



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

Case Reference : MAN/00CJ/MNR/2023/0186

Property : 7A Tankerville Place
Jesmond Newcastle upon Tyne
NE2 3AT

Applicant : Miss Lois Fleetwood

Respondent : Mr Leigh Dobson

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

Tribunal Members : Tribunal Judge W L Brown
Mr C Snowball MRICS

Date of determination : 18 July 2023

REASONS

Decision

1. The Market Rent for the Property is £695.00 per calendar month, effective from 4 July 2023

Background

2. The Applicant, the Tenant of the Property, referred to the Tribunal by Application dated 22 May 2023 (the Application) notice of increase in rent (the Notice) by the Landlord of the property under Section 13 of the Housing Act 1988.
3. The Notice is dated 11 May 2023 and proposed a new rent of £850.00 per calendar month (pcm) instead of the existing rent of £650.00 pcm. It was proposed that the new rent take effect from 4 July 2023.

Inspection

4. The Parties were notified that the Tribunal would consider the matter on 18 July 2023. Neither party requested a Hearing. The Tribunal undertook an internal and external inspection of the Property on 18 July 2023, in the presence of the parties and the Applicant's Partner.
5. The Property is a first floor flat within a 1900s mid-terraced premises, comprising living room, kitchen, 1 double bedroom and bathroom. It has use of the small front and side gardens. According to the application, it is let unfurnished.

Evidence

6. In the papers the Applicant raised issues concerning the interior of the Property, complaining of extensive mould affecting walls. She alleged that the Respondent Landlord had made an allowance to her for only one pot of paint. She alleged that she had been buying "*....up to 20 dehumidifiers per month....*" and had replaced "*....the furniture on three occasions.*" In addition, she reported "*The landlord instructed a commercial cleaner to clean some of the mould from the lounge, the commercial cleaner subsequently painted and damaged the walls further as well as an excess of £1,500 of our personal property. The landlord has refused to pay for this....*"
7. The Applicant presented an Improvement Notice from Newcastle City Council to the owner of the Property, dated 12 May 2023 regarding Category 1 and Category 2 hazards posing "*....unacceptable health and safety risks to the occupants and visitors.*" The Category 1 hazard concerned inadequate heating, from convector heaters; the Category 2 hazard concerned damp and mould growth throughout the Property.
8. The tenant proposed a reduction in the rent to "£600 or less", to reflect the cost of the repairs she and her Partner had carried out. As to levels of market rent,

she provided a schedule of rental evidence taken from recent listings, as follows (with Tribunal comments on the first and second):

7B Tankerville Place, Jesmond – 1 Bedroom flat with 1 bathroom, 1 living room, 1 kitchen, no garden. £675. It is unknown whether this rental is furnished or unfurnished, nor when the rent was first agreed.

7D Tankerville Place, Jesmond – 1 Bedroom flat with 1 bathroom, 1 living room, 1 kitchen, no garden. £675. It is unknown whether this rental is furnished or unfurnished, nor when the rent was first agreed.

St Georges Terrace, Jesmond – 1 Bedroom flat with a bathroom, kitchen and living area. Shared garden. Furnished. £595 pcm.

Eskdale Terrace, Jesmond – 1 Bedroom flat with 1 bathroom, 1 kitchen and a living space. No Garden. Furnished. £695 pcm.

Portland Mews, Jesmond – 1 Bedroom flat with 1 bathroom, 1 kitchen and a living space. No Garden. Furnished. £700 pcm.

Otterburn Terrace, Jesmond – 1 Bedroom flat with 1 bathroom, 1 kitchen and a living space. No Garden. Furnished. £725 pcm.

Lambton Road, Jesmond – 1 Bedroom flat with 1 bathroom, 1 kitchen and a living space. Garden included. Furnished. £875 pcm.

Glenthorn Road, Jesmond - 2 Bedroom flat with 1 bathroom, 1 kitchen and a living space. Garden included. Furnished. £950 pcm.

Jesmond Place, Jesmond – 2 Bedrooms flat with 1 bathroom, 1 kitchen and a living space. No garden. Unfurnished. £885 pcm.

Jesmond Park East, Jesmond - 2 Bedrooms flat with 1 bathroom, 1 kitchen and living space. No Garden. Unfurnished. £875 pcm.

9. It was not clear to the Tribunal whether this evidence was of asking, or achieved rents. The schedule included a further four properties whose accommodation is shared. The Tribunal attached no weight to this evidence, as the Tribunal considered that shared accommodation attracts a different sector of the market and the four properties consequently showed lower rentals of between £320 and £520 pcm. (Note that the same comment does not apply to shared gardens).
10. The Landlord stated that the Property had been let at £750pcm in 2019. He presented as evidence of comparable rents an email dated 11 May 2023 from Mr J Moore, Valuer and Negotiator of Bowson Property, a local lettings agency. It recorded *“Based on my findings from Rightmove, I have examined several similar properties within the vicinity, taking into consideration various factors such as size, location, amenities, and condition. Taking all these aspects into account, I have estimated that the rental value of your property falls within the range of £895 to £995 per calendar month (pcm).*

Please note that the lower end of the range (£895 pcm) reflects the pricing of comparable properties in the same area that offer similar features and amenities. Meanwhile, the higher end of the range (£995 pcm) represents the upper limit, which considers any unique advantages or exceptional characteristics your property may possess.

I would like to emphasize that these figures are based on the data available on Rightmove and other relevant sources. However, it is important to consider that market conditions and tenant demand can fluctuate over time, impacting the final rental value.”

11. A print out of a property search on Rightmove was provided , which included the following evidence of asking rentals:

Eskdale Terrace, Jesmond – 1 bedroom flat in period property, with open plan reception, modern kitchen, study room, communal garden. Furnished. £1,200 pcm. Marketed for 38 days February to March 2023.

Jesmond – 1 bedroom flat with parking, available furnished or unfurnished £950 pcm. Marketed for 44 days June to August 2022.

Osbourne Avenue, Jesmond – 1 bedroom flat with refurbished bathroom. Currently available furnished at £950 pcm.

Clayton Road, Jesmond – 1 bedroom maisonette, furnished £950 pcm. Marketed for 34 days January to February 2023.

Tankerville Terrace, Jesmond – 1 bedroom flat in period property £950 pcm. Marketed for 5 days July 2022.

Tankerville Terrace, Jesmond – 1 bedroom ground floor flat in period property £925 pcm. Marketed for 33 days January to February 2023 and also currently on the market at same rental since April 2023.

Osbourne Avenue, Jesmond – 1 bedroom flat in period mid terraced property. Modern kitchen. £850 pcm. Marketed for 454 days February 2022 to (assumed) May 2023

12. In addition, the Landlord alleged that the Tenant had denied access for inspection, had not complained promptly about mould, that he was appealing the Improvement Notice and the Tenant had contributed to mould growth by not ventilating the Property appropriately.

The Law

13. 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.

14. 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.
15. 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.
16. 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.)
17. 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).
18. 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.
19. 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

20. The Tribunal found the following facts:

- i) the Tenant held the property under a fixed term assured shorthold tenancy from 4 June 2020 to 3 June 2021 and thereafter continuing as a statutory monthly periodic tenancy. The prevailing rent is £650pcm, which was effective from commencement of the tenancy;
- ii) the Tribunal was informed of the following tenant improvements – stripping of walls and painting with mould retardant paint;
- iii) the heating system at the Property comprised electric panel radiators in the living room and bedroom, which are defective. There is no heating in the kitchen or bathroom. There is one small electric panel radiator in the hallway. In addition, the immersion heater in the hot water cylinder is defective, providing almost no hot water supply. There is an extractor in the bathroom, but the vent in the kitchen has been covered during the fitting of the new kitchen units;
- iv) the Property is affected by the presence of extensive mould growth to many walls, ceilings and skirtings, with areas of bare plaster;

v) the Property is in a poor state of decoration.

21. 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 it was more than 52 weeks since the last rent increase; 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 satisfied the requirements of Section 13 (2) and there was no argument as to the validity of its service.
22. The Tribunal had regard to the comparable evidence put forward by the parties, and in addition the Tribunal used its own knowledge and experience of market rent levels for similar properties in the Newcastle upon Tyne area, but without any specific or secret evidence.
23. The Tribunal had been provided with a large amount of somewhat conflicting comparable evidence, and has attached more or less weight as follows:
 - (i) From the Applicant - As noted in paragraph 9 above, the Tribunal has not attributed any weight to the rental evidence of the shared accommodation. It also found the lettings of 7B and 7D Tankerville Terrace to be of limited assistance, as it is not known when these rents of £675 were first agreed.

Rental evidence for the three 2 bedroom flats showed a range of £875-£950 pcm, however, being 2 bedroomed, these properties are less comparable to the subject property.

Of the five remaining comparables for 1 bedroom flats, they suggest asking rentals ranging from £595 to £875 pcm, with the majority being around £700/£725 pcm, with all being furnished lettings.

- (ii) From the Respondent - these comparables are all 1 bedroom, mainly furnished, flats and show consistency of rentals around £925 - £950 pcm, which is also consistent with the stated rental expectations of the Respondent's agent of between £895 and £995 pcm.

The rental of the 1 bedroom property in Osbourne Avenue at £850 pcm appears to date from February 2022 and the Tribunal afforded it less weight.

The letting of the 1 bedroom flat in Eskdale Terrace off an asking rent of £1,200 pcm in February/March 2023, is inconsistent with the remainder of the evidence and without further detail of the specification of the property, the Tribunal also gave it less weight.

24. Having considered all the evidence detailed above, and using its own knowledge and experience, the Tribunal determined a Market Rent of 925.00 pcm, assuming the property to be in good order, with an efficient and operable system of heating and hot water. It was determined that it is appropriate to

make adjustments to this rental figure and a 10% deduction was made for inadequate heating and hot water and a further allowance of 15% for the poor state of the internal decorations and extensive mould - total adjustment of £231.25pcm, making a rent determined of £693.75, rounded to £695.00.

25. 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 4 July 2023, the date specified in the landlord's Notice. In the circumstances the Tribunal determined a new rent of £695.00pcm payable from 4 July 2023.

Tribunal Judge Leslie Brown