



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

Case Reference : BIR/00CN/MNR/2021/0005

Property : 7 Maybank, Birmingham B9 5FF

Tenant : Mrs R Abdelgadir

Landlord : Mrs S Sultana

Type of Application : An Application under section 13 of the Housing Act 1988 that refers a notice proposing a new rent under an assured periodic tenancy to the Tribunal.

Tribunal Members : Judge David R. Salter (Chairman)
Mr I Humphries FRICS

Date of Decision : 9 June 2021

Date Reasons Issued : 3 August 2021

REASONS FOR DECISION

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Introduction

- 1 In an application to the First-tier Tribunal (Property Chamber) ('the Tribunal') under section 13(4) of the Housing Act 1988 (the Act) dated 16 February 2021, the Tenant referred a notice from the Landlord proposing an increase in rent to the Tribunal.
- 2 The Landlord's notice, which was dated 21 January 2021 and in the prescribed form, proposed a rent of £670.00 per calendar month with effect from 21 February 2021 in place of the current rent of £580.00 per calendar month.
- 3 Initially, the Tenant occupied the Property under the terms of successive assured shorthold tenancies dated 21 March 2011 for a term of six months and 21 December 2017 for a term of twelve months. The rent payable was £550.00 per calendar month and £580.00 per calendar month respectively. The agreements were, otherwise, in the common form with, in particular, the Landlord responsible for maintaining and repairing the Property and the Tenant responsible for keeping the interior of the Property in a 'good and tenant-like repair and condition'.
- 4 By Directions dated 19 February 2021, each of the parties was instructed, *inter alia*, to complete and return to the Tribunal on or before specified dates the reply form attached to the Directions giving details of the Property together with any further comments either party may wish the Tribunal to consider in making its determination. In the latter respect, the Directions informed the Landlord that such comments may include details of any rentals of similar properties upon which reliance may be placed and photographs; whilst, the Tenant was directed that such comments may include 'any comments you wish to make about the condition of the property or any improvements or alterations you have made and when you made them, in addition to those already provided', the details of any rentals of similar properties upon which reliance may be placed and photographs. The Directions afforded the Landlord the opportunity to provide a brief response to any points raised by the Applicant with a copy of any such response to be sent to the Tribunal. Further, the Directions advised that whenever a letter or e-mail was sent to the Tribunal by either party a copy should be sent to the other party and a note of this made on the letter or e-mail.
- 5 The Directions also indicated that, in view of Public Health England's advice prevailing at the time, namely to avoid unnecessary travel and social interaction, it was not the intention of the Tribunal to hold an oral hearing or to inspect the Property. Nevertheless, it was open to either party to request a remote hearing; any such request should be made to the Tribunal, with a copy to the other party, within 14 days of the date of the Directions and noted on the reply form. The Directions added that, in the event of a request being made for an oral hearing, the hearing would be conducted, in light of the situation that was current at the time of the Directions, by way of a video hearing.
- 6 In furtherance of the application and in accordance with the Directions, the Landlord submitted to the Tribunal a statement of case dated 9 March 2021 together with a duly completed reply form. The statement of case was accompanied by estate agents' particulars upon which the Landlord relied as evidence of 'the fair market rental value of my property in the rental market'.
- 7 Similarly, the Tenant duly completed a reply form as requested by the Directions. In so doing, she alluded to what she regarded as unacceptable aspects of the state and condition of the Property and presented various photographs of the interior of the Property in support of those comments.

Thereafter, the Landlord submitted a letter dated 11 March 2021 to the Tribunal headed 'Landlord Reply', that sought, *inter alia*, to address the matters relating to the Property that had been raised by the Tenant in her reply form; a letter that was compiled by the Landlord following a visit to the Property on 10 March 2021. This letter included inset photographs of the interior and exterior of the Property.

- 8 In her reply form, the Tenant requested a hearing in the knowledge that such hearing would be conducted by telephone (the practice at that time). As a consequence, a telephone hearing was scheduled for 21 April 2021. Immediately prior to the commencement of that hearing, the Tenant informed the Tribunal that she could not proceed without an interpreter. It was impossible to secure the services of an interpreter at such short notice, and, accordingly, with the consent of the parties, the hearing did not take place.

In the light of this experience, it was determined, with the agreement of the parties, that a virtual rather than a telephone hearing should be arranged and that an interpreter would be appointed for the benefit of the Tenant and be present during that hearing. Such hearing was scheduled for 17 May 2021. On this occasion, the Tenant was unable to 'join' the hearing despite numerous attempts. From time to time, she could be seen, but not heard and, moreover, she indicated that she could not hear what was being said. Ultimately, the Tribunal decided to abort the hearing.

Finally, it was agreed, in accordance with changed practice in relation to the conduct of hearings, that a face-to-face hearing would be arranged, and that, as with the virtual hearing, an interpreter would be appointed for the benefit of the Tenant and would be present at the hearing. This hearing was set for 9 June 2021. In the event, the Tenant did not attend and gave no explanation for her failure to attend. In this circumstance, the Tribunal proceeded to hear the Landlord's submission.

- 9 In light of the above, the Tribunal determines the application taking into account the totality of the evidence, oral, written and visual, submitted by the parties, without an inspection of the Property, and relying upon its knowledge and experience as an expert tribunal.
- 10 Following the issue of its decision to the parties, the Tenant requested this statement of reasons.

The Property

- 11 From the evidence presented by the parties, the Tribunal gleaned the following.
- 12 The property is a semi-detached house situated in an inner City residential area and in close proximity to the Heartlands Hospital. The accommodation comprises a living room, a small cloakroom/storeroom and a kitchen on the ground floor. On the first floor, there are two double bedrooms and a bathroom with WC. There are gardens to the front and rear. The Property has a garage and off-street parking is available.
- 13 The Property has the benefit of double glazing, full gas fired central heating, mains gas, water, electricity and drainage.
- 14 The Landlord has provided carpets and curtains and white goods (including a freezer and fridge) together with some furniture and beds (although, the precise nature and extent of such provision cannot, in the absence of an inventory, be ascertained). Washing machines have also been provided by the Landlord, but the washing machine at the Property, presently, was installed by the Tenant.
- 15 The Tenant has not carried out any improvements.

Relevant Law

- 16 Under Section 14 of the Act, the Tribunal has jurisdiction to determine the rent following a referral to the Tribunal under section 13 of the Act. Section 14(1) provides that:

‘...the Tribunal shall determine the rent at which, subject to subsections (2) and (4) below, the Tribunal considers that the dwelling-house concerned might reasonably be expected to be let in the open market by a willing landlord under an assured tenancy –

- (a) which is a periodic tenancy 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 tenancy to which the notice relates;
- (d)...’

- 17 Further, section 14(2) provides:

‘In making a determination under this section, there shall be disregarded –

- (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 carried out by a person who at the time it was carried out was the tenant, if the improvement –
 - (i) was carried out otherwise than in pursuance of an obligation to his immediate landlord, or
 - (ii) was carried out pursuant to an obligation to his immediate landlord being an obligation which did not relate to the specific improvement concerned but arose by reference to consent given to the carrying out of that improvement; and
- (c) any reduction in the value of the dwelling-house attributable to the failure by the tenant to comply with any terms of the tenancy.’

- 18 For the purposes of section 14, section 14(4) specifies that:

‘... “rent” does not include any service charge, within the meaning of section 18 of the Landlord and Tenant Act 1985, but, subject to that, includes any sums payable by the tenant to the landlord on account of the use of furniture...or for any of the matters referred to in subsection (1)(a) of that section, whether or not those sums are separate from the sums payable for the occupation of the dwelling-house concerned or are payable under separate agreements.’

Submissions of the Parties

Tenant

- 19 The Tenant set out her concerns about aspects of the condition of the Property in the reply form and these were supported, where appropriate, with photographs. More specifically, these concerns related to the matters that were germane to the living room, kitchen and bathroom respectively. In relation to the living room, the Tenant informed the Tribunal that the heater is defective (especially, when used in the Winter), whilst in the kitchen the ‘ventilator’ and the light switch situated above the cooker are not working, many of the door handles on the fitted cupboards and drawers are broken and ‘come off easily’, and there is damage to parts of the skirting board and some of the floor covering. Further, there is marking on the ceiling in the kitchen which is evidence of water leaking

from the bathroom. The leaks in the bathroom may be attributed to the toilet and/or bath. The bath is damaged and the sealant surrounding the sink is detached from it, although neither of these matters appears to account for the leaks. In addition, the Tenant stated that there is no smoke alarm in the Property.

- 20 The Tenant also indicated that she had installed a washing machine in the kitchen in place of a washing machine provided by the Landlord.

Landlord

- 21 The essence of the Landlord's case is to be found in her statement of case and her response in the Landlord Reply to the reply form completed by the Tenant, as supplemented, in each instance, by her oral evidence presented at the hearing on 9 June 2021.

- 22 The Landlord explained that the Property was professionally cleaned and, otherwise, in very good condition prior to the Tenant moving into the Property in 2011. In addition, the Property was part furnished – this included beds, wardrobes, chest of drawers, a fridge freezer and a washing machine. Further, the Landlord stated that throughout the Tenant's subsequent tenure she had received no complaints from the Tenant until the Tenant decided to make the present application to the Tribunal.

- 23 The Landlord also informed the Tribunal that this was first increase in rent she had sought since 2017 when the rent had been increased from £550.00 per calendar month to £580.00 per calendar month. Moreover, the Landlord indicated that she had settled on £670.00 per calendar month after taking into account the fact that the Tenant had been a tenant for a while, and notwithstanding her belief based on the views of several estate agents that this figure was lower than rents for 'other properties in the area of this size, type and condition'. The prospect of such an increase in rent had been mooted, initially, with the Tenant in November 2020 at which time the Tenant said that 'she could not afford to pay any increase at all'.

- 24 In an attachment to her statement of case, the Landlord referred the Tribunal to estate agents' particulars (sourced through Zoopla) relating to several properties which, in her opinion, might assist the Tribunal in its assessment of the market rent of the Property and that are situate within a 1-2 mile radius of the Property . However, in this respect, she conceded in her written evidence and affirmed at the face-to-face hearing that '[T]here is nothing available at all in the immediate area/postcode and those within the similar price range are small terraced houses in less affluent areas'. The particulars adduced in evidence related to the following properties:

Alum Rock Road, Birmingham B8: Flat, 2 bedrooms, available to let at £600.00 per calendar month;

Kenelm Road, Birmingham B10: terraced house, 2 bedrooms, available to let at £800.00 per calendar month;

Cobham Road, Birmingham B9: terraced house, 2 bedrooms, available to let at £650.00 per calendar month; and

Cobham Road, Birmingham, B9: detached house, 2 bedrooms, available to let at £650.00 per calendar month.

When questioned by the Tribunal during the face-to-face hearing the landlord was unable to offer any evidence as to the condition of these properties and she did not know

whether these properties or any of them had been let and, if so, whether they had been let at the rents cited in these particulars.

- 25 As to the specific matters relating to the condition of the Property which had been raised by the Tenant in her reply form, the pertinent comments of the Landlord following a visit to the Property and recited in the Landlord Reply may be summarised as follows:

Living room

The Landlord indicated that she did not understand the Tenant's comment about the heating in this room and that she did not have any recollection of this being raised previously.

Kitchen

Extractor fan

The Landlord said that this had been damaged and not been properly maintained. She had not been made aware of this by the Tenant. It would need to be replaced.

Cupboard and drawer handles

The Landlord stated that none of the handles are broken, but she accepted that some are loose or detached. She had not been aware of this by the Tenant. The Landlord suggested that this circumstance had been brought about by either wear and tear or through use by the Tenant.

Laminate floor panels

The Landlord accepted that some laminate floor panels have 'come off', but she had not been made aware of this by the Tenant.

Watermark on the ceiling

The Landlord accepted that there was a watermark on the ceiling that it would have to be repainted.

Washing machine

The Landlord indicated that the Tenant had removed a washing machine that she had provided and replaced it with the washing machine that was, presently, at the Property. The Landlord opined that this machine does not fit in the space provided for a washing machine and, as a consequence, she believed that it would have been necessary in order to accommodate it for the Tenant to remove skirting board from the wall. It was also conceivable that damage had been caused to the laminate flooring when it was fitted.

Bathroom

Bath/toilet leaks

The Landlord acknowledged that there had been leaks from the bath. These had been investigated by plumbers on a number of occasions. The plumbers had concluded that there was an issue with the silicone around the bath leading to the egress of water and, in all probability, the corresponding leak into the kitchen. This silicone would have to be replaced. The Landlord added that she had repaired a previous leak from the toilet.

Damage to the bath

The Landlord intimated that any damage to the bath was not attributable to wear and tear but to the Tenant.

Silicone seal around the sink

The Landlord acknowledged that the silicone around the sink is 'worn' and indicated that this would be dealt with. However, she pointed out that, again, this was not a matter of which she had previously been made aware by the Tenant.

The Landlord added that the smoke alarm system at the Property was hard wired, and whilst it would appear that there is a fault, but this had only been drawn to her attention by the Tenant recently.

- 26 On 31 March 2021, the Landlord sent an e-mail to the Tribunal together with various photographs that showed 'some recent work that was completed this week' at the Property. The Landlord stated in the e-mail that this work comprised a new bath unit and fittings to resolve the leak and damaged bath panel, resealing the sink basin, new kitchen extractor fan, repair of kitchen unit door handles, replacement of window levers and skirting repair.

The Tribunal's Determination

- 27 In accordance with section 14 of the Act (see above, paragraphs 16-18), the Tribunal may proceed to determine the rent at which it considers the Property might reasonably be expected to let on the open market by a willing landlord under an assured tenancy. The personal circumstances of the Tenant are not relevant to the determination of this issue.
- 28 In so doing, the Tribunal determines, objectively, what rent the Landlord could reasonably be expected to obtain for the Property in the open market if it were let on the terms and in the condition that is considered usual for such an open market letting. In this respect, the Tribunal relies on its own knowledge of general rents for this type of property, assisted to a very limited extent by the indeterminate particulars and minimal information relating to properties in the rental market which were presented in evidence by the Landlord, and determines that such rent should be £670.00 per calendar month.
- 29 As to the condition of the Property, the Tribunal is grateful to the Tenant for raising, in this respect, the concerns set out in her reply form but, whilst acknowledging their relevance to the application, the Tribunal is not persuaded that those concerns, which were defined, predominantly, by reference to user of the Property, were sufficiently material to warrant any downward adjustment to the above-mentioned figure.
- 30 Consequently, the Tribunal acting in its capacity as an expert tribunal and relying, principally, on its knowledge and experience of the relevant property market reiterates that the market rent for the Property is £670.00 per calendar month.
- 31 The rent will take effect from 21 February 2021 which is the date specified in the Landlord's notice of increase.

Judge David R. Salter

Date: 3 August 2021

Appeal to the Upper Tribunal

- 32 If any party is dissatisfied with this statement of reasons they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such appeal must be received within 28 days after these written reasons have been sent to the parties (Rule 52 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).
- 33 If the party wishing to appeal does not comply with the 28-day time limit, the party shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
- 34 The application for permission to appeal must identify the decision to which it relates, state the grounds of appeal and state the result the party making the application is seeking.