FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**CAM/38UC/MNR/2020/0028**
HMCTS code	:	**A:BTMMREMOTE**
Property	:	**36 Jericho St Oxford OX2 6BU**
Applicant	:	**James Devereux**
Respondent	:	**Josephine Sharoni**
Type of application	:	**Section 14 of the Housing Act 1988 Determination of market rent payable.**
Tribunal member(s)	:	**Mary Hardman FRICS IRRV(Hons)**
Date of hearing	:	**13 January 2021**
Date of decision	:	**25 February 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote [audio] hearing which has been consented to by the parties. 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 I was referred to are in individual bundles produced by the Applicant and the Respondent. I have noted the contents and my decision is below.

Decision:

1. The Tribunal determined a rent of **£600** per calendar month with effect from 1 November 2020.

Reasons

Background

2. The Landlord by a notice in the prescribed form dated 16 September 2020 proposed a new 'rent' of £1188 per calendar month to be effective from 1 November 2020. On 26 October 2020 the tenant referred the Notice to the Tribunal. This was in lieu of the £688 per month which appears to take effect from January 2018.

3. No inspection took place due to measures introduced to combat the spread of the Coronavirus (COVID-19) and to protect the parties and the public, particularly those at risk.

4. Parties were requested to complete a pro forma supplying details of the accommodation on a room by room basis, the features of the property (central heating, white goods, double glazing, carpets and curtains) and other property attributes and any further comments that they may wish the tribunal to take into consideration. This could include any repairs and improvements that had been made, any comments on the condition of the property and rentals of similar properties – should they wish to rely on these.

5. They were invited to include photographs and were informed that the Tribunal may use internet mapping applications to gather information about the location of the property and may inspect externally.

6. The determination would take place based on the submissions from both parties unless either party requested a hearing. Further evidence was submitted by both the landlord and the tenant. The tenant requested a hearing on 10 November 2020

The Property

7. The property is second floor flat in a relatively small three storey, ex local authority block which dates from the late 1960's.

8. The accommodation comprises a sitting room/study, kitchen, two bedrooms with a bathroom and wc.

9. There is central heating which was installed by the local authority following what the tenant says was an application that he made. It is not clear, although appears possible that this was paid for by the

landlord via the annual service charge and does ultimately belong to the landlord.

10. Similarly, the double glazing was installed by the local authority and it appears likely that this was paid for via the service charge.

The Tenancy

11. The Tenancy commenced on 15 May 1996. There is no written tenancy agreement. From some time following that, a statutory tenancy appears to have arisen. Section 11 of the Landlord and Tenant Act 1985 applies in respect of Landlord's repairing obligations

12. From 15 May 1996 Mr Devereux occupied one bedroom and shared the living room/study, kitchen and bathroom with the tenant of the second bedroom.

13. A limited amount of basic furniture was provided by the landlord.

14. Historically Mr Devereux found a tenant for the second bedroom, collected the rent and passed it directly to Ms Sharoni.

15. In 2017 it was agreed that his rent would increase to £688 and on this basis, he would have sole use of the living room/study.

16. At the same time, he applied for increased housing benefit to cover the increased rent. Ms Sharoni wrote to the local authority to confirm that he occupied one bedroom and had exclusive use of the living room and study. She said that he was also expected to pay council tax, electricity and water bills.

17. Ms Sharoni believes that the Mr Devereux is the tenant of the whole flat and garage and the Section 13 notice to increase the rent to £1188 is served on this basis.

The Law

18. 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

19. 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.

Issues to be determined

20. There are two issues to be determined
    i) What is the extent of the property occupied under Mr Devereux's tenancy?
    ii) What is the market rent for that property?

Representation – Landlord

21. At the hearing Ms Sharoni said that she believed the tenancy extended to the whole flat and the garage. She felt that the default was that it was for the whole flat. She said that Mr Devereux had let out the second bedroom and the garage but she accepted that the money for these came as separate payments. She said he started letting out the garage in return for a cap on his rent. She was receiving £125 a month for the garage until July 2020, since when she had received nothing.

22. She also accepted that in 2017 she agreed that he would have exclusive use of the living/room study. She also agreed that, when the second bedroom and garage were not let, she received no money in addition to Mr Devereux's rent of £688.

23. In her written evidence she said that Mr Devereux's rent of £688 together with the subletting of the bedroom at £400 and the garage at £125 meant that she was receiving £1213 plus bills from August 2017 until September 2019. She said that as this 'informal arrangement' no longer holds she was seeking to formalise it.

24. She said that it was not possible to rent out the second bedroom without Mr Devereux's cooperation as she lived abroad.

25. The state of the flat was taken into account in the lower rental price in comparison to other local advertisements. She was also not allowed to touch any of the flat bar the second bedroom without Mr Devereux's permission and she was not finding him co-operative when looking to make improvements.

26. The rent had remained low, being £346.66 per month inclusive of bills from 2003 – 2015, £400 per month inclusive of bills from 2015-2018 and only raised to £688 per month excluding bills from January 2018 . She said that Mr Devereux did the repairs on a 'quid pro quo' basis and felt that this 'heavily subsidised rent' more than paid for improvements

carried out over the course of more than 20 years. The proposed new rent of £1188 was not taking advantage of tenant's improvements.

27. She said that she had paid for the washing machine and that the central heating was paid for by the council and the double glazing installed by them and paid via her service charge, which was £100/month.

28. Mr Devereux had paid a lump sum of £1500 which she saw as towards the utility and council tax bills from January 2017 until July 2019, since when he had not paid anything towards them.

29. To support the proposed rent of £1188 she produced evidence of the sale of an adjacent flat at £408,000 in January 2018. She also produced a Zoopla estimate of the rent for 36 Jericho St of £1350-£1600 per month, a two-bedroom, two-bathroom apartment on Walton Well Rd, Oxford on the market at £1,950 per month, a 1 bedroom house on Great Clarendon St, OX 2 at an asking rent of £1320 per month and a one bedroom house on Wellington St Ox2 at an asking rent of £1,325 per month

Representations – Tenant

30. Mr Devereux said he first occupied the property in May 1996 and another tenant occupied the second bedroom with the lounge/dining room, kitchen and bathroom shared by both tenants. At the time the landlord was abroad and this has continued to be the position.

31. In 2015, following discussions with the landlord, Mr Devereux wrote to the landlord suggesting that he 'clear out the garage and put it out for rent' which would bring in £80 a month. In his letter he set out the current and separate rents paid by both himself and the other tenant and how this might be increased. He also stated that he had paid for a number of things such as a vacuum cleaner and a new springless mattress.

32. Ms Sharoni wrote to the local authority on 7 December 2017 to confirm Mr Devereux occupied one bedroom and had exclusive use of the living room and study. She said that he was also expected to pay council tax, electricity and water bills.

33. In a letter dated March 2018 he again wrote to Ms Sharoni following discussions asking that she write(again) to the council setting out his new rent of £688 per month plus 'charges in your letter dated 7 December 2017.

34. He also asked that she state that his rent did not change if someone was living in the other room.

35. in June 2018 he wrote again to Ms Sharoni regarding payment by the council of his rent and saying that he had shown a number of people the bedroom and was working to find someone as soon as possible.

36. He said that the landlord had relied on his goodwill to find tenants and he was under no legal obligation to do this, He did not accept that he had sublet the flat. The benefit (rent) for the other room went to the landlord and the landlord was now seeking a very different tenancy to that which had been previously agreed.

37. He said that over the years he had carried out a large amount of repair and replacement to the property which included:

Hall – painted walls and woodwork; installed mirror and rugs; fitted wooden shelves and coat hooks; provided loft ladder.

Sitting room and study – painted walls and woodwork; removed defunct fire and replaced with bookcase; supplied light fitting, tables and chairs,desk, mirror and cupboard; installed internet and electrical sockets

Kitchen – replaced walls tiles; painted; repaired and re hung kitchen cupboards and drawers, supplied kitchen table and chairs, and storage racks: supplied microwave, washing machine, cooker hood, cooking equipment; installation and commissioning of new gas stove; various repair maintenance jobs.

Bedroom 1 – Painted walls and woodwork; supplied table, lamp and chairs; fitted bookshelves; supplied light fitting, bedhead, mirrors, pictures, mattress bed linen, towels, curtains and roller blind

Bedroom 2 - Painted walls and woodwork; supplied desk, lamp, side table and chair; supplied bedhead, mirror, mattress bed linen, towels, curtains and curtain rail.

Bathroom and wc – painted walls and woodwork; replaced floor covering; replaced light fitting; retiled and regrouted; supplied and fitted bathroom fittings.

He had also installed WiFi.

38. He said that that he had done the vast majority of the repairs at his own expense. When asked by the tribunal why he had done this he explained that the flat was in a poor condition with nothing spent on it. The landlord was not interested and did not understand the responsibilities of a landlord. However, he did not want to live in the flat in the condition it was in. He did not accept that the rent had been kept at an artificially low level to reflect that he was expending money on repairing the property and replacing items.

39. When he had agreed to the increase in rent to £688 in 2018 he had done so on the understanding that repairs and renewals would take place but no action was taken.

40. He felt that any enhancement to the rental value arising from the improvements should not benefit the landlord as this would be unjust.

41. The flat was still in need of repairs and refurbishment. The bathroom and kitchen were at least 60 years old, the shower was a 'dribble'. The plumbing leaked and had flooded the flat below on two occasions and the electrics were an issue.

42. Whilst situated in a good area of central Oxford it was a council block reflecting the old character of the area with close proximity of neighbours and attendant noise issues.

43. In respect of payment of council tax and utilities Mr Devereux said that prior to 2018 these were included in the rent. However, after the last rent increase letter was submitted to the council Mr Devereux assumed that he would pay a share in the utilities – gas/water and electricity which he thought should be 50% of the bill. In respect of council tax, he said that he explained to Ms Sharoni that he could not assure her that the council would cover his share of the council tax. He says that the letter that Ms Sharoni wrote to the council regarding him paying council tax was an expectation not a liability.

44. Furthermore, he said that the council had told him in January 2018 that he was not liable to pay council tax on this type of tenancy. It was classed as a 'HMO' and was the responsibility of the landlord.

45. He had make a payment of £1500 towards the utilities but had never had a proper statement nor an acknowledgment of the payments that he had made.

46. He felt that he was significantly out of pocket as he had paid out £1064 on items on her behalf since the rent was increased to £688 and these payments should be offset against any bills that were due.

47. He said that Ms Sharoni intended to do works to the flat but he did not think that these were being commissioned appropriately and appeared to require him to move out whilst they were done.

48. He had been unable to find a direct comparison for the tenancy. He felt it was something rather less than a one bedroom flat with a sitting room and kitchen as it was shared accommodation with the 'randomness of changing and different tenants – in effect strangers with the lack of privacy'.

49. He said that the flat below was let by the Council at £107.05 per week. He appreciated that council rents are subsidised but it had been totally modernised and upgraded. He said that the Rowntree Foundation suggested that council rents averaged around 40-50% of market rents .

50. In terms of the comparables quoted by the landlord he felt that the Zoopla valuation was unrealistic for the flat due to its condition. The

flats which she provided as rental comparables were self-contained, professionally managed, high spec and in good condition and they were asking rents.

Determination

51. 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. It 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. In addition, the legislation makes it clear that the Tribunal cannot take into account the personal circumstances of either the landlord or the tenant.

52. The Tribunal assesses a rent for the Property as it is on the day of the hearing disregarding any improvements made by the tenant but taking into account the impact on rental value of any disrepair which is not due to a failure of the tenant to comply with the terms of the tenancy.

53. In terms of what constitutes the 'property' for which the tribunal is determining the rent I am not persuaded by Ms Sharoni's argument that the 'default position' is the entire flat and that Mr Devereux sublet the second bedroom and the garage.

54. Mr Devereux's explanation is much more convincing – that he had rented part of the flat for some considerable time and the second bedroom was let separately. Indeed, Ms Sharoni states that there was already a tenant occupying the second bedroom in the flat before Mr Devereux moved in.

55. I accept that he collected the rent from whoever occupied the second bedroom, paid it to Ms Sharoni and assisted her in looking for tenants – which was presumably to some extent in his interest as it enabled that he retained some influence over who he shared with. It is clear from correspondence in 2015 that he offered to vacate the garage and seek a tenant and passed the money collected directly to her.

56. In her letter to the council in December 2017 Ms Sharoni stated the extent of Mr Devereux's occupation.

57. The tribunal is satisfied that Mr Devereux's tenancy consists of exclusive use of a bedroom, living room/study and shared use of a hall, kitchen and bathroom and wc.

58. This is an entirely different proposition to exclusive use of a property and in determining the rent the tribunal has given little weight to the Zoopla valuation, given this is almost certainly influenced by the sale of the adjacent flat which was in much better condition – and was for the flat in its entirety. Equally the other comparables also relate to

exclusive occupation of properties, whilst in the immediate vicinity are just not comparable.

59. It also places little weight on the rent charged by the council for the flat on the floor below.

60. This leaves the tribunal with little in terms of useful comparables but taking these factors into account, and using its skill and knowledge the tribunal determines that the market rent for the property as defined in paragraph 57 above is £750 per month excluding council tax and bills.

61. The Tribunal then needs to consider whether this need adjusting to reflect any improvements made by the tenant and any impact on rental value of any disrepair which is not due to a failure of the tenant to comply with the terms of the tenancy.

62. Mr Devereux has carried out a large number of repairs and improvements which would usually be the responsibility of the landlord. With the exception of the washing machine these do not appear to be disputed by the landlord.

63. However, whilst the tenant appears to have been very proactive in getting the double glazing and central heating installed, it is likely that some of the cost was paid via the service charge. Even if this were not the case these are effectively the property of the landlord and are taken into account when assessing the rent for the property.

64. The tribunal is not persuaded that the rent was held artificially low to offset the cost of these repairs. It would appear from the letter from Mr Devereux to Ms Sharoni in February 2015, when he did not have exclusive use of the living room/study that he was paying £340 per month and the tenant of the second bedroom £320. The proposal which Ms Sharoni appears to have accepted is that his rent was increased to £400/month and the other tenants to £360/month. Later in 2019 Mr Devereux was paying £688 for his larger area and the other tenant £400. However, there is no suggestion that the other tenants were also undertaking repairs and renewals and yet their rent was similar – or lower than that paid by Mr Devereux.

65. The tribunal has therefore determined that the repairs and renewals were not done in lieu of rent and that they should be disregarded in assessing the market rent.

66. On this basis it has made a £150 adjustment to the rental value to arrive at the market rent of the subject property of **£600 per month**.

67. It should be noted that this figure cannot be a simple arithmetical calculation and is not based specifically upon capital cost but is the Tribunal's estimate of the amount by which the rent would have to be reduced to attract a tenant.

68. This would not include utilities or council tax which would need to be the subject of agreement between the parties. However, the tribunal would comment that this is not a HMO – which by definition needs to be occupied by three or more people in two or more households. This does not suggest that the entirety of the charge for council tax or utilities should fall on Mr Devereux – given that he does not occupy all of the property.

Mary Hardman FRICS IRRV(Hons)
Regional Surveyor

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).