



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

Case Reference : **LON/OOBE/MNR/2021/0060
V:CVPREMOTE**

Property : **17A Tresco Road London SE15 3PY**

Applicant : **Miss Rachel Dennis**

Representative : **In person**

Respondent : **L & Q Housing Association**

Representative : **Mr Alexander Campbell**

Date of Application : **13 September 2020**

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

Tribunal : **Mrs E Flint DMS FRICS**

**Date and venue of
Hearing** : **30 June 2021
remote video hearing.**

DECISION

The rent as at 5 April 2021 is £30 per week.

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was CVPREMOTE 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.

© CROWN COPYRIGHT

Background

1. On 10 March 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 dated 25 January 2021 proposed a weekly rent of £99.68, inclusive of £3.39 service charge, with effect from 5 April 2021.
3. The tenancy is a periodic tenancy which commenced on 3 September 2018.
4. A video hearing was held at which the tenant appeared and the landlord was represented by Mr Alexander Campbell of counsel. Prior to the hearing the Tribunal received written representations including photographs from the tenant, no written representations were received from or on behalf of the landlord.

The Hearing

5. At the commencement of the hearing Mr Campbell asked for an adjournment. He said that the tribunal's letter enclosing the Directions dated 28 April 2021 was received by the landlord on 30 April 2021. It seems that no action was taken to comply with the Directions relating to the application. The tribunal letter enclosing the joining instructions for this hearing was received by the landlord on 18 June 2021. The landlord has a couple of reports about the property however they are not in evidence. He was also of the opinion that the only evidence the applicant had provided concerned issues relating to the structure of the premises but not the rental value.
6. Miss Dennis asked that the hearing be allowed to go ahead. She said that she had done everything asked of her in the Directions. She had spoken to several different members of staff, including her rent officer, regarding the matter and therefore was sure that the landlord knew about her application. Moreover, she had received emails about the matters raised in her case. She had a pressurised job and could not take further time off for another hearing.
7. The request is refused because it would be unfair to the applicant. The landlord is a large organisation with back of office resources, it is acknowledged that both the Tribunal's directions and instructions for joining the video hearing were received at the same time as the tenant. An adjournment would not be in accordance with the overriding objective of the Tribunal to deal with cases fairly and justly by dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal.

The Evidence

8. Miss Dennis said that about a year ago she thought that the house was subsiding but that initially the landlord had ignored her concerns. About three months later a surveyor inspected and had agreed that the house had subsided. She said that the doors and windows do not close properly and rain comes in through the cracks in the wall. An area of render had been hacked off the rear wall and not replaced.
9. In her written submission, supported by photographs, she had listed the defects with the flat: cracks across all walls; floor sinking; ceilings cracking and separating; doors and windows not closing or locking properly; mould; draught and damp and repairs to kitchen walls outstanding causing water to penetrate kitchen walls. The ground levels had been reduced but that there was no works underway at present.
10. She was no longer living in the property because she did not feel safe as without assistance, she was unable to lock the door. She was sofa surfing and had removed anything valuable from the flat. She agreed that she had some of her belongings stored in the flat.
11. A service charge was added to the rent which she did not consider she ought to pay. When the fire alarm was tested it was not working. The charge includes bulk refuse removal: she said that the only occasion when there was bulk refuse was when the landlord replaced a fence which had blown down and the workmen had not removed the rubbish.
12. Miss Dennis in cross examination said that she considered that the flat was uninhabitable because of the outstanding repairs and also that she felt unsafe due to the difficulty in locking the doors and windows. She could not sleep properly knowing the door was not locked.
13. Mr Campbell asked if she had been offered alternative accommodation. Miss Dennis said that she had but that the flat she had been offered was not ready for occupation. She had not even been able to have a virtual tour because the flat was voided. Miss Dennis confirmed that the landlord had not told her that the flat was uninhabitable.
14. Mr Campbell said that his client had not found any photographs on the computer system and asked that the Tribunal not take into account any photographic evidence which had been submitted. During her evidence, Miss Vinten told the tribunal that the landlord has several computer systems and that she had looked on them all but not found the photographs.
15. I found Miss Dennis to be a credible witness and am satisfied that, as she has already stated, she has complied with the Directions and that the photographs are part of the evidence before the tribunal. However even without the photographs the oral evidence is clear regarding the condition of the premises, nor is the condition disputed by the landlord.

16. Mr Campbell submitted that the rent proposed was not unreasonable. Miss Dennis had undermined her case by stating that she did not think that the flat was worth anything; she was using it to store her belongings.
17. He said that social housing providers have limited funds therefore repairs were not always dealt with as quickly as the tenants would like.
18. Miss Dennis had been offered alternative accommodation which she had not accepted. She had chosen to stay.
19. Mr Campbell called Miss Emma Vinten of L & Q, who is responsible for their Healthy Homes programme, to give evidence. Miss Vinten confirmed that she had no personal knowledge of the flat. However, a contactor had inspected the flat on 22 June 2021 and reported that there is subsidence, repointing is required, there is damp and mould at the flat. The humidity in the flat had been tested and Miss Dennis had been offered a clean which would involve removing the mould and treating the areas with mould inhibiting solution but Miss Dennis had declined the offer. She said that the report supported the statements made by Miss Dennis. Miss Vinten said that photographs are taken prior to the clean then afterwards as a record of the condition of the property before and after.
20. Mr Campbell also called Miss Jenna McCleod, a rent setting officer, at L & Q to give evidence. She explained that the rent was based on a formula and would be in line with other similar flats in the area. She confirmed that the rent would not have been adjusted to take into account any outstanding repairs.
21. In closing Miss Dennis disagreed that she had refused alternative accommodation because the alternative accommodation was not currently available. The problems with the flat were affecting her health. She had refused the clean/ mould removal because it would have involved stripping out the kitchen units. She wants the repairs done.

The law

22. 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.
23. 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

24. Section 14 requires an assessment of the open market value of the flat in its present condition, there were no improvements to be disregarded. It is not disputed that the flat is suffering from subsidence which has

affected the opening and closing of the doors and windows and caused cracking in the walls and together with other outstanding repairs there is dampness and mould growth in the flat.

25. I find that the structural issues are such that a prospective tenant would not be willing to take the flat in its present condition and I determine that the flat is not suitable for human habitation because of the structural condition which has caused severe cracking, the floor sinking, damp and a lack of security. However, in its current condition, as Mr Campbell pointed out and the tenant accepted it is being used as a storage facility, albeit one that is ostensibly neither dry nor secure.
26. I am not aware of any market evidence for flats such as this being used for storage however it clearly does have a value to the tenant for storage purposes. It is not comparable to commercial personal storage facilities which are both dry and secure. I am of the opinion that the rental value of storage in this area is in the region of £20 to £50 per week. Doing the best, I can, using my expert knowledge I determine the value of this property at £30 per week to reflect the dampness and security issues in particular which would impinge on the type of goods able to be stored on the premises.

The Decision

27. The rent is determined at £30 per week as at 5 April 2021 in accordance with the effective date in the landlord's notice.

Chairman: Evelyn Flint

Dated: 8 July 2021

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....