



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

**Case Reference** : BIR/00CN/MNR/2020/0057

**HMCTS** : A:BTMMREMOTE

**Property** : 66 Charles Road, Small Heath, Birmingham B10 9EU

**Tenant** : Mr A Tarhouni

**Representative** : Ms K Tarhouni (daughter)

**Landlord** : Mohammed Akram

**Representative** : Ms N Kusar (daughter)

**Type of Application** : An Application under section 13 of the Housing Act 1988 that refers a notice proposing a new rent under an assured periodic tenancy to the Tribunal.

**Tribunal Members** : Judge David R. Salter (Chairman)  
Mr Vivek Chadha FRICS

**Date of Decision** : 5 January 2021

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**REASONS FOR DECISION**

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## Introduction

- 1 In an application to the First-tier Tribunal (Property Chamber) (the Tribunal) under section 13(4) of the Housing Act 1988 (the Act) received by the Tribunal on 12 November 2020, the Tenant referred a notice from the Landlord proposing an increase in rent to the Tribunal.
- 2 The Landlord's notice, which was dated 1 November 2020 and in the prescribed form, proposed a rent of £700.00 per calendar month with effect from 1 December 2020 in place of the current rent of £550.00 per calendar month.
- 3 Initially, the Tenant occupied the Property under the terms of successive assured shorthold tenancies dated 1 April 2016 for a term of six months and 1 October 2016 for a term of twelve months respectively. In each instance, the rent payable was £550.00 per calendar month. The agreements were, otherwise, in the common form with the Landlord responsible for maintaining and repairing the Property and the Tenant responsible for keeping the interior of the Property in a 'good and clean state and condition'.
- 4 By Directions dated 12 November 2020, each of the parties was instructed, *inter alia*, to complete and return to the Tribunal on or before specified dates the reply form attached to the Directions giving details of the Property together with any further comments either party may wish the Tribunal to consider in making its determination. In the latter respect, the Directions informed the Landlord that such comments may include details of any rentals of similar properties upon which reliance may be placed and photographs; whilst, the Tenant was directed that such comments may include 'any comments you wish to make about the condition of the property or any improvements or alterations you have made and when you made them, in addition to those already provided', the details of any rentals of similar properties upon which reliance may be placed and photographs. The Directions afforded the Landlord the opportunity to provide a brief response to any points raised by the Applicant with a copy of any such response to be sent to the Tribunal. Further, the Directions advised that whenever a letter or e-mail was sent to the Tribunal a copy should be sent to the other party and a note of this made on the letter or e-mail.
- 5 The Directions also indicated that, in view of Public Health England's advice to avoid unnecessary travel and social interaction, it was not the intention of the Tribunal to hold an oral hearing or to inspect the Property. Nevertheless, it was open to either party to request an oral hearing; any such request should be made to the Tribunal, with a copy to the other party, within 14 days of the date of the Directions and noted on the reply form. The Directions added that, in the event of such a request being made, the hearing would be conducted, in light of the prevailing situation, by way of either a telephone or a video hearing.
- 6 In the event, the Landlord requested an oral hearing.
- 7 In furtherance of the application and in accordance with the Directions, each of the parties completed and submitted the reply form to the Tribunal. In the course of completing the reply form, the Tenant alluded to the state and condition of the Property and presented various photographs of the interior of the Property in support of those comments. In addition to a duly completed reply form, Ms Kusar submitted, on behalf of the Landlord, a written statement, evidence of suggested comparable rentals and several photographs of the interior of the Property. Latterly in December 2020, Ms Tarhouni sent a video to the Tribunal purporting to show water ingress from the ceiling onto a landing in the Property following heavy rain.

8 A telephone hearing was held on 5 January 2021. Ms Kusar and Ms Tarhouni participated.

9 In light of the above, the Tribunal determines the application taking into account the totality of the evidence, oral, written and visual, submitted by the parties, without an inspection of the Property, and relying upon its knowledge and experience as a an expert tribunal.

### **The Property**

10 From the evidence presented by the parties, the Tribunal gleaned the following.

11 The property is a mid-terraced house situated in an inner City residential area. It is fronted by what was described as a porch with a porch window. The accommodation comprises a hall (with stairs to the first floor), two living rooms and a kitchen and dining area on the ground floor. On the second floor, there are two double bedrooms, one single bedroom and a bathroom with WC. Some of the windows are double glazed together with the rear garden door. There are gardens to the front and rear. Off-street parking is available.

12 The Property has the benefit of full gas fired central heating, mains gas, water, electricity and drainage.

13 The Landlord has provided carpets and curtains and white goods (washing machine and fridge) together with a coffee table, wardrobes, beds and mattresses.

14 The Tenant has not carried out any improvements.

### **Specific matters pertaining to the condition of the Property**

15 In addition to observations about the general condition of the Property, the following specific matters pertaining to the condition of the Property were raised and addressed by the parties in their submissions (see further below, paragraphs 19-21 and 22-27), and considered by the Tribunal in the course of its determination (see below, paragraphs aa-bb):

Mould in some rooms and in the bathroom;  
Condition of carpets;  
Damage to the front door;  
Upgrading with double glazing; and  
Water ingress.

### **Relevant Law**

16 Under Section 14 of the Act, the Tribunal has jurisdiction to determine the rent following a referral to the Tribunal under section 13 of the Act. Section 14(1) provides that:

‘...the Tribunal shall determine the rent at which, subject to subsections (2) and (4) below, the Tribunal considers 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 rent) are the same as those of the tenancy to which the notice relates;  
(d)...

17 Further, section 14(2) provides:

‘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 the failure by the tenant to comply with any terms of the tenancy.’

18 For the purposes of section 14, section 14(4) specifies that:

‘... “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.’

## **Submissions of the Parties**

### **Tenant**

19 The Tenant set out his concerns about the Property in the Reply Form and these concerns were supported, where appropriate, with photographs. More specifically, the Tenant drew the attention of the Tribunal to mould in one of the living rooms, the single bedroom and the bathroom (in which it was extreme), the poor condition of the carpet in one of the living rooms and the smell emanating from carpets which it was not possible to eradicate notwithstanding regular cleaning, the front door which was insecure, and to the coldness of the living rooms, even with central heating, due to the fact that the porch window was not double glazed.

The Tenant also related that the upgrading by the Landlord of some of the windows and the rear garden door was unfinished as shown in photographs submitted in evidence.

The Tenant concluded that the Property was not safe and that it did not provide a healthy environment for himself and his family.

20 Further, on 4 December 2020, Ms Tarhouni submitted, on behalf of her father, a video which, purportedly, showed water ingress through the ceiling on the first floor adjacent to a light fitting and onto the carpeted hallway. Ms Tarhouni explained that it had rained heavily on that day.

21 During the telephone hearing, Ms Tarhouni re-iterated many of the points raised by her father in the Reply Form and emphasised that the central heating was in constant use in

the Property. She explained that she was acting as his representative because her father was not confident in the use of the English language and, often, lacked understanding of its meaning.

### **Landlord**

- 22 The essence of the Landlord's case is to be found in a statement of case accompanied by photographs and evidence relating, primarily, to similar properties on the rental market, which was prepared and submitted by Ms Kusar on the Landlord's behalf.
- 23 In that statement, Ms Kusar informed the Tribunal that when the Property was let to the Tenant in 2016 it was in very good condition. In her opinion, the subsequent problems to which the Tenant alluded, namely mould in some rooms and the bathroom, the condition of carpets and the damage to the front door were attributable to the manner in which the Property was used by the Tenant and his family i.e. to poor housekeeping. More specifically, the mould issues, which were not denied, arose because, first, the heating in some rooms (rear bedroom, bathroom and downstairs living rooms) had been turned off, secondly, there was a lack of ventilation in the bathroom (which occurred, especially, when showering took place with the bathroom window shut), and, thirdly, hand washing of clothes occurred in the rear bedroom after which the clothes were hung in that room as shown by a photograph that had been submitted in evidence. Further, Ms Kusar contended, similarly, that the evident deterioration in the condition of some of the carpets was also a matter for which the Tenant was accountable. In this respect, there was damage in the form of fraying caused by the Tenant's cat(s) to the carpet 'on the stairs and hallway, both upstairs and downstairs', and, downstairs, the carpet in the hallway was worn and dirty due to the Tenant leaving his bicycle in the hallway whilst the carpets in the living rooms and dining area were showing wear and tear that had been exacerbated by the Tenant wearing dirty shoes in the Property and by the behaviour of the cat(s). Any odour emanating from the carpets was due to 'the cats being kept inside and litter trained within the house.' As to the damaged front door, Ms Kusar stated that she had only learnt of this matter in September 2020 when work on installing upgraded double glazing to the windows was taking place. She indicated that there had been no issue with this door at the time of letting to the Tenant and referred the Tribunal to a photograph that had been adduced in evidence and which showed that there was a door lock towards the top of the door and also midway up the door. Ms Kusar believed that the damage to the door had occurred some eighteen months ago when the Tenant's wife and daughter had locked themselves out of the property and it was necessary for the lock to be broken to secure entry. Ms Kusar intimated that she had advised the Tenant and his family that the damage should be fixed by them. She added that it would appear that this advice had not been heeded.

Ms Kusar also explained that a plan to upgrade some of the windows at the Property was formulated following Ms Tarhouni telling her that cold air was entering the Property through certain windows and affecting the health of her parents. Ms Kusar indicated that this plan involved the upgrading of five windows together with the rear garden door at a cost of £2,000.00. This did not include the porch window which would be replaced as and when the porch was extended and replaced. Ms Kusar told the Tribunal that she had informed Ms Tarhouni that the carrying out of this work was dependent on the rent for the Property being increased to £700.00 per calendar month from 1 October 2020 to which Ms Tarhouni agreed. Thereafter, Ms Kusar stated that work on fitting the windows and the rear garden door began in September 2020, but it ceased when Mr Tarhouni refused to pay the increase in rent in October 2020; this was the reason for the unfinished work, such as plastering, shown in some of the photographs that had been adduced in evidence.

24 In addition, Ms Kusar acknowledged that she had seen the video forwarded to the Tribunal by Ms Tarhouni that purported to show water coming through the ceiling of the first floor of the Property and into the hallway on that floor. Ms Kusar informed the Tribunal that her father had visited the Property within two hours of being notified of the leak and found little evidence of dripping water and some confusion about where the water had come from. Ms Kusar added that a builder who was sent the following day (5 December 2020) to investigate found no evidence of a leak either on the ceiling in the vicinity of the light bulb holder or in the loft and concluded that there was no leak from the roof.

25 Further, Ms Kusar adduced in evidence a letter dated 27 November 2020 written by C.B.S Properties Small Heath Ltd relating to a market appraisal of the Property which had been conducted by this company at Ms Kusar's request. In light of that appraisal, the company recommended 'an initial rental valuation of £800.00-£850.00 per calendar month' for the Property. In addition, Ms Kusar drew the Tribunal's attention to estate agent particulars relating to similar properties within a reasonable distance of the Property. These particulars related to the following properties:

*Charles Road, Small Heath, Birmingham B10*: terraced house, 3 bedrooms, available to let at £800.00 per calendar month;

*Pretoria Road, Birmingham B9*: terraced house, 3 bedrooms, available to let at £700.00 per calendar month; and

*Blake Lane, Birmingham, B9*: terraced house, 3 bedrooms, available to let at £795.00 per calendar month.

During the telephone hearing, Ms Kusar added that she believed that the property in Charles Road, which, in her opinion, was smaller than the Property, had been let on 1 December 2020. Otherwise, she was unable to furnish any further information on any of the above-cited 'comparable' properties.

26 Ms Kusar also remarked that any attempts to deal with matters relating to the Property, including the rent, were handicapped by the Tenant's general unwillingness to engage with her or her father.

27 Finally, Ms Kusar stated that the rent had not been increased since the Tenant moved into the Property in 2016.

### **The Tribunal's Determination**

28 In accordance with section 14 of the Act (see above, paragraphs 16 -18), the Tribunal may proceed to determine the rent at which it considers the Property might reasonably be expected to let on the open market by a willing landlord under an assured tenancy. The personal circumstances of the Tenant are not relevant to the determination of this issue.

29 The evidence submitted by the parties relating to the general condition of the Property and summarised in these reasons suggests that if offered today in the market it would require some degree of restorative and decorative work, whatever may have been the catalyst for that work, and completion of the upgrade of the designated windows and rear garden door.

30 Hence, in the first instance, the Tribunal determines what rent the Landlord could reasonably be expected to obtain for the Property in the open market if it were let today on the terms and in the condition that is considered usual for such an open market letting. In this respect, the Tribunal relies on its own knowledge of general rents for this

type of property, assisted to a very limited extent by the indeterminate particulars and information relating to similar properties in the rental market which were presented by the Landlord, and determines that the starting point should be £775.00 per calendar month.

- 31 In this case, however, the Tribunal must take into account the general condition of the Property (see above, paragraph 29), and, in so doing, it finds that a deduction of £75.00 per calendar month should be made from the above mentioned starting point of £775.00 per calendar month to reflect that condition.
- 32 Consequently, the Tribunal acting in its capacity as an expert tribunal and relying, principally, on its knowledge and experience of the relevant property market finds that the market rent for the Property is £700.00 per calendar month.
- 33 The rent will take effect from 1 December 2020 which is the date specified in the Landlord's notice of increase.

Judge David R. Salter

Date: 24 February 2021

### **Appeal to the Upper Tribunal**

- 34 If any party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such appeal must be received within 28 days after these written reasons have been sent to the parties (Rule 52 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).
- 35 If the party wishing to appeal does not comply with the 28-day time limit, the party 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.
- 36 The application for permission to appeal must identify the decision to which it relates, state the grounds of appeal and state the result the party making the application is seeking.