act.

The Tribunal's Decision

23. The Tribunal found the following facts:
 - i) the Tenant held the property under a periodic tenancy that commenced 5 January 2023 at an agreed rent of £2,250pcm. A copy of the Tenancy Agreement was provided to the Tribunal.
 - ii) the Tribunal were not made aware of any significant relevant tenants improvements. Any furnishings installed by the Tenant were ignored in arriving at the rental value

- iii) there was no evidence to suggest that the Tenants had required working fireplaces prior to signing the Tenancy Agreement nor that the Landlords had held out that the fireplaces were in working order
- iv) there were various maintenance issues, particularly in respect of the central heating, which were being addressed by the Landlord's Agent, as were any other reported defects
- v) the Tenants preliminary issue regarding the validity of the original Notice or Notices was otiose and the revised Notice submitted part way through the Hearing by both Parties dated 30 August 2023 superseded any earlier Notices. The Tenant accepted the validity of the more recent Notice.

24. The appropriate procedure to initiate a proposed new rent in this matter is that set out in Section 13 of the Act. It was not disputed that by the date of the proposed increase 52 weeks would have elapsed; that minimum notice of increase had been given; that the date for commencement of the new rent proposed by the landlord was the start of a new period of the tenancy; and in addition that the tenant had received the Guidance Notes forming part of the Notice. The Tribunal determined that the landlord's Notice dated 30 August 2023 satisfied the requirements of Section 13 (2) and there was no argument as to the validity of its service.
25. The Tribunal had regard to the comparable evidence put forward by the Tenant, and in addition the Tribunal used its own knowledge and experience of market rent levels for similar properties in the Jesmond and Central Newcastle area, but without any specific or secret evidence.
26. The Tribunal therefore determined a Market Rent assuming the property to be in reasonable order of £2,500pcm. This figure assumes a non-HMO letting. This headline figure was adjusted to reflect the inadequacy of the central heating, and various other minor defects, together with the single glazed windows to the front elevation owing to the listed/conservation area status reducing the rental figure to a Market Rent of £2,400pcm.
27. No relevant evidence was before the Tribunal in relation to Section 14 (7) whether undue hardship would be caused to the tenant by the new rent being payable from 5 March 2024, the date specified in the Landlord's Notice. In the circumstances the Tribunal determined a new rent of £2,400pcm payable from 5 March 2024.