



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

**Case Reference** : **CHI/ooLC/MNR/2021/0036**

**Property** : **39 Baden Road  
Gillingham  
Kent  
ME7 1RE**

**Tenant** : **Mr A G Mackay**

**Representative** : **None**

**Landlord** : **Mr S Wright and Mrs D Wright**

**Representative** : **None**

**Type of Application** : **Determination of a Market Rent  
sections 13 & 14 of the Housing Act  
1988**

**Tribunal Members** : **Mr I R Perry BSc FRICS  
Mr N I Robinson FRICS  
Mr M C Woodrow MRICS**

**Date of Inspection** : **None. Paper determination.**

**Date of Decision** : **27<sup>th</sup> May 2021**

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**DECISION**

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### **Summary of Decision**

1. On 27<sup>th</sup> May 2021 the Tribunal determined a market rent of £815 per month to take effect from 11<sup>th</sup> April 2021.

### **Background**

2. The case concerned the determination of a market rent for the subject property following a referral of the Landlord's notice of increase of rent by the Tenant pursuant to sections 13 and 14 Housing Act 1988.
3. On 27<sup>th</sup> January 2021 the Landlord served a notice under Section 13(2) of the Housing Act 1988 which proposed a new rent of £815 per month in place of the existing rent of £715 per month to take effect from 11th April 2021. The notice complied with the legal requirements.
4. On 7<sup>th</sup> April 2021 the Tribunal received an application from the Tenant under Section 13(4) (a) of the Housing Act 1988.
5. The Coronavirus pandemic and considerations of health have caused a suspension of inspections and Tribunal hearings in person until further notice.
6. The Tribunal issued directions on 21<sup>st</sup> April 2021 informing the parties that the Tribunal intended to determine the rent based on written representations. The parties were invited to make submissions which could include photographs or videos.
7. Both parties submitted papers to the Tribunal but the Landlord had not received the Tenant's submission in the time specified within the Directions. On 25<sup>th</sup> May 2021 the Landlord made an application to make further submissions which were copied to the Tenant. Whilst not agreeing with the content of that application, the Tenant had no objection to the submission being included.
8. Accordingly a Tribunal was convened on 27<sup>th</sup> May 2021 using video conferencing which considered all the papers submitted by both parties, which were well made and comprehensive. The papers included photographs.

### **The property**

9. From the information given in the papers and available on the internet the property comprises a small, mid-terraced house with a bay window to the front elevation, situated close to the town centre and the River Medway on the north side of Gillingham.
10. The accommodation is described as including a Living Room, Kitchen and Bathroom at ground level with three first floor Bedrooms. Outside there are small gardens. There is a residents on-street parking scheme.

11. The property has central heating, double glazed windows, carpets and curtains provided by the Landlord and a cooker. The Tenant provides the fridge freezer and washing machine.
12. The Tenant had originally occupied the property in March 2007 and the Tribunal were provided with an agreement signed on 21<sup>st</sup> January 2017 with a rent of £715 per month.

## **Submissions**

13. The Landlord stated that the property was refurbished in 2007 after they had purchased it and they provided evidence of comparable properties with rents ranging from £875 per month to £1,250 per month. The Landlord also drew the Tribunal's notice to the position of the property within walking distance of a mainline Railway Station and its proximity to the nearby University.
14. The Tenant suggests that the rent should rise to £765 per month and provided photographs which showed some mould growth at various points within the house and several areas of poor plasterwork. The Tenant's fridge-freezer sits within the Living Room as there appears to be no tall space available in the Kitchen.
15. The Tenant also referred the Tribunal to a previous decision made in respect of 17 Seaview Road, Gillingham made in February 2020 ref CHI/ooLC/MNR/2019/0072.

## **The law**

### S14 Determination of Rent by First-tier Tribunal

- (1) Where, under subsection (4) (a) of section 13 above, a tenant refers to a First-tier Tribunal a notice under subsection (2) of that section, the Tribunal shall determine the rent at which, subject to subsections (2) and (4) below, the Tribunal 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, in respect of council tax 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.

### **Consideration and Valuation**

16. The Tribunal first considered whether it felt able to reasonably and fairly decide this case based on the papers submitted only with no oral hearing. Having read and considered the papers, it decided that it could do so.
17. The Tribunal is required to determine the rent at which the subject property might reasonably be expected to be let in the open market by a

willing Landlord under an assured tenancy. The personal circumstances of the Tenant are not relevant to this issue.

18. Having carefully considered the representations from the parties and associated correspondence, including the decision on 17 Seaview Road, Gillingham made over twelve months ago, and using its own judgement and knowledge of rental values in the Gillingham area, the Tribunal decided that the market rent for the subject property, with its ground floor Bathroom, if let today in a condition that was usual for such an open market letting would be £875 per month.
19. However, from the submissions it is clear that the property is not let in such a condition and a number of adjustments to this open market rent should be made. These adjustments should include the Tenant's provision of some white goods, general decorative order with some mould growth.
20. Using its experience the Tribunal decided that the following adjustments should be made:

Tenant's provision of fridge-freezer and washing machine	£20
Mould caused by dampness and general finish	
including poor plasterwork	£40
<b>TOTAL</b>	<b>£60</b>

21. The Tenant made no representation that the starting date for the new rent specified in the Landlord's notice would cause the Tenant undue hardship.

### **Determination**

22. The Tribunal therefore decided that the rent at which the subject property might reasonably be expected to be let in the open market by a willing Landlord under the terms of this assured tenancy was £815 per month.
23. The Tribunal directed that the new rent of £815 per month should take effect from 11<sup>th</sup> April 2021 this being the date in the original Notice.

### **RIGHTS OF APPEAL**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case. Where possible you should send your application for permission to appeal by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) as this will enable the First-tier Tribunal Regional office to deal with it more efficiently.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person 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.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.