



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

**Case Reference** : **CAM/22UG/MNR/2021/0047  
A:BTMMREMOTE**

**Property** : **22 Booth Avenue Colchester Essex  
CO4 3BB**

**Applicant** : **Mr Thomas R Warwick and  
Miss Kerrie M Smith**

**Respondent** : **Mr Stuart Fosker**

**Date of Application** : **9 August 2021**

**Type of Application** : **Determination of the market rent  
under Section 14 Housing Act 1988**

**Tribunal** : **Mrs E Flint DMS FRICS**

**Date and venue of  
Determination** : **1 November 2021  
remote telephone hearing.**

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**DECISION**

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The market rent as at 1 November 2021 is £1000 per month.

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was A:BTMMREMOTE with all participants joining from elsewhere. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that the Tribunal were referred to are in a bundle, the contents of which have been noted. The order made is described below.

## **Background**

1. On 9 August 2021, the tenant referred to the Tribunal a notice of increase of rent served by the landlord under section 13 of the Housing Act 1988.
2. The landlord's notice, which was dated 21 July 2021 proposed a rent of £1050 per month with effect from 3 September 2021.
3. The tenancy is a periodic tenancy which commenced on 3 January 2021 on the expiry of a previous fixed term tenancy.
4. Directions were issued by the tribunal on 23 August 2021.
5. A telephone hearing was held attended by Mr Warwick on behalf of himself and his partner, Mr Fosker the landlord, appeared in person. Prior to the hearing the Tribunal received written representations including photographs from both the landlord and the tenant.

## **The Hearing**

6. Mr Warwick described the locality and the house in some detail. He explained that the house is on a residential estate situated reasonably close to the town centre, several large supermarkets, bus stops and a station. The estate is also within walking distance of the university campus.
7. The house is a three bedroom semi detached house with double garage, with gardens to the front and back. There are two double bedrooms and a single room. The kitchen and bathroom are both dated, some carpets are worn. He had secured the oven within its housing at the beginning of the tenancy. The back door absorbs the rain and becomes mouldy in the winter.
8. There is no side gate meaning the back garden and garage are not secure. The house is centrally heated via a back boiler to a gas fire, the latter has been disconnected. The window frames are timber and one or two are in poor condition, the double glazing has only a small gap between the panes, the seal has failed on several.
9. The roof leaked about a month ago, he had made a temporary repair to prevent the water running down the walls in the main bedroom and had reported the matter to the landlord the following day. All other outstanding repairs had recently been completed.
10. Mr Warwick referred to the comparables which he had submitted: the rents ranged from £775 to £1200 per month. He had tried to provide a full range of three bedroom properties available on the market. On the basis of the comparables he was of the opinion that the rental value was £950 per month. The higher rents related to more modern well fitted houses with white goods; the washing machine and fridge freezer were his own.

11. Mr Fosker said that the house had been in the family since 1985 which due to his personal circumstances he had decided to sell. It was a 1960's built house in a quiet cul de sac close to all amenities. The area was particularly popular with university students.
12. The photographs which he had provided were taken in about 2019 before the previous tenant had moved out of the house. He accepted that the property needed "freshening up". The bathroom had been replaced in the 1990's and the kitchen in 2010 although the oven and hob were replaced in 2019 just before the tenants moved into the house. He agreed that some windows were worn but said they were not falling out: they needed an overhaul.
13. The tenant had agreed to carry out minor repairs as he was a carpenter. The rent of £850 per month had not been increased since the beginning of the original tenancy in July 2019.
14. He had investigated the market and had come to the conclusion that the rental value was more than the passing rent. The comparables which he had produced showed that nice, modern houses were available for £1350 - £1400 per month, the entire range was from £1000 to £1700 per month. He knew Colchester well as he had lived there for most of his life. He noted that some of the tenant's comparables were in inferior locations, some were on main roads, his comparables were in more similar locations to the subject.

### **The Accommodation**

15. The Tribunal viewed the locality via google maps and associated programmes.
16. The house is situated within a cul de sac on an estate of similar properties located to the east of the town centre and to the north of the university campus. The garage is set back from the road, the driveway provides parking for at least two vehicles parked in tandem.
17. It is agreed by the parties that the house is not in the condition of most houses available to let on the open market.

### **The law**

18. In accordance with the terms of section 14 Housing Act 1988 the Tribunal proceeded to determine the rent at which it considered that the subject property might reasonably be expected to be let on the open market by a willing landlord under an assured tenancy.
19. In so doing the Tribunal, as required by section 14(1), ignored the effect on the rental value of the property of any relevant tenant's improvements as defined in section 14(2) of that Act.

### **Valuation**

20. In coming to its decision, I had regard to the evidence supplied by both the landlord and the tenant. The comparables were mainly superior in terms of modernisation to the subject premises and generally benefited from white goods, floor coverings and blinds or curtains. The comparables were all in good repair, including some which were newly refurbished. Those at the

higher end of the range had ensuites to the main bedroom and ground floor cloakrooms.

21. The Tribunal concluded that the rent at which the property might reasonably be expected to be let on the open market would be £1200 per month if it were in the condition usually found in open market lettings. However, this house requires updating and replacement of the worn floor coverings together with the repair to the leaking roof. The rental value of the house in its current condition is £1000 per month.

### **The decision**

22. Towards the end of the hearing Mr Warwick explained his financial position. The Tribunal is satisfied that if the rent were to be backdated to 3 September this would result in undue hardship for the tenant. The landlord said that not back dating the rent would cause him hardship however he had already explained that he was seeking possession of the house with effect from 3 December 2021 because he intended to sell the house.
23. The rent of £1000 per month will take effect from 1 November 2021 in accordance with the Tribunal's discretion under section 14(7) of the Act as set out below.

Chairman: Evelyn Flint

Dated: 1 November 2021

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### **ANNEX - RIGHTS OF APPEAL**

- i. 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.
- ii. 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.
- iii. 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.
- iv. 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.

## **Appendix Housing Act 1988**

14 Determination of rent by rent assessment committee.

(1) Where, under subsection (4) (a) of section 13, a tenant refers to a rent assessment committee a notice under subsection (2) of that section, the committee shall determine the rent at which, subject to subsections (2) and (4) below, the committee consider 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 the rent) are the same as those of the tenancy to which the notice relates; and
- (d) in respect of which the same notices, if any, have been given under any of Grounds 1 to 5 of Schedule 2 to this Act, as have been given (or have effect as if given) in relation to the tenancy to which the notice relates.

(2) 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 a failure by the tenant to comply with any terms of the tenancy.

(3) For the purposes of subsection (2)(b) above, in relation to a notice which is referred by a tenant as mentioned in subsection (1) above, an improvement is a relevant improvement if either it was carried out during the tenancy to which the notice relates or the following conditions are satisfied, namely—

(a) that it was carried out not more than twenty-one years before the date of service of the notice; and

(b) that, at all times during the period beginning when the improvement was carried out and ending on the date of service of the notice, the dwelling-house has been let under an assured tenancy; and

(c) that, on the coming to an end of an assured tenancy at any time during that period, the tenant (or, in the case of joint tenants, at least one of them) did not quit.

(4) In this section “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....

(7) Where a notice under section 13(2) above has been referred to the appropriate tribunal, then, unless the landlord and the tenant otherwise agree, the rent determined by the appropriate tribunal ... shall be the rent under the tenancy with effect from the beginning of the new period specified in the notice or, if it appears to the appropriate tribunal that that would cause undue hardship to the tenant, with effect from such later date (not being later than the date the rent is determined) as the appropriate tribunal may direct.