



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

Case Reference : **CAM/22UD/MNR/2021/0041**

Property : **5 Deans Court, Deans Road, Warley,
Brentwood,
Essex CM14 5DX**

Applicant (Tenant) : **Mr Sean O’Sullivan**

**Respondent (Landlord):
Representative** : **Mr Duncan Ferreira
Concentric Sales & Lettings**

Type of Application : **Determination of a market rent under
Section 13 of the Housing Act 1988**

Tribunal Members : **Judge JR Morris
Mr D Barnden MRICS**

Date of Original Decision: **23rd August 2021
(Issued 8th September 2021)**

Date of Application : **6th October 2021**

Date of Decision : **8th October 2021**

DECISION

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Decision of the Tribunal

1. The Tribunal has decided not to review its Decision and refuses permission to appeal to the Upper Tribunal because it is of the opinion that there is no realistic prospect of a successful appeal against its Decision in respect of any of the Grounds of the Application.
2. In accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007 and Rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the applicant / respondent may make further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission to appeal. Where possible, you should send your application for permission to

appeal **by email** to Lands@justice.gov.uk, as this will enable the Upper Tribunal (Lands Chamber) to deal with it more efficiently.

3. Alternatively, the Upper Tribunal (Lands Chamber) may be contacted at: 5th Floor, Rolls Building, 7 Rolls Buildings, Fetter Lane, London EC4A 1NL (tel: 020 7612 9710).

Reason for the Decision

4. The reason for the decision is that the Tribunal had considered and taken into account all of the points now raised by the Applicant, when reaching its original decision.
5. The original Tribunal's decision was based on the evidence before it and the applicant has raised no legal arguments in support of the application for permission to appeal.
6. For the benefit of the parties and of the Upper Tribunal (Lands Chamber) (assuming that further application for permission to appeal is made), the Tribunal has set out its comments on the specific points raised by the applicant in the application for permission to appeal, in the appendix attached.

Judge J R Morris

APPENDIX TO THE DECISION
REFUSING PERMISSION TO APPEAL

For the benefit of the parties and of the Upper Tribunal (Lands Chamber), the Tribunal records below its comments on the grounds of appeal. References in square brackets are to those paragraphs in the main body of the original Tribunal decision.

Original Application and Decision

1. The Tribunal assessed a rent based on the condition of the Property as at the time of the determination for a two-bedroom flat in the condition as described by the parties. [14]
2. Neither party provided rental values for comparable properties and therefore the Tribunal used the knowledge and experience of its members. Similar properties in the locality range from £950.00 to £1,300. Those at the upper end are in very good condition with central heating, carpets, curtains and white goods and also have gardens and parking. [15]
3. The Property is at the lower end of the market as described by the Tenant which is not contradicted by the Landlord. Although it has white goods these are dated and several do not work. The bathroom does not have a shower, which is standard in most rental properties today. The flooring in the living room is also in poor condition. The maintenance of the decking is a landlord responsibility and appears to be in an unsafe and therefore unusable condition. In addition, it is in close proximity to the railway line which would have an effect on its rental value. [16]
4. The Tribunal determined that a market rent for the Property in its present condition is £950.00 per calendar month to take effect on 3rd July 2021. [17]

Grounds of Appeal

5. The Applicant stated the grounds of appeal to be:
 1. The rent increase notice was incorrect because the contractual tenancy expired many years ago.
 2. The Tribunal did not take into account the full range of market rents in the area, in particular the local housing allowance for two-bedroom flats is £182.00/£788.00 per calendar month to £201.37 per week/£873.00 per calendar month. The Property is less than 49 square metres in area and the Rightmove internet site estimate their rental value at £750 and £850 depending state of repair.
 3. The Tribunal did not take account of the considerable investment the Landlord would need to make to achieve the rent determined should the Tenant choose to vacate.

4. The Landlord failed to provide the full terms of the contractual tenancy which made the Tenant liable for outdated and dangerous flooring and equipment.
5. The Tribunal did not take full or sufficient account of:
 - a) the condition of the flooring which has caused the tenant injury which is particularly dangerous as the Tenant is diabetic;
 - b) the disrepair of the dishwasher, particularly because the Tenant has an allergy to most rubber gloves and washing up liquids;
 - c) the inadequate seal on the oven door;
 - d) the lack of aids for the Tenant to get in and out of the bath;
 - e) the proximity of the washing machine to the bath;
 - f) the kitchen and bathroom sharing the same drain resulting in a smell of faeces;
 - g) the steepness of the stairs particularly with regard to access for the emergency services;
 - h) the Landlord's failure to comply with the Consumer Rights Act 2015 the Protection Act and the failure to provide a gas safety certificate, Energy Proficiency Certificate, How to Rent Guide, copy of a tenancy agreement and rental statements and contact details;
 - i) the rotten decking which is the Landlord's responsibility or the path to the garden being overgrown resulting in a lack of access.

Decision

6. In response to the Grounds:
 1. The Tribunal found that the rent increase notice was correct and was not affected by the length of time since the contractual tenancy became a statutory tenancy. This representation was not made in the Applicants' original statement of case.
 2. The Tribunal took into account the full range of market rents for two-bedroom flats in the area. At the time of the determination properties at a lower rent were one bedroom or studio flats. The local housing allowance rates are only based on private market rents being paid by tenants in the broad rental market area and can differ from advertised rents. The Tribunal found that rents advertised on the market were higher than local housing allowance rates. Where a housing allowance is paid a landlord may reduce the rent to the allowance in order to be paid directly by the local housing authority rather than the tenant. This

representation was not made in the Applicants' original statement of case.

3. The Tribunal assessed the rental value of the Property based on the condition it was at the time of the determination. This representation was not made in the Applicants' original statement of case.
4. Neither party provided a copy of the terms of the original contractual tenancy. This representation was not made in the Applicants' original statement of case.
5. The Tribunal did take full and sufficient account of:
 - a) the condition of the flooring [16] but not the fact that the Tenant is diabetic as this is a personal circumstance [13];
 - b) the disrepair of the dishwasher [16] but not the fact that the Tenant has an allergy to most rubber gloves and washing up liquids as this is a personal circumstance [13];
 - c) the inadequate seal on the oven door [16];
6. The Tribunal did not take account of:
 - d) the lack of aids for the Tenant to get in and out of the bath as this is a personal circumstance [13];
 - e) the proximity of the washing machine to the bath because this representation was not made in the Applicants' original statement of case;
 - f) the kitchen and bathroom sharing the same drain resulting in a smell of faeces because this representation was not made in the Applicants' original statement of case;
 - g) the steepness of the stairs because this representation was not made in the Applicants' original statement of case;
 - h) the Landlord's failure to comply with the Consumer Rights Act 2015 the Protection Act and the failure to provide a gas safety certificate, Energy Proficiency Certificate, How to Rent Guide, copy of a tenancy agreement and rental statements and contact details because this representation was not made in the Applicants' original statement of case and does not affect the rental value of the Property.
7. The Tribunal considered whether the rental value should be reviewed taking into account the matters which were not included in the Applicant's original statement of case.
 - The Tribunal found that the proximity of the washing machine to the bath would only affect the rental if the situation was not in

accordance with the electrical regulations. It was for the Tenant to adduce evidence that it was not and in the absence of that evidence the Tribunal decided not to review its determination.

- The Tribunal found from the Applicant's appeal statement that the allegation that there was a smell from the foul drain appeared to be due to a lack of flushing the system rather than the configuration of the drain being defective. In the absence of evidence, the Tribunal decided not to review its determination.
- The Tribunal found that the steepness of the stairs may be of concern to some prospective tenants but that there would be a sufficient number of persons for whom this would not be a problem and therefore it would not affect the rental value.

8. The Tribunal did take full and sufficient account of:

- i) the rotten decking which is the Landlord's responsibility or the path to the garden being overgrown resulting in a lack of access.

Conclusion

- 7. The Applicant has not provided any additional evidence or made any new submissions to justify the Tribunal reconsidering its original decision.
- 8. The Tribunal did not wrongly interpret or wrongly apply the relevant law or take into account irrelevant considerations, or fail to take account of relevant consideration or evidence. The Tribunal has decided not to review its Decision and refuses permission to appeal to the Upper Tribunal because it is of the opinion that there is no realistic prospect of a successful appeal against its Decision.