

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL

Reference: RAC/0004/09/20

In the Matter of Bron Haul, Abbey Road, Llangollen, LL20 8SN

In the matter of an Application under Section 13(4) Housing Act 1988

Applicants: Mark Looby & Sharon Smith

Respondent: Alison Pottenger

Tribunal Robin Phillips (Chairman)
Neil Martindale (Surveyor)

Decision

The Tribunal directs that the new rent of £551 per month should take effect from 1st October 2020, this being the date in the original notice.

Summary of Decision

1. On 8th March 2021 the Tribunal determined a market rent of £551 per month to take effect from 1st October 2020.

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 17th August 2020 the Landlord served a notice under Section 13(2) of the Housing Act 1988 which proposed a new rent of £565 per month in place of the existing rent of £525 per month to take effect from 1st October 2020. The notice complied with the legal requirements.
4. The Tribunal received an application dated 10th September 2020 from the Tenant under Section 13(4) (a) of the Housing Act 1988.
5. The hearing took place via the Cloud Video Platform and was attended by Sharon Smith and Alison Pottenger.

Submissions

6. Mr David Jones, the Tribunal surveyor, inspected the property on 25th February 2021.
- (1) The property is an end of terrace premises with ground floor shop and Upper Floor Flat. It is an old building and is according to the Respondents Grade II listed.
 - (2) It is located on Abbey Road (A542) which is a main road into Llangollen and has residential and commercial properties along its length.
 - (3) The flat in question comprises the following accommodation:
 - Ground Floor: Shared Hallway with Shop
 - First Floor: Landing, Lounge, Rear Hall, Kitchen and Bathroom with 4 piece modern suite.
 - Second Floor: Landing, Bedroom 1(front), Bedroom 2 (rear).
 - Exterior: Rear garden area with decking and sheds.

7. Applicants' Evidence

- (1) The Applicants provided evidence of a local two bedroomed property with an open market rent of £467pcm
- (2) The Applicants confirmed that there had been a history of damp and water damage at the property. It was accepted that the repairs to the roof had been carried out and whilst damp was still present, the situation was improving. There still remain some items of disrepair including a new roof leak and disrepair to the storage shed in the garden. A previous leak in the bathroom had been repaired.
- (3) Due to changes by the Council in the parking arrangements outside the property the Applicants have now lost the parking previously available. The situation is that they would be lucky to find a parking space within half a mile.
- (4) The rental figure provided by the Respondent could not be relied upon because the agents concerned had not been in the property for three years.
- (5) The Council had become involved at the property regarding the ground floor and basement in relation to dangerous structures.

8. Respondent's Evidence

- (1) The Respondent provided evidence of a local one bedroomed property with an open market rent of £575pcm. The agents had been provided with internal and external photographs of the property.
- (2) The comparable provided by the Applicant related to a Housing Association property which was set at 80% of the market value so as to be affordable. The market value would therefore be £590pcm.

- (3) The Respondent confirmed that the roof had been repaired in January 2020 and the chimneys capped and that any items of disrepair reported to her had been repaired. The Respondent has been denied access to the property for the last six months.
- (4) The Respondent is not aware of the new leak to the roof but would arrange for this to be repaired, and to look at the shed.
- (5) The Respondents had lived at the property previously for many years and there had never been parking outside the property. There were council car parks within one hundred meters.
- (6) The Council had been provided with an electrical certificate and were aware of the floor repairs downstairs, and were happy.

The Law

S14 Determination of Rent

- (1) Where, under subsection (4) (a) of section 13 above, a tenant refers to the appropriate 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

9. 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.
10. Having carefully considered the representations from the parties and associated correspondence, and using its own judgement and knowledge of rental values in Llangollen, 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 £580 per month.
11. However, because of the damp issue, the property is not currently in a condition that would achieve this level of rent.
12. Using the Tribunal's own judgement and experience it would be reasonable as a starting point to reduce the monthly rent by 10% to reflect the current level of dampness and the history of dampness at the property. The Applicant accepts that following the works carried out by the Respondent the damp situation is improving. It can take time for the property to dry out, so a year is not unreasonable. Accordingly, the Tribunal allows a 5% reduction ie £29.
13. The Tribunal accepts the evidence of the Respondent in relation to the parking. There has never been official parking at the property. It seems enforcement may have been lax in the past, but this is no longer the case. Accordingly, this is not a relevant consideration in determining the rent.
14. The Tribunal accepts the evidence of the Respondent regarding the Council involvement regarding the basement. Accordingly, this is not a relevant consideration in determining the rent.

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

Determination

16. 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 in its present condition was £551 per month.

17. The Tribunal directs that the new rent of £551 per month should take effect from 1st October 2020, this being the date in the original notice.

DATED this 30th day of March 2021

AR Phillips
Chairman