

Rent Assessment Committee

Full Reasons for Decision.

Housing Act 1988

Address of Premises

Flat 1 Victoria House,
189 Terminus Road,
Eastbourne, BN21 3DH

The Committee members were

Mr J B Tarling MCMI
Mr R. Athow FRICS MIRPM
Lady J. Davies FRICS

Parties:

Bestbaron Limited – Landlord

Mr David Brewer – Tenant

Inspection: 20th July 2006

Decision: 4th August 2006

1. Background

By a Tenancy Agreement dated 13th August 1987 the Premises were let by Barclays Bank plc to Mrs Angela Brewer (the mother of the current tenant Mr David Brewer). The Tenancy Agreement was expressed to be made under the provisions of the Rent Act 1977. It also contained (in Clause 3(5)) detailed provisions relating to the tenant's obligations to repair and decorate and (in Clause 3 (3)) to pay a further rent for the following services:

- (a) providing heating and hot water to the premises
 - (b) keeping the common parts decorated cleaned including window cleaning and lighted
 - (c) keeping any common garden areas properly cultivated
 - (d) providing any existing lift service to the premises
 - (e) providing an entryphone service for the premises
 - (f) discharging general or water rates where the premises are not separately assessed
 - (g) paying the costs of a metered water supply where the premises are not separately metered.
2. In February 2006 the Landlord appealed the Decision of the Rent Officer relating to the amount of Rent and the matter was considered by the Southern Rent Assessment Committee. The Decision of the Rent Assessment Committee was initially issued on 8th February 2006 and this was corrected by the issue of a Correction certificate issued on 10th March 2006. The rent registered at that time was £619.50 per month. The amount of rent was subject to the provisions of the Rent Act (Maximum Fair Rent) Order 1999 ("the Capping Order") and the amount of any increase was capped.

3. Mrs Angela Brewer, who was the original tenant, died on 26th March 2006. It is understood that on her death the tenancy passed to David Brewer who is understood to be the son of Mrs Angela Brewer, and who had been resident with his mother for at least two years before her death. No question has been raised by the Landlord's Agents in relation to these facts and it is assumed that they are agreed. In any event the Landlord's Agents appear to have accepted Mr David Brewer as the current tenant as on 16th May 2006 they served him with a Notice of Increase under the provisions of Section 13 (2) of the Housing Act 1988. The Notice proposed a new rent of £1,050 per month in place of the registered rent of £619.50 per month. The starting date for the increased rent was to be 1st July 2006. The tenant referred the Notice of Increase to the Rent Assessment Committee on or about 6th June 2006.
4. By way of further background the current Landlord, Bestbaron Limited, purchased the leasehold interest in this Flat in June 2005 from the original Freeholder, Barclays Bank plc. The current freeholder is Mr & Mrs K. Tutt who operate the restaurant on the ground floor of the Building.
5. **The relevant law as to the transmission of the tenancy**
 The relevant law relating to the transmission of the tenancy from Mrs Angela Brewer to her son Mr David Brewer is to be found in Schedule 1 Paragraph 4 of the Rent Act 1977 as amended by Section 39 and Schedule 4 Part 1 of the Housing Act 1988. The terms on which the tenancy take effect are set out in Section 39(6) of the Housing Act 1988 and section 39(6)(f) provides that it is to be treated as a statutory periodic tenancy for the purposes of Section 13(2) of the Housing Act 1988. Since 15th January 1989 only a spouse or civil partner living with a deceased at the time of death is entitled to succeed to a regulated tenancy. This is set out in Schedule 1 Paragraph 2 of the Rent Act 1977 as amended. As a result of these various statutory provisions, when Mrs Angela Brewer died, her Rent Act regulated tenancy came to an end and Mr David Brewer inherited a new assured tenancy being a statutory periodic monthly tenancy. The effect of this is to remove the "capping" of any rent increases as the Capping Order only relates to regulated tenancies, and not to assured tenancies.
6. **Inspection**
 The Committee inspected the property on 20th July 2006. The subject Flat is on the first floor of a purpose built block in the centre of Eastbourne. The ground floor was formerly a bank, but is now a restaurant. The Block was probably built in the 1930s. The access to the flat is through a doorway directly off the street and there is an entryphone system which was working on the day of inspection. The doorway leads to a small lobby and then up a staircase to the first and two further upper floors. Each of the 3 Flats occupies the whole of each floor above the ground floor restaurant.
 The accommodation comprised five bedrooms, a sitting room, a kitchen, a bathroom, a separate wc and a laundry room. In the kitchen there was an external door leading to a fire escape. The property was in a fair state of repair and decoration. Some of the central heating radiators did not work and one was leaking. The tenant complained that there was not always hot water available for washing and bathing. Outside the front door of the Flat was a small passenger lift which led off a small landing. The lift was some years old but appeared to work satisfactorily.

7. Representations

The parties had both indicated in writing that they did not wish to have a formal hearing and that they were content for the matter to proceed on the basis of the Committee's inspection and a subsequent determination after consideration of the written representations.

8. The tenant had sent in a written note in which he had said the proposed rent of £1,040 per month was grossly unfair for this Flat. He referred to the previous decision of the Committee at £685.19 per month as a registered rent. He said nothing has changed or been repaired since the Committee last inspected and he saw no reason for any increase in rent. He made no reference to any comparable market rents for consideration by the Committee.
9. The Landlords Agents, Messrs Richards & Co had made written representations in a letter to the Committee dated 3rd July 2006. This letter went into detail as to the services and also set out some comparable rents for consideration by the Committee. These were:

- A 4-bedroomed town house in north Harbour currently available through Martin & Co at a monthly rent of £995 unfurnished
- A 4-bedroom Flat in Hartington Place being offered unfurnished by Edwin Jones Partnership at a monthly rent of £1,100
- A 5-bedroomed terraced house in South Harbour being offered by Castle Estates unfurnished at a monthly rent of £1,100
- A 4-bedroomed Flat close by in Hyde Gardens being offered by Castle Estates unfurnished at a rent of £1,040 per month
- Details of one other 7-bedroomed maisonette in Bristol were supplied.

The Landlord's Agents accepted that the kitchen and bathroom fittings are a little dated and that some allowance should be made to reflect this. They reminded the Committee that the provisions of the Tenancy Agreement still applied that the tenant is responsible for internal decorations and minor repairs. They suggested the following rental calculation:

Estimated current market rent	£975 pcm
Less 15% to reflect dated fittings, lack of carpets and white goods	<u>(£146)</u>
	£829
Add amount attributable to services	<u>£225</u>
	£1,054
	BUT SAY £1,050 pcm

10. Services

The Landlords agents reminded the Committee of the provisions of the tenancy agreement relating to Services (as set out in Paragraph 1 above). The latest Service Charge Accounts that are available disclosed the following payments due from the Landlord to the Freeholder for this Flat:

Cleaning	£212
Electricity	£40
Gas	£679.14
Sewerage & Water	£788.22
Flat repairs (minor)	£89.02
Boiler repairs/services	£26.14
Management fee	£240.87
Lift service/repair	£618.95
TOTAL	£2,694.34 pa

11. The relevant law relating to the determination of rent

Section 14 of the Housing Act 1988 requires the Committee 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. In so doing the Committee, as required by Section 14(1), is to ignore the effect on the rental value of the property of any relevant tenant's improvements as defined in Section 14(2) of that Act.

12. Consideration

The Committee worked through the written representations received from both parties. In particular it worked through the comparables supplied by the Landlord's Agents. Whilst these comparables were helpful to give an idea of what other properties were available on the market, none of the comparables was evidence of actual lettings, but were merely asking rents. Two of the comparables were houses and the others gave insufficient information as to the terms and conditions of the proposed tenancies to enable the Committee to be able to rely on the accuracy of the information. The 7-bedroomed maisonette in Bristol was considered to be in a different locality to the subject property to be of any great value.

After considering all the evidence and using the Committee's combined knowledge and experience of the rental market in East Sussex, the Committee came to the conclusion that the correct starting figure for a market rent for this property in a good condition would be in the region of £850 per month.

13. Deductions

From the starting market rent deductions should be made to reflect the lack of carpets and curtains and white goods which a landlord normally supplies with an assured shorthold tenancy, a deduction to account for the more onerous repairing and decorations responsibilities in this Tenancy Agreement, a deduction for the lack of a modern bathroom and kitchen, and a deduction for the poor central heating and hot water supply. The Committee produced the following calculation:

	Per month	Per month
Open market rent		£850.00
Less allowances for:		
Lack of carpets curtains and white goods	£26.00	
Tenants internal decorating/repairing Liability	£26.00	
Lack of modern bathroom and kitchen	£52.00	
Disrepair to hot water/central heating	<u>£20.00</u>	
	£124.00	<u>£124.00</u>
		£726.00

To this amount must be added the cost of Services enjoyed by the tenant.

14. Services

The Committee then worked through the list of Service Charges items supplied by the landlord's agents as set out in Paragraph 10 above. They agreed all those items with the exception of the Management fee item of £240.87. There was nothing in the tenancy agreement that required the tenant to contribute to this item. Accordingly the amount of £2,694.34 pa was

reduced by £240.87 to £2,453.47pa. This amount divided by 12 made £204.46 per month for services.

15. Conclusion


The Committee added the amount of rent assessed under Paragraph 12 of £726 to the amount of £204.46 for Services, as set out in Paragraph 13, which gives a total of £930.46 per calendar month. **The Committee therefore concluded that the rent at which the property might reasonably be expected to be let on the open market in its current condition and on the terms of the existing tenancy would be £930.46 per calendar month.**

16. Date of commencement of new rent.

The rent increases from £619.50 per month to the new rent of £930.46. The date of increase set out in the Notice of Increase was 1st July 2006. The Committee decided to exercise its discretion to delay the operation of the date of increase to the date of this Decision, namely 20th July 2006. This provision is set out in Section 14 (7) of the Housing Act 1988. The reason for this is that the increase from £619.50 to £930.46 per month is substantial and is likely to cause the tenant undue hardship.

17. Water charges

None of the above figures include any additional amounts that are payable for water charges. According to the Notice of Increase the amount of water charges is £65.69 per month and this amount must be added to the new rent that is payable.

Chairman  Mr J B Tarling MCMI

Dated 4th August 2006