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Case No: LC-2024-398

IN THE UPPER TRIBUNAL (LANDS CHAMBER)

AN APPEAL AGAINST A DECISION OF THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)

FTT REF: CHI/29UL/MNR/2024/0066

11 September 2024

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007
AN APPEAL FROM A DECISION FOR THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)

LANDLORD AND TENANT – RENT DETERMINATION – market rent under sections 13 and 14 of the Housing Act 1988 - failure to consider relevant evidence – appeal allowed

BETWEEN:

BRYAN RYLANDS

Appellants

-and-

IAN HOPKINS
TRACY HOPKINS

Respondents

Flat D Avenay Court
217 Sandgate Road
Folkestone Kent
CT20 2LN

Upper Tribunal Judge Elizabeth Cooke
Decision on written representations

Introduction

1. This is an appeal from the First-tier Tribunal's determination of the market rent for Flat D Avenay Court, 217 Sandgate Road, Folkestone Kent CT20 2LN. It has been decided under the Tribunal's written representations appeal; neither party has been legally represented. Mr Bryan, the tenant, is the appellant, and the respondents are his landlords.

The background and the FTT's decision

2. The appellant is the tenant of Flat D, which is a converted First Floor Flat within a substantial 4-storey building, probably dating from before 1914. The building overlooks open ground to the rear towards the sea but faces onto a busy road within an established residential area. The tenancy began on 1 July 2021. It is not in dispute that in order to raise the rent for the flat the landlord must comply with section 13 of the Housing Act 1988 by serving notice on the tenant in the prescribed form proposing a new rent to take effect at the beginning of a new period of the tenancy. Section 13(4) says that where such a notice is served the proposed new rent takes effect unless, before the date of the new period of the tenancy, the tenant refers the notice to the FTT. Section 14 says that if the tenant does so, the FTT is to determine the market rent for the property, on certain assumptions and disregarding a number of factors which are not relevant to this appeal.

3. On 9th March 2024 the respondents served a notice under Section 13 of the Housing Act 1988 which proposed a new rent of £1,050 per month in place of the existing rent of £900 per month to take effect from 1st May 2024. The appellant applied to the FTT for a determination of the market rent under section 14.

4. The FTT's decision set out the current rent and proposed new rent, and explained that neither the landlord nor the tenant had requested a hearing, and that it had decided the matter on the papers without inspecting the property. It summarised the evidence received from the parties and said this:

> "21. Having carefully considered the representations from the parties and associated correspondence, and using its own judgement and knowledge of rental values in the Folkestone area, the Tribunal decided that the market rent for the subject property if let today in a condition that was usual for such an open market letting would be £1,100 per month.
>
> 22. The Tribunal considers that this market rent should be reduced to reflect the absence of a fridge or washing machine, the dated Bathroom and general disrepair as described by the Tenant.
>
> 23. Using its experience the Tribunal decided that the following adjustments should be made:
>
> Lack of some white goods provided by Landlord's £20
>
> Dated bathroom £25
>
> General disrepair £45
>
> TOTAL per month £90"

5. Accordingly it determined the rent at £1,050 per month.

The appeal

6. The appellant has permission to appeal on the ground that the property did not have a valid Electrical Installation Condition Report, because the landlord had done work on the bathroom himself and left the electrical installations in a dangerous state (with sockets incorrectly wired) which a visiting electrician would not touch. He produced a report dated 13 March 2024 from OVO energy confirming that that was the position when their engineer visited on 13 September 2022.

7. The appellant says that the FTT in assessing the market rent failed to take into account the dangerous condition of the electrical installations as a result of the landlord's work.

8. Certainly there is no mention of that in the FTT's decision, and it is not in dispute that the letter of 13 March 2024 was produced to the FTT. Nor did the FTT address the point when refusing permission to appeal.

9. The respondents in their statement of case in the appeal point to the date on the letter – some 18 months after the engineer's visit. They have produced now an email from an officer of the local housing authority dated 15 July 2024 stating that the electrical problem had been resolved – but of course that was some time after the FTT's decision. It seems there may be a dispute of fact about whether the Mr Hopkins actually did the work himself, but the letter from the local housing authority does appear to acknowledge that there was a problem which has now been solved.

10. This Tribunal on an appeal of this nature cannot make findings of fact. What does seem clear is that the appellant did tell the FTT about the electrical problem, and that the FTT neither took that into account in its determination of market rent nor explained why it had not done so. I do not think it is plausible to suppose that the point was covered by "general disrepair", which is not apt to describe an electrical hazard.

11. Accordingly the FTT's decision is set aside; either it failed to take into account a material consideration in the determination of the market rent, or it failed to explain what it made of that consideration.

Conclusion

12. The appeal succeeds; the matter is remitted to the FTT for a fresh determination of the market rent. The FTT will need to make a finding of fact about the state of the electrical installations before the start date for the new rent and then consider what effect if any that would have on the market rent at that date.

Upper Tribunal Judge Elizabeth Cooke

11 September 2024

Right of appeal

Any party has a right of appeal to the Court of Appeal on any point of law arising from this decision. The right of appeal may be exercised only with permission. An application for permission to appeal to the Court of Appeal must be sent or delivered to the Tribunal so that it is received within 1 month after the date on which this decision is sent to the parties (unless an application for costs is made within 14 days of the decision being sent to the parties, in which case an application for permission to appeal must be made within 1 month of the date on which the Tribunal's decision on costs is sent to the parties). An application for permission to appeal

must identify the decision of the Tribunal to which it relates, identify the alleged error or errors of law in the decision, and state the result the party making the application is seeking. If the Tribunal refuses permission to appeal a further application may then be made to the Court of Appeal for permission.