



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

Case Reference : **CAM/22UN/MNR/2021/0036**

Property : **20 Quintons Corner, East Bergholt, Colchester,
Essex, CO7 6RD**

Applicant (Tenant) : **Mr David Everitt & Mrs Sarah Everitt**

Respondent (Landlord): **Mr Stephen Cockerton**

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 Decision : **23rd August 2021**

DECISION

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DECISION

1. **The Tribunal determined a rent of £1,100.00 per calendar month to take effect from 19th June 2021.**

REASONS

THE PROPERTY

2. The Property is a detached bungalow with brick elevations under a pitched tile roof. The windows and doors are upvc with double glazed units. The rainwater goods are upvc. There is a driveway with parking for two cars and garage and a front and rear garden. The front garden is laid to lawn. There is a side gate giving access to the rear garden. The rear garden is approximate 80' x 60' and is mainly laid to lawn with some flowerbeds and shrubs and a patio area. The Property backs onto farmland.

Accommodation

The Property comprises an entrance hall, living room (16'3" x 12'3"), kitchen/diner (20'11" x 11'0"), three bedrooms (12'6" x 10'3"; 11'0" x 10'3"; 8'10" x 8'6") and a shower room. The kitchen has modern fitted units. The oven, hob, and fridge are integrated. The hob has an extractor hood over it.

Inventory

An inventory taken on 18th July 2013, when the Property was first let, was provided which described each room and is summarised here for the purpose of the rent assessment as follows:

Hallway: in good decorative order with new carpet.

Lounge: in good decorative order with laminate floor 3 rugs and curtains.

Kitchen/Diner: in good decorative order with fitted units in fair condition; Kitchen floor area tiled; Diner floor area carpeted; roller blinds.

Bedroom 1: in good decorative order with carpet in good condition; curtains; fitted furniture.

Bedroom 2: in good decorative order with new carpet; curtains.

Bedroom 3: in good decorative order but with water staining under window; carpet in fair condition with some staining; curtains; built in wardrobe.

Shower Room: Wet room shower, wash hand basin and w.c. in good decorative order; roller blind.

Services

Space and water heating is by a gas fired central heating system. The Property has mains electricity, gas, water and drainage.

Furnishing

The Property is let unfurnished.

Location

The Property is in a village between Colchester and Ipswich which are each 10 miles away, where there is a range of facilities.

THE TENANCY

3. The Tenancy commenced as a contractual fixed term Assured Shorthold Tenancy of 12 months on 19th July 2013. It appears that the Tenancy was renewed annually until the most recent renewal on 19th July 2019 for a fixed term of 12 months and has continued thereafter as a statutory periodic tenancy. Section 11 of the Landlord and Tenant Act 1985 applies in respect of the Landlord's repairing obligations.

THE REFERRAL

4. The current rent is £850.00 per calendar month from the commencement of the Tenancy. The Landlord by a notice in the prescribed form dated 14th May 2021 proposed a new rent of £1,100.00 per calendar month from 19th June 2021.
5. On 9th June 2021 the Tenant referred the notice proposing a new rent to the Tribunal. Directions dated 28th June 2021 were issued informing the parties that due to Public Health England's advice the Tribunal did not intend to inspect the Property internally (although it would use internet mapping to view the exterior) or hold an oral hearing unless a request was made by 26th July 2021. Neither party made a request for a hearing or internal inspection and both parties completed the Reply Form attached to the Directions and provided photographs.

THE LAW

6. The relevant law is in section 14 of the Housing Act 1988 which is summarised below.

7. By virtue of section 14 (1) Housing Act 1988 the Tribunal is to determine a rent at which the dwelling-house concerned might reasonably be expected to be let in the open market by a willing landlord under an assured periodic tenancy-
 - (a) 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 subject Tenancy

8. By virtue of section 14 (2) Housing Act 1988 in making a determination the Tribunal shall disregard –
 - (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 (as defined by section 14(3) Housing Act 1988) carried out by a tenant otherwise than as an obligation; and
 - (c) any reduction in the value of the dwelling-house due to the failure of the Tenant to comply with any terms of the subject Tenancy.

9. Nothing in section 14 affects the right of the landlord and the tenant under an assured tenancy to vary by agreement any term of the tenancy (including a term relating to rent).

REPRESENTATIONS

9. The Tenant made written representations.

10. With regard to the condition of the accommodation the Tenants said that:
 - a) The Living Room was 16'11" x 12'4" at its widest but narrowed to 10'10". The Decoration and flooring are tired and where wires have been chased in by the electrician they have been roughly plastered over. A hole had been left in the wall after the new boiler had been installed (photographs provided).

 - b) The Kitchen/Diner carpet was cheap and had been poorly fitted without underlay and is in need of replacement as is the main walk-through area. It is also in need of redecoration (photographs provided). Cupboard space was lost in the Kitchen area when the new boiler was installed (photographs provided). The kitchen units were showing signs of wear and the surface was peeling off (photograph provided).

 - c) Bedrooms 1 and 3 were enlarged by the Tenants with the Landlord's permission, by the removal of two built in cupboards/wardrobes that were in poor condition. The poor quality carpets in these two bedrooms were replaced by the Tenants due to the area being left uncarpeted after the removal of the cupboards.

 - d) Bedroom 2 carpets were poorly fitted without underlay. The Tenants said that they have decorated the hallway, the three bedrooms and bathroom.

 - e) The Shower Room suffered from condensation causing mould which led to the Tenants having to replace the blind. The Landlord repaired the

shower in 2015 which took 7 days. The shower broke down again and the Tenants said that they paid to have it replaced. There was a leak in the loft which damaged the bathroom ceiling which the Tenants said they had repaired at their own expense.

- f) Externally a new garage door frame and upvc cladding was fitted under the bathroom window. The brick work has not been completely repointed only the damp proof course joint has been repointed 4 months after the tenant moved in.
11. Generally, the Tenants said that at the commencement of the term in 2013 the Property was in good or fair condition, it was not immaculate as claimed. The Landlord had not kept up with the maintenance of the Property during the time they had been Tenants. They said that the DPS Guide regarding the deposit states that the Landlord should have decorated the Property many years ago. The Tenants said that the Landlord had given them permission to have two cats and two rabbits which increased the wear and tear on the Property.
12. The Tenants said that the boiler was replaced but never worked correctly. An estimate for £400 to have it repaired was given but the work was never carried out. The oven had also been replaced but it never heated up properly. The Tenants expressed the view that the Landlord had chosen cheaper alternatives over modern energy saving items.
13. The Tenants referred to the annual inspection reports that were provided pointing out that the Landlord's Agent had always found the Tenants had looked after the Property appropriately. They added that they had not been permitted to put up pictures and the Landlord had been difficult about making arrangements for the Gas Inspection. The Landlord referred to the cost of the Electrical Installation Condition Report (EICR) but the Tenants said that this was not an expense that should be taken into account when assessing the rent.
14. With regard to the Proposed Rent the Tenants said that the Property had been advertised in 2013 for £850.00 per calendar month but they had offered £825.00 which had been accepted. In July 2017 the rent had been increased to £850.00. The Tenants said that the valuation of the Property, submitted by the Landlord, carried out by Griers and Partners which valued the property at £1,350 per calendar month is overpriced. Mrs Everitt said that she was a letting agent with 17 years' experience and knew that Griers had a reputation for overpricing in this way. For the proposed rent of £1,100.00 per calendar month a tenant would expect an immaculate property with excellent facilities. Anything above this valuation would have a fourth bedroom at least. The increased rent would only be reasonable if there had been regular increases where the property had been well maintained. In addition, the Tenants said that the increase of £250.00 was unreasonable and does not represent 3% annual increase as that would give a rent of £985.00 per calendar month.
15. With regard to Rents of Comparable Properties the Tenants said that those the Landlord had provided are finished to a very high standard and most had two bedrooms. The only three-bedroom property he included was finished to an excellent standard with a cloak room and newly fitted kitchen.
16. Details of a property at East Bergholt valued at £1,000.00 per calendar month by the agency for which Mrs Everitt's Agency worked was provided. The Property is a

mid-terraced house with lounge kitchen diner cloakroom, bathroom, three bedrooms, garage and garden. Mrs Everitt said it had a bath and shower as well as a cloakroom and was decorated to a very high standard. The current tenant had offered £975.00 per calendar month for the first six months which was accepted rising to £1,000.00 per calendar month on renewal.

17. The Tenant also made representations regarding a Notice Seeking Possession of a Property Let on an Assured Shorthold Tenancy pursuant to Section 21 of the Housing Act 1988 as amended. This is not within the jurisdiction of the Tribunal whose sole task is to assess a market rent for the Property.
18. The Landlord made written representations.
19. With regard to the condition of the Property the Landlord referred the Tribunal to the Inventory and the photographs provided.
20. Externally the property had been renovated with a new garage door frame, upvc cladding to the wall adjacent the front door (invoice for £470.00 dated 20th November 2013 provided) and brick work repointed in November 2013 (invoice for cementing to damp proof course and drain pipe for £200.00 dated 21st May 2014 provided).
21. Internally all but two of the carpets were brand new and the two existing carpets were less than two years old and in excellent condition. He said that from the annual inspection for 24th March 2017 it was noted that the Tenants' cats had clawed the wallpaper in the hall and that he did not know about the carpets being fitted by the Tenants. he said that both the decoration and new carpets may have been necessitated due to damage by the Tenant's cats. The inventory had referred to some slight rust stains on a skirting board where a radiator had leaked but otherwise was in excellent condition. The Landlord said that the Property has been well maintained over the years, including a new gas oven (invoice for £522.00 dated 13th January 2015 provided), a new gas boiler (invoice for £1,950.00 dated 31st March 2017 provided) and a new shower unit (invoice for £150.00 dated 3rd April 2014 provided).
22. With regard to the proposed rent the Landlord said that the Property was situated in a highly desirable village with an excellent High School and good road links to London, Colchester and Ipswich and is in an area of outstanding natural Beauty close to Dedham Village and Flatford Mill and therefore commands high rents.
23. A rent assessment was provided by Griers and Partners for an asking rent of £1,350.00 per calendar month subject to some routine maintenance being carried out. In addition, he provided the following internet advertisements:
 - West Gate, East Bergholt, 3-bedroom bungalow with an asking rent of £1,295.00 per calendar month;
 - Rectory Hill, East Bergholt, 2-bedroom terraced house with an asking rent of £1,095.00 per calendar month;
 - Collingwood Fields, East Bergholt, 2-bedroom terraced house with an asking rent of £895.00 per calendar month.

DETERMINATION

24. The Tribunal determines a market rent for a property by reference to rental values generally and to the rental values for comparable properties in the locality in particular. The Tribunal does not take into account the present rent and the period of time which that rent has been charged nor does it take into account the percentage increase which the proposed rent represents to the existing rent.
25. In addition, the legislation makes it clear that the Tribunal cannot take into account the personal circumstances of either the Landlord or the Tenant. With regard to some of the comments in the log of annual inspections the Tribunal only takes into account the condition of the building it does not consider conduct of the parties or neighbours.
26. The Tribunal assessed a rent based on the condition of the Property as at the time of the determination. Therefore, it did not take into account disrepair that had been remedied by the Landlord or that the Landlord intended to carry out works in the future. With regard to the replacement of the central heating boiler, oven, shower, garage door frame, cladding and repointing the capital cost is helpful to indicate the extent of the work. The Tribunal only takes into account the effect of the works themselves on the rent.
27. The Tribunal considered the rental value of the Property as a three-bedroom bungalow in good condition (subject to fair wear and tear), with central heating, modern kitchen and bathroom, with a single garage and garden. In doing so, it firstly took into account the rental values of the properties which the parties submitted were comparable.
28. Whereas the Tribunal found that the:
 - Brook Noll, East Bergholt, 3-bedroom mid terraced house to be let at a rent of £1,000.00 per calendar month submitted by the Tenants;
 - Rectory Hill, East Bergholt, 2-bedroom terraced house to be let at a rent of £1,095.00 per calendar month; and
 - Collingwood Fields, East Bergholt, 2-bedroom terraced house, to be let at a rent of £895.00 per calendar month submitted by the Landlord;were a general guide to rental values in the area they were all a different type of house to the Property.
29. The Tribunal found that the most comparable property was that at West Gate, East Bergholt, which was a 3-bedroom bungalow with an asking rent of £1,295.00 per calendar month. This was confirmed by the knowledge and experience of the Tribunal members which is that generally three-bedroom bungalows within a radius of 10 miles East Bergholt let at the present time for rents in the region of £1,250.00. By way of confirmation the Tribunal finds that since 2013 rents have increased significantly.
30. Secondly, the Tribunal took into account all the evidence and submissions made by the parties, taking particular note of the following points which were raised:
 - a) Notwithstanding that the Landlord had renewed the shower in 2014 the Tribunal accepted the Tenants' statement that it had broken down and that they had had to replace it again at their own cost. The Tribunal also

accepted that the Tenants had the leaking pipe in the loft repaired as an emergency measure.

- b) The Tribunal also noted that from the log of the annual inspections the central heating may not have run as efficiently as it should. However, no details were given of this.
- c) The Tribunal also accepted that the Tenants had found it necessary to replace the carpet in two of the bedrooms following the removal of the fitted furniture, which it appears was with the Landlord's permission.
- d) It noted that the carpet in the Diner area was worn but on the balance of probabilities this is due to fair wear and tear taking into account the Tenants' pets.
- e) The photographs showed that the units in the Kitchen were deteriorating beyond fair wear and tear and after at least 8 years might be expected to be renewed by the Landlord.
- f) Condensation which caused mould in the Shower Room and Kitchen is usually as a result of lack of ventilation unless there are issues with rising or permeating damp which were not evidenced in this case. Their remedy is for tenants to open windows or operate an extractor fan.
- g) The hole left following the installation of the boiler should have been made good as should the decoration following the electrical work. However, Clause 4 of Part B of the Tenancy Agreement requires the Tenants to "Keep the inside of the Property in at least as good a condition as it was when the tenancy started (apart for fair wear and tear)." This places an obligation upon the Tenants to decorate the interior, because on the balance of probabilities it will have deteriorated beyond the point of fair wear and tear over a period of 8 years. This would include decorating over the hole and the plaster.

31. With all the above in mind the Tribunal determined that a market rent for the Property in its present condition is **£1,100.00 per calendar month to take effect on 19th June 2021.**

Judge JR Morris

Caution: The Tribunal inspected the subject property for the purposes of reaching this decision. The inspection was not a structural survey and any comments about the condition of the property in this statement must not be relied upon as a guide to the structural or other condition of the property.

APPENDIX - RIGHTS OF APPEAL

1. If a party wishes to appeal the 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.
2. 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.
3. 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.
4. 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.