



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

**Case Reference** : **CAM/12UB/MNR/2019/0005**

**Property** : **54 Aberdeen Avenue Cambridge CB2 8DZ**

**Applicant (Tenants)** : **Mr Theron de Ris & Dr Lara de Ris**

**Respondent (Landlord):** **Mr & Mrs Kirkpatrick**  
**Agent** : **Bidwells**

**Type of Application** : **Determination of a market rent under  
Section 13 of the Housing Act 1988**

**Tribunal Members** : **Judge JR Morris**  
**Mrs M Hardman FRICS IRRV (Hons)**  
**Regional Judge R Wayte**

**Date of Decision** : **2<sup>nd</sup> May 2019**

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**DECISION**

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**DECISION**

1. The Tribunal determines a market rent of £3,500.00 per calendar month to take effect from 5<sup>th</sup> May 2019.

**REASONS**

**THE PROPERTY**

2. The Property is a modern end of terrace house constructed circa 2010 of brick under a flat roof. The terrace of houses is set in communal grounds.

**Accommodation**

Entrance to the house is under a large porch.

The Property comprises as follows:

- On the ground floor there is an entrance lobby to a hallway off which is a kitchen, study, bathroom, laundry cupboard, garage and a terrace.
- From the hallway rise stairs to the first, second and third floors and to an annexe.
- On the first floor is a living room and terrace.

- On the second floor there are two bedrooms (bedroom 2 and 3), a bathroom, a boiler room and a terrace.
- On the third floor there is a bedroom (master bedroom) with en suite bathroom and a terrace.
- The annexe which is at first floor level comprises a bedroom and shower room and opens onto the first floor terrace.

#### Services

Space heating is by an underfloor gas central heating system and water is heated by the same gas heating system. The Property has mains electricity, water and drainage.

#### Furnishing

The Property is let unfurnished.

#### Location

The Property is situated on the Accordia Development in Cambridge which is a large estate of 378 dwellings 166 of which are flats and 212 are houses.

### **THE TENANCY**

3. The Tenancy commenced as a contractual Assured Shorthold Tenancy for a fixed term of 24 months from 5<sup>th</sup> September 2015. A copy of the agreement dated 21<sup>st</sup> August 2015 was provided. This tenancy was extended for a further 12 months from 5<sup>th</sup> September 2017. From 5<sup>th</sup> September 2018 a statutory tenancy on the terms of the written agreement appears to have arisen. Section 11 of the Landlord and Tenant Act 1985 applies in respect of Landlord's repairing obligations.

### **THE REFERRAL**

4. The current rent is £3,625.00 per calendar month from the commencement of the tenancy payable on the 5<sup>th</sup> day of each month. The Landlord by a notice in the prescribed form dated 7<sup>th</sup> March 2019 proposed a new rent of £3,725.00 per calendar month from 5<sup>th</sup> May 2019. On 13<sup>th</sup> March 2019 the Tenant referred the notice proposing a new rent to the Tribunal. The referral was by written representations and a hearing.

### **THE INSPECTION**

5. The Tribunal inspected the Property in the presence of the Tenants, the Landlords and representatives of the Landlord's Agents. The house extends over four floors and is spacious.
6. Externally the Property is in fair condition. However, there is a substantial growth of ivy climbing to all four floors of the Property and around its windows. The underside of the porch to the front of the Property is timber which has signs of water damage which appears to be due to ingress of water through the roof of the porch.
7. The communal area around the Property has a substantial growth of ground cover plants. The area immediately around the house is said to be part of the Property but the boundary did not appear to be defined.

8. Internally the Property is in fair decorative order. The windows are mostly floor to ceiling and all are double glazed metal alloy. The ivy on the outside of the house encroaches around the windows on all except the third floor. One of the living room windows does not open. There is timber flooring throughout except in the bathrooms which are tiled. There was a section of the timber flooring in the hallway on the ground floor which did not fit to the wall.
9. The door to the study snags on the floor. The door to the master bedroom from the second floor landing is liable to snagging on the jamb due to some displacement of the hinged door post. There was some minor cracking where the skirting met the wall on the stair case. The door handle to the laundry cupboard on the ground floor had punctured the hallway wall.
10. There are two water marks on the ceiling in the living room which appear to be due to ingress of water from the bathroom above. The exact cause could not be identified. The kitchen is modern with integrated units. The bathrooms are also modern. The bathroom floor tiles on the second floor move and the tiles do not feel securely affixed when walked on. There had been a leak in the annexe bathroom which is over the garage and an inspection hatch has been fitted to deal with any future problems.
11. On each floor there is a terrace which has timber deck floors. These are covered with algae. There are trees in the vicinity and leaves could be seen between the deck timbers.

## **THE LAW**

12. 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
13. 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.

## **REPRESENTATIONS**

14. The hearing was attended by the Tenants, Mr de Ris and Dr de Ris, Mrs Leisha Kirkpatrick, one of the Landlords and by Ms Kersha Douglas, Senior Property Manager and Mr Alex Bloxham, Head of Letting, from the Agents.
15. The Tribunal explained that its jurisdiction came from the Housing Act 1988 which required it to assess a market rent for the 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. The legislation makes it clear that the Tribunal cannot take into account the personal circumstances of either the Landlord or the Tenant.

16. The Tribunal noted from the Tenants' written representations that they were aggrieved that although some repairs had been carried out, they felt that they had had to wait an unreasonable time for the work to be done and that there had been some dispute between the Tenants and the Agent as to the extent or nature of the repairs to be carried out. At the hearing the Landlord said in response that the Tenants had not given access to undertake repairs promptly or, more recently, at all.
17. The Tenants had stated in written representations that they were dissatisfied with the management by the Agent. The Tribunal explained that it only had jurisdiction to determine the rent and could not address any complaints regarding the management.
18. The Tribunal stated that it determines the rent based on the condition of the Property as at the day of the inspection.
19. A tribunal cannot take into account any repairs the landlord intends to do or that the tenant had been waiting a long time for the repairs to be carried out. Even where access to undertake repairs is refused, the assessment based on the condition as at the day of inspection is justified on the basis that although the landlord is not able to achieve a full rental value nevertheless money has not had to be expended on the particular repairs. The tenant may perhaps have a lower rent for the want of repair but lives in a property which is not in the best condition.
20. The points relevant to the assessment of the rent raised by the tenants in their written and oral representations were responded to by the Landlords and their Agent at the hearing.
21. The issues regarding the condition of the Property were addressed room by room followed by a consideration of the evidence of rents of comparable properties submitted by the Landlord's agent.

## **Condition**

### ***Porch***

22. The Tenants said that the porch at the entrance to the house suffers from an ingress of water. Mr de Ris said he had replaced the bulbs in the inset lights but they had failed within a short time. The Tenants said that this meant the area outside the house was unlit creating a safety and security risk but their main concern was that lights short circuited and there was a risk of electrocution from the operating switch.
23. Ms Douglas said that the Agent was not aware that there was a problem with the porch or the lights.

## **Ground Floor**

### *Entrance Lobby and Hallway*

24. The Tenants said that there was a section of the timber flooring in the hallway which did not fit to the wall and that the gap had resulted in an ant infestation.
25. Ms Douglas said that this was a matter for action by the Tenants laying ant killer.
26. The door handle to the laundry cupboard on the ground floor had punctured the hallway wall. The Tenants said that this had been caused by the workman who came to ease the door.
27. Ms Douglas said that the Agent had not been aware of the damage to the wall.

### *Kitchen*

28. The Tenants had said that the appliances had failed to operate but these had been repaired. Their main concern was that the ivy encroached on the windows. They had attempted to pull it away but it was particularly vigorous. The ivy grew at the corner of the house and extended over all the floors and therefore this complaint was made with regard to all the windows in all the rooms at that corner of the house.
29. The Landlords' view appeared to be that it was the Tenants responsibility to tend the ivy by removing it from the windows.
30. The Tribunal was not clear whether the ivy had extended from and was part of the communal grounds and therefore should be tended under the auspices of any service arrangement or whether it grew from the Property and so was the responsibility of the owner. It was not clear what the extent of the Property was and where the Estate took over. No plans were provided. If the ivy had grown from the Property and was the owner's responsibility there was uncertainty with regard to the terms of the Lease as to whether the Tenants had responsibility for it.
31. Clause 19.1 of the Tenancy Agreement requires the Tenants "To keep the garden...if any in the same condition and style as at the commencement of the Tenancy". However, Clause 19.5 requires the Tenant "Not to top, prune, remove or destroy any existing plants, trees or shrubs, unless it is required to keep the garden in good order without the consent of the Landlord or the Agent". As noted, it was not clear whether there was a garden to the Property. The ivy is an existing plant and therefore should not be cut back without the consent of the Landlord or Agent.
32. The Tribunal was of the opinion that the terms of the Tenancy Agreement were unclear and therefore were to be construed against the party inserting the clause (as per the principle of *contra proferentum*) i.e. the Landlord. In this instance the ivy required some specific provision within the Tenancy Agreement.

### *Study*

33. The Tenant stated the door snagged against the floor and could not be fully opened.
34. Ms Douglas said that the Agent had not been aware of the door snagging the floor.

*Bathroom, Laundry Cupboard, Garage*

35. There were no specific defects with regard to the bathroom, laundry cupboard or garage.

*Terrace (issue applicable to all terraces)*

36. An issue was raised with regard to all the terraces. The Tenants said that the terraces are dangerous in that the gap between the boards is unduly wide, the wood is beginning to rot and the decking is and has since the beginning of the tenancy been covered with algae making it slippery when wet. The Tenants attributed the condition of the terraces to the failure by the Landlords to apply a protective sealant. The terraces were also affected by leaves, pollen and debris falling from a large tree nearby, which is not part of the Property, making the terraces unusable as an area on which to sit out.
37. Ms Douglas said that the Agent was aware of the condition of the terraces but considered their maintenance to be the responsibility of the Tenants under clause 19.1 of the Tenancy Agreement (see above).

***First Floor***

*Living Room*

38. The Tenants said that the ivy encroached on the living room windows and that one of the windows did not open. In addition, there were signs of two leaks on the living room ceiling. They said that they received a letter dated 25<sup>th</sup> October 2018 from Cambridge Water Company stating that a plumbing fault was suspected at the Property due to the increase in the water supply. The Tenants said that the patches of damp continued to be wet notwithstanding investigations.
39. Ms Douglas said that the Agent was aware of the leaks but access was needed to carry out works to remedy them.

***Second Floor***

*Bathroom*

40. The Tenants stated that the bathroom floor on the second floor moves and the tiles do not feel securely affixed when walked on. The w.c. requires two attempts before it flushes satisfactorily. The Tenants said that an attempt had been made to repair it but that had only made it worse. The grout has mould which the Tenants believe is due to its poor condition and possibly ingress of water from behind. The Tenants believed the water mark on the living room ceiling is due to a leak from this bathroom.
41. Ms Douglas said that so far as the Agent was aware the w.c. had been repaired. The Agent was aware of the water marks in the living room and attempts had been made to investigate them but any remedial work would mean the bathroom would be out of commission until the repairs were complete and the Tenants had made it clear that this was not acceptable to them. Dr de Ris explained that her son needed access to a bathroom on the same floor as his bedroom.

### *Boiler Cupboard*

42. The Tenants said that there had been a leak on one of the pipes in the boiler room and they were concerned that it may still be leaking.
43. Ms Douglas said that the leak from the boiler had been investigated and repaired. The plumber had said that it was a result of a minor seepage which did not affect the operation the heating and that the pipes were not corroded.

### *Bedrooms*

44. There were no issues with bedrooms 2 and 3 except in respect of the ivy referred to above.

### ***Third Floor & Annex***

45. The Tenants said that the seals on the showers in the en suite bathroom to the master bedroom and the annexe appear to have failed as the cubicles leak and the fall of the floor causes the water to settle, rather than flowing back to the shower, causing a slipping hazard.
46. The Tenants said that the door from the landing to the third floor was a fire door but did not always close properly.
47. Ms Douglas said that the showers had been re-sealed but the agent had not been aware of the door to the third floor not closing properly.

### **Rents of Comparable Properties**

48. The Landlord's Agent submitted details of rental values for comparable properties as follows:
  - a. 9 Aberdeen Avenue, a four storey four bedroom terraced house let at a rent of £3,500 per calendar month since 2014. This was said to have a smaller floor area compared to the Property,
  - b. 20 Aberdeen Avenue, a four storey four bedroom terraced house let at a rent of £3,800 per calendar month in 2018. This was said to be the most comparable to the Property. The house had been occupied by the owner until it was let and was in very good condition having recently been prepared for letting.
  - c. 4 Aberdeen Avenue, a four storey four bedroom terraced house currently on the market at an asking rent of £3,500 per calendar month. This was said to be the most comparable to the Property.
  - d. 1 Harrison Drive, a three storey five bedroom terraced house currently on the market at an asking rent of £4,000 per calendar month. This was said to have a different layout.
  - e. 15 Henslow Mews details were not provided but it was said to be let at a rent of £3,700 per calendar month.
49. All the houses were either on the Aberdeen Avenue or a street nearby. They are all modern constructed in a similar style on the same Estate with one or more en suite bathrooms in addition to the main bathroom.

50. The Landlord's Agent said that 20 Aberdeen Avenue was the most similar and was let in 2018 at a rent is £3,800 per calendar month. Therefore, an increased rent for the Property of £3,725 per calendar month was a reasonable market rent especially since it was the first increase since the letting commenced in 2015.
51. The Tenants in response said that they knew the Tenant of 9 Aberdeen Avenue and considered that to be similar to the Property except that it was in better condition and had a more attractive layout.

## **DETERMINATION**

52. The Tribunal found that the Property had deteriorated from fair wear and tear in the course of the letting. Some of the resulting defects, which the Tribunal found would affect the rental value, had been addressed by the Landlord and its Agent but some were still outstanding at the time of the inspection.
53. The plumbing requires attention and this was evident from the water marks on the living room ceiling which appeared to come from the second floor bathroom. Also, some of the sealant on the showers had been replaced but the sealant and grout throughout needed to be checked as sections were showing signs of deterioration and may or wear resulting in water ingress.
54. The ivy was overgrown and was intrusive and therefore required to be substantially cut back. The Tribunal was of the opinion that, taking in to account the terms of the lease, this was a task for the Landlord.
55. The terraces were in poor condition and needed attention. The Tenants stated that they had been in this condition since the commencement of the tenancy. This was not contradicted by the Landlords or their Agent and, from its inspection, this appeared to the Tribunal to be entirely credible. The Tribunal noted that the Lease at clause 19.1 required the patios, which might be interpreted to include the terraces, to be kept "in the same condition and style as at the commencement of the Tenancy". It appeared to the Tribunal that this is how they had been kept.
56. The Tribunal found that there was evidence that the porch was leaking and that this was likely to cause the lights to fail. The laundry cupboard door handle had damaged the wall due to the lack of a door stop. The study door required attention as did the door to the third floor, which was of particular concern as it is a fire door. The Tribunal also found that the second floor bathroom floor tiles moved when walked on and probably ned to be re-affixed.
57. The Tribunal found from the evidence of rental values for comparable properties submitted, that the market rent for similar properties was between £3,500 and £4,000 in good condition. The differential between them appeared to depend on the layout as much as the size and the date the rent was set.
58. The Tribunal determined that the market rent for the Property was in the region of £3,800 per calendar month if in good condition as might be expected for a rent of that amount. However, taking in to account the overgrown ivy, the condition of the terraces, the plumbing repairs required, the want of repair to the porch and its lights, damage to the hallway wall, the need to adjust the study and third floor doors and the apparent need to re-affix the second floor bathroom floor tiles the Tribunal determined that a market rent of £3,500 per calendar month.



59. The Tribunal determined that the rental value for the Property taking into account its present condition to be **£3,500 per calendar month week to take effect from 5<sup>th</sup> May 2019.**

**Judge JR Morris**

**Caution:** The Tribunal inspected the subject property for the purposes of reaching this decision. The inspection was not a structural survey and any comments about the condition of the property in this statement must not be relied upon as a guide to the structural or other condition of the property.

**APPENDIX - RIGHTS OF APPEAL**

1. If a party wishes to appeal the 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.
2. 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.
3. 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.
4. 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.



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**REASONS**

**THE PROPERTY**

2. The Property is a modern end of terrace house constructed circa 2010 of brick under a flat roof. The terrace of houses is set in communal grounds.

**Accommodation**

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The Property comprises as follows:

- On the ground floor there is an entrance lobby to a hallway off which is a kitchen, study, bathroom, laundry cupboard, garage and a terrace.
- From the hallway rise stairs to the first, second and third floors and to an annexe.
- On the first floor is a living room and terrace.

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### **THE TENANCY**

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### **THE REFERRAL**

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### **THE INSPECTION**

5. The Tribunal inspected the Property in the presence of the Tenants, the Landlords and representatives of the Landlord's Agents. The house extends over four floors and is spacious.
6. Externally the Property is in fair condition. However, there is a substantial growth of ivy climbing to all four floors of the Property and around its windows. The underside of the porch to the front of the Property is timber which has signs of water damage which appears to be due to ingress of water through the roof of the porch.
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## **THE LAW**

12. 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-
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## **REPRESENTATIONS**

14. The hearing was attended by the Tenants, Mr de Ris and Dr de Ris, Mrs Leisha Kirkpatrick, one of the Landlords and by Ms Kersha Douglas, Senior Property Manager and Mr Alex Bloxham, Head of Letting, from the Agents.
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16. The Tribunal noted from the Tenants' written representations that they were aggrieved that although some repairs had been carried out, they felt that they had had to wait an unreasonable time for the work to be done and that there had been some dispute between the Tenants and the Agent as to the extent or nature of the repairs to be carried out. At the hearing the Landlord said in response that the Tenants had not given access to undertake repairs promptly or, more recently, at all.
17. The Tenants had stated in written representations that they were dissatisfied with the management by the Agent. The Tribunal explained that it only had jurisdiction to determine the rent and could not address any complaints regarding the management.
18. The Tribunal stated that it determines the rent based on the condition of the Property as at the day of the inspection.
19. A tribunal cannot take into account any repairs the landlord intends to do or that the tenant had been waiting a long time for the repairs to be carried out. Even where access to undertake repairs is refused, the assessment based on the condition as at the day of inspection is justified on the basis that although the landlord is not able to achieve a full rental value nevertheless money has not had to be expended on the particular repairs. The tenant may perhaps have a lower rent for the want of repair but lives in a property which is not in the best condition.
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## **Condition**

### ***Porch***

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## **Ground Floor**

### *Entrance Lobby and Hallway*

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### *Kitchen*

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29. The Landlords' view appeared to be that it was the Tenants responsibility to tend the ivy by removing it from the windows.
30. The Tribunal was not clear whether the ivy had extended from and was part of the communal grounds and therefore should be tended under the auspices of any service arrangement or whether it grew from the Property and so was the responsibility of the owner. It was not clear what the extent of the Property was and where the Estate took over. No plans were provided. If the ivy had grown from the Property and was the owner's responsibility there was uncertainty with regard to the terms of the Lease as to whether the Tenants had responsibility for it.
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### *Study*

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34. Ms Douglas said that the Agent had not been aware of the door snagging the floor.

*Bathroom, Laundry Cupboard, Garage*

35. There were no specific defects with regard to the bathroom, laundry cupboard or garage.

*Terrace (issue applicable to all terraces)*

36. An issue was raised with regard to all the terraces. The Tenants said that the terraces are dangerous in that the gap between the boards is unduly wide, the wood is beginning to rot and the decking is and has since the beginning of the tenancy been covered with algae making it slippery when wet. The Tenants attributed the condition of the terraces to the failure by the Landlords to apply a protective sealant. The terraces were also affected by leaves, pollen and debris falling from a large tree nearby, which is not part of the Property, making the terraces unusable as an area on which to sit out.
37. Ms Douglas said that the Agent was aware of the condition of the terraces but considered their maintenance to be the responsibility of the Tenants under clause 19.1 of the Tenancy Agreement (see above).

***First Floor***

*Living Room*

38. The Tenants said that the ivy encroached on the living room windows and that one of the windows did not open. In addition, there were signs of two leaks on the living room ceiling. They said that they received a letter dated 25<sup>th</sup> October 2018 from Cambridge Water Company stating that a plumbing fault was suspected at the Property due to the increase in the water supply. The Tenants said that the patches of damp continued to be wet notwithstanding investigations.
39. Ms Douglas said that the Agent was aware of the leaks but access was needed to carry out works to remedy them.

***Second Floor***

*Bathroom*

40. The Tenants stated that the bathroom floor on the second floor moves and the tiles do not feel securely affixed when walked on. The w.c. requires two attempts before it flushes satisfactorily. The Tenants said that an attempt had been made to repair it but that had only made it worse. The grout has mould which the Tenants believe is due to its poor condition and possibly ingress of water from behind. The Tenants believed the water mark on the living room ceiling is due to a leak from this bathroom.
41. Ms Douglas said that so far as the Agent was aware the w.c. had been repaired. The Agent was aware of the water marks in the living room and attempts had been made to investigate them but any remedial work would mean the bathroom would be out of commission until the repairs were complete and the Tenants had made it clear that this was not acceptable to them. Dr de Ris explained that her son needed access to a bathroom on the same floor as his bedroom.

### *Boiler Cupboard*

42. The Tenants said that there had been a leak on one of the pipes in the boiler room and they were concerned that it may still be leaking.
43. Ms Douglas said that the leak from the boiler had been investigated and repaired. The plumber had said that it was a result of a minor seepage which did not affect the operation the heating and that the pipes were not corroded.

### *Bedrooms*

44. There were no issues with bedrooms 2 and 3 except in respect of the ivy referred to above.

### ***Third Floor & Annex***

45. The Tenants said that the seals on the showers in the en suite bathroom to the master bedroom and the annexe appear to have failed as the cubicles leak and the fall of the floor causes the water to settle, rather than flowing back to the shower, causing a slipping hazard.
46. The Tenants said that the door from the landing to the third floor was a fire door but did not always close properly.
47. Ms Douglas said that the showers had been re-sealed but the agent had not been aware of the door to the third floor not closing properly.

### **Rents of Comparable Properties**

48. The Landlord's Agent submitted details of rental values for comparable properties as follows:
  - a. 9 Aberdeen Avenue, a four storey four bedroom terraced house let at a rent of £3,500 per calendar month since 2014. This was said to have a smaller floor area compared to the Property,
  - b. 20 Aberdeen Avenue, a four storey four bedroom terraced house let at a rent of £3,800 per calendar month in 2018. This was said to be the most comparable to the Property. The house had been occupied by the owner until it was let and was in very good condition having recently been prepared for letting.
  - c. 4 Aberdeen Avenue, a four storey four bedroom terraced house currently on the market at an asking rent of £3,500 per calendar month. This was said to be the most comparable to the Property.
  - d. 1 Harrison Drive, a three storey five bedroom terraced house currently on the market at an asking rent of £4,000 per calendar month. This was said to have a different layout.
  - e. 15 Henslow Mews details were not provided but it was said to be let at a rent of £3,700 per calendar month.
49. All the houses were either on the Aberdeen Avenue or a street nearby. They are all modern constructed in a similar style on the same Estate with one or more en suite bathrooms in addition to the main bathroom.



50. The Landlord's Agent said that 20 Aberdeen Avenue was the most similar and was let in 2018 at a rent is £3,800 per calendar month. Therefore, an increased rent for the Property of £3,725 per calendar month was a reasonable market rent especially since it was the first increase since the letting commenced in 2015.
51. The Tenants in response said that they knew the Tenant of 9 Aberdeen Avenue and considered that to be similar to the Property except that it was in better condition and had a more attractive layout.

## **DETERMINATION**

52. The Tribunal found that the Property had deteriorated from fair wear and tear in the course of the letting. Some of the resulting defects, which the Tribunal found would affect the rental value, had been addressed by the Landlord and its Agent but some were still outstanding at the time of the inspection.
53. The plumbing requires attention and this was evident from the water marks on the living room ceiling which appeared to come from the second floor bathroom. Also, some of the sealant on the showers had been replaced but the sealant and grout throughout needed to be checked as sections were showing signs of deterioration and may or wear resulting in water ingress.
54. The ivy was overgrown and was intrusive and therefore required to be substantially cut back. The Tribunal was of the opinion that, taking in to account the terms of the lease, this was a task for the Landlord.
55. The terraces were in poor condition and needed attention. The Tenants stated that they had been in this condition since the commencement of the tenancy. This was not contradicted by the Landlords or their Agent and, from its inspection, this appeared to the Tribunal to be entirely credible. The Tribunal noted that the Lease at clause 19.1 required the patios, which might be interpreted to include the terraces, to be kept "in the same condition and style as at the commencement of the Tenancy". It appeared to the Tribunal that this is how they had been kept.
56. The Tribunal found that there was evidence that the porch was leaking and that this was likely to cause the lights to fail. The laundry cupboard door handle had damaged the wall due to the lack of a door stop. The study door required attention as did the door to the third floor, which was of particular concern as it is a fire door. The Tribunal also found that the second floor bathroom floor tiles moved when walked on and probably ned to be re-affixed.
57. The Tribunal found from the evidence of rental values for comparable properties submitted, that the market rent for similar properties was between £3,500 and £4,000 in good condition. The differential between them appeared to depend on the layout as much as the size and the date the rent was set.
58. The Tribunal determined that the market rent for the Property was in the region of £3,800 per calendar month if in good condition as might be expected for a rent of that amount. However, taking in to account the overgrown ivy, the condition of the terraces, the plumbing repairs required, the want of repair to the porch and its lights, damage to the hallway wall, the need to adjust the study and third floor doors and the apparent need to re-affix the second floor bathroom floor tiles the Tribunal determined that a market rent of £3,500 per calendar month.

59. The Tribunal determined that the rental value for the Property taking into account its present condition to be **£3,500 per calendar month week to take effect from 5<sup>th</sup> May 2019.**

**Judge JR Morris**

**Caution:** The Tribunal inspected the subject property for the purposes of reaching this decision. The inspection was not a structural survey and any comments about the condition of the property in this statement must not be relied upon as a guide to the structural or other condition of the property.

**APPENDIX - RIGHTS OF APPEAL**

1. If a party wishes to appeal the 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.
2. 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.
3. 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.
4. 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.



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

**Case Reference** : **CAM/12UB/MNR/2019/0005**

**Property** : **54 Aberdeen Avenue Cambridge CB2 8DZ**

**Applicant (Tenants)** : **Mr Theron de Ris & Dr Lara de Ris**

**Respondent (Landlord):** **Mr & Mrs Kirkpatrick**  
**Agent** : **Bidwells**

**Type of Application** : **Determination of a market rent under  
Section 13 of the Housing Act 1988**

**Tribunal Members** : **Judge JR Morris**  
**Mrs M Hardman FRICS IRRV (Hons)**  
**Regional Judge R Wayte**

**Date of Decision** : **2<sup>nd</sup> May 2019**

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**DECISION**

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**DECISION**

1. The Tribunal determines a market rent of £3,500.00 per calendar month to take effect from 5<sup>th</sup> May 2019.

**REASONS**

**THE PROPERTY**

2. The Property is a modern end of terrace house constructed circa 2010 of brick under a flat roof. The terrace of houses is set in communal grounds.

**Accommodation**

Entrance to the house is under a large porch.

The Property comprises as follows:

- On the ground floor there is an entrance lobby to a hallway off which is a kitchen, study, bathroom, laundry cupboard, garage and a terrace.
- From the hallway rise stairs to the first, second and third floors and to an annexe.
- On the first floor is a living room and terrace.

- On the second floor there are two bedrooms (bedroom 2 and 3), a bathroom, a boiler room and a terrace.
- On the third floor there is a bedroom (master bedroom) with en suite bathroom and a terrace.
- The annexe which is at first floor level comprises a bedroom and shower room and opens onto the first floor terrace.

#### Services

Space heating is by an underfloor gas central heating system and water is heated by the same gas heating system. The Property has mains electricity, water and drainage.

#### Furnishing

The Property is let unfurnished.

#### Location

The Property is situated on the Accordia Development in Cambridge which is a large estate of 378 dwellings 166 of which are flats and 212 are houses.

### **THE TENANCY**

3. The Tenancy commenced as a contractual Assured Shorthold Tenancy for a fixed term of 24 months from 5<sup>th</sup> September 2015. A copy of the agreement dated 21<sup>st</sup> August 2015 was provided. This tenancy was extended for a further 12 months from 5<sup>th</sup> September 2017. From 5<sup>th</sup> September 2018 a statutory tenancy on the terms of the written agreement appears to have arisen. Section 11 of the Landlord and Tenant Act 1985 applies in respect of Landlord's repairing obligations.

### **THE REFERRAL**

4. The current rent is £3,625.00 per calendar month from the commencement of the tenancy payable on the 5<sup>th</sup> day of each month. The Landlord by a notice in the prescribed form dated 7<sup>th</sup> March 2019 proposed a new rent of £3,725.00 per calendar month from 5<sup>th</sup> May 2019. On 13<sup>th</sup> March 2019 the Tenant referred the notice proposing a new rent to the Tribunal. The referral was by written representations and a hearing.

### **THE INSPECTION**

5. The Tribunal inspected the Property in the presence of the Tenants, the Landlords and representatives of the Landlord's Agents. The house extends over four floors and is spacious.
6. Externally the Property is in fair condition. However, there is a substantial growth of ivy climbing to all four floors of the Property and around its windows. The underside of the porch to the front of the Property is timber which has signs of water damage which appears to be due to ingress of water through the roof of the porch.
7. The communal area around the Property has a substantial growth of ground cover plants. The area immediately around the house is said to be part of the Property but the boundary did not appear to be defined.

8. Internally the Property is in fair decorative order. The windows are mostly floor to ceiling and all are double glazed metal alloy. The ivy on the outside of the house encroaches around the windows on all except the third floor. One of the living room windows does not open. There is timber flooring throughout except in the bathrooms which are tiled. There was a section of the timber flooring in the hallway on the ground floor which did not fit to the wall.
9. The door to the study snags on the floor. The door to the master bedroom from the second floor landing is liable to snagging on the jamb due to some displacement of the hinged door post. There was some minor cracking where the skirting met the wall on the stair case. The door handle to the laundry cupboard on the ground floor had punctured the hallway wall.
10. There are two water marks on the ceiling in the living room which appear to be due to ingress of water from the bathroom above. The exact cause could not be identified. The kitchen is modern with integrated units. The bathrooms are also modern. The bathroom floor tiles on the second floor move and the tiles do not feel securely affixed when walked on. There had been a leak in the annexe bathroom which is over the garage and an inspection hatch has been fitted to deal with any future problems.
11. On each floor there is a terrace which has timber deck floors. These are covered with algae. There are trees in the vicinity and leaves could be seen between the deck timbers.

## **THE LAW**

12. 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
13. 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.

## **REPRESENTATIONS**

14. The hearing was attended by the Tenants, Mr de Ris and Dr de Ris, Mrs Leisha Kirkpatrick, one of the Landlords and by Ms Kersha Douglas, Senior Property Manager and Mr Alex Bloxham, Head of Letting, from the Agents.
15. The Tribunal explained that its jurisdiction came from the Housing Act 1988 which required it to assess a market rent for the 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. The legislation makes it clear that the Tribunal cannot take into account the personal circumstances of either the Landlord or the Tenant.

16. The Tribunal noted from the Tenants' written representations that they were aggrieved that although some repairs had been carried out, they felt that they had had to wait an unreasonable time for the work to be done and that there had been some dispute between the Tenants and the Agent as to the extent or nature of the repairs to be carried out. At the hearing the Landlord said in response that the Tenants had not given access to undertake repairs promptly or, more recently, at all.
17. The Tenants had stated in written representations that they were dissatisfied with the management by the Agent. The Tribunal explained that it only had jurisdiction to determine the rent and could not address any complaints regarding the management.
18. The Tribunal stated that it determines the rent based on the condition of the Property as at the day of the inspection.
19. A tribunal cannot take into account any repairs the landlord intends to do or that the tenant had been waiting a long time for the repairs to be carried out. Even where access to undertake repairs is refused, the assessment based on the condition as at the day of inspection is justified on the basis that although the landlord is not able to achieve a full rental value nevertheless money has not had to be expended on the particular repairs. The tenant may perhaps have a lower rent for the want of repair but lives in a property which is not in the best condition.
20. The points relevant to the assessment of the rent raised by the tenants in their written and oral representations were responded to by the Landlords and their Agent at the hearing.
21. The issues regarding the condition of the Property were addressed room by room followed by a consideration of the evidence of rents of comparable properties submitted by the Landlord's agent.

## **Condition**

### ***Porch***

22. The Tenants said that the porch at the entrance to the house suffers from an ingress of water. Mr de Ris said he had replaced the bulbs in the inset lights but they had failed within a short time. The Tenants said that this meant the area outside the house was unlit creating a safety and security risk but their main concern was that lights short circuited and there was a risk of electrocution from the operating switch.
23. Ms Douglas said that the Agent was not aware that there was a problem with the porch or the lights.

## **Ground Floor**

### *Entrance Lobby and Hallway*

24. The Tenants said that there was a section of the timber flooring in the hallway which did not fit to the wall and that the gap had resulted in an ant infestation.
25. Ms Douglas said that this was a matter for action by the Tenants laying ant killer.
26. The door handle to the laundry cupboard on the ground floor had punctured the hallway wall. The Tenants said that this had been caused by the workman who came to ease the door.
27. Ms Douglas said that the Agent had not been aware of the damage to the wall.

### *Kitchen*

28. The Tenants had said that the appliances had failed to operate but these had been repaired. Their main concern was that the ivy encroached on the windows. They had attempted to pull it away but it was particularly vigorous. The ivy grew at the corner of the house and extended over all the floors and therefore this complaint was made with regard to all the windows in all the rooms at that corner of the house.
29. The Landlords' view appeared to be that it was the Tenants responsibility to tend the ivy by removing it from the windows.
30. The Tribunal was not clear whether the ivy had extended from and was part of the communal grounds and therefore should be tended under the auspices of any service arrangement or whether it grew from the Property and so was the responsibility of the owner. It was not clear what the extent of the Property was and where the Estate took over. No plans were provided. If the ivy had grown from the Property and was the owner's responsibility there was uncertainty with regard to the terms of the Lease as to whether the Tenants had responsibility for it.
31. Clause 19.1 of the Tenancy Agreement requires the Tenants "To keep the garden...if any in the same condition and style as at the commencement of the Tenancy". However, Clause 19.5 requires the Tenant "Not to top, prune, remove or destroy any existing plants, trees or shrubs, unless it is required to keep the garden in good order without the consent of the Landlord or the Agent". As noted, it was not clear whether there was a garden to the Property. The ivy is an existing plant and therefore should not be cut back without the consent of the Landlord or Agent.
32. The Tribunal was of the opinion that the terms of the Tenancy Agreement were unclear and therefore were to be construed against the party inserting the clause (as per the principle of *contra proferentum*) i.e. the Landlord. In this instance the ivy required some specific provision within the Tenancy Agreement.

### *Study*

33. The Tenant stated the door snagged against the floor and could not be fully opened.
34. Ms Douglas said that the Agent had not been aware of the door snagging the floor.

*Bathroom, Laundry Cupboard, Garage*

35. There were no specific defects with regard to the bathroom, laundry cupboard or garage.

*Terrace (issue applicable to all terraces)*

36. An issue was raised with regard to all the terraces. The Tenants said that the terraces are dangerous in that the gap between the boards is unduly wide, the wood is beginning to rot and the decking is and has since the beginning of the tenancy been covered with algae making it slippery when wet. The Tenants attributed the condition of the terraces to the failure by the Landlords to apply a protective sealant. The terraces were also affected by leaves, pollen and debris falling from a large tree nearby, which is not part of the Property, making the terraces unusable as an area on which to sit out.
37. Ms Douglas said that the Agent was aware of the condition of the terraces but considered their maintenance to be the responsibility of the Tenants under clause 19.1 of the Tenancy Agreement (see above).

***First Floor***

*Living Room*

38. The Tenants said that the ivy encroached on the living room windows and that one of the windows did not open. In addition, there were signs of two leaks on the living room ceiling. They said that they received a letter dated 25<sup>th</sup> October 2018 from Cambridge Water Company stating that a plumbing fault was suspected at the Property due to the increase in the water supply. The Tenants said that the patches of damp continued to be wet notwithstanding investigations.
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***Second Floor***

*Bathroom*

40. The Tenants stated that the bathroom floor on the second floor moves and the tiles do not feel securely affixed when walked on. The w.c. requires two attempts before it flushes satisfactorily. The Tenants said that an attempt had been made to repair it but that had only made it worse. The grout has mould which the Tenants believe is due to its poor condition and possibly ingress of water from behind. The Tenants believed the water mark on the living room ceiling is due to a leak from this bathroom.
41. Ms Douglas said that so far as the Agent was aware the w.c. had been repaired. The Agent was aware of the water marks in the living room and attempts had been made to investigate them but any remedial work would mean the bathroom would be out of commission until the repairs were complete and the Tenants had made it clear that this was not acceptable to them. Dr de Ris explained that her son needed access to a bathroom on the same floor as his bedroom.



### *Boiler Cupboard*

42. The Tenants said that there had been a leak on one of the pipes in the boiler room and they were concerned that it may still be leaking.
43. Ms Douglas said that the leak from the boiler had been investigated and repaired. The plumber had said that it was a result of a minor seepage which did not affect the operation the heating and that the pipes were not corroded.

### *Bedrooms*

44. There were no issues with bedrooms 2 and 3 except in respect of the ivy referred to above.

### ***Third Floor & Annex***

45. The Tenants said that the seals on the showers in the en suite bathroom to the master bedroom and the annexe appear to have failed as the cubicles leak and the fall of the floor causes the water to settle, rather than flowing back to the shower, causing a slipping hazard.
46. The Tenants said that the door from the landing to the third floor was a fire door but did not always close properly.
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### **Rents of Comparable Properties**

48. The Landlord's Agent submitted details of rental values for comparable properties as follows:
  - a. 9 Aberdeen Avenue, a four storey four bedroom terraced house let at a rent of £3,500 per calendar month since 2014. This was said to have a smaller floor area compared to the Property,
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49. All the houses were either on the Aberdeen Avenue or a street nearby. They are all modern constructed in a similar style on the same Estate with one or more en suite bathrooms in addition to the main bathroom.

50. The Landlord's Agent said that 20 Aberdeen Avenue was the most similar and was let in 2018 at a rent is £3,800 per calendar month. Therefore, an increased rent for the Property of £3,725 per calendar month was a reasonable market rent especially since it was the first increase since the letting commenced in 2015.
51. The Tenants in response said that they knew the Tenant of 9 Aberdeen Avenue and considered that to be similar to the Property except that it was in better condition and had a more attractive layout.

## **DETERMINATION**

52. The Tribunal found that the Property had deteriorated from fair wear and tear in the course of the letting. Some of the resulting defects, which the Tribunal found would affect the rental value, had been addressed by the Landlord and its Agent but some were still outstanding at the time of the inspection.
53. The plumbing requires attention and this was evident from the water marks on the living room ceiling which appeared to come from the second floor bathroom. Also, some of the sealant on the showers had been replaced but the sealant and grout throughout needed to be checked as sections were showing signs of deterioration and may or wear resulting in water ingress.
54. The ivy was overgrown and was intrusive and therefore required to be substantially cut back. The Tribunal was of the opinion that, taking in to account the terms of the lease, this was a task for the Landlord.
55. The terraces were in poor condition and needed attention. The Tenants stated that they had been in this condition since the commencement of the tenancy. This was not contradicted by the Landlords or their Agent and, from its inspection, this appeared to the Tribunal to be entirely credible. The Tribunal noted that the Lease at clause 19.1 required the patios, which might be interpreted to include the terraces, to be kept "in the same condition and style as at the commencement of the Tenancy". It appeared to the Tribunal that this is how they had been kept.
56. The Tribunal found that there was evidence that the porch was leaking and that this was likely to cause the lights to fail. The laundry cupboard door handle had damaged the wall due to the lack of a door stop. The study door required attention as did the door to the third floor, which was of particular concern as it is a fire door. The Tribunal also found that the second floor bathroom floor tiles moved when walked on and probably ned to be re-affixed.
57. The Tribunal found from the evidence of rental values for comparable properties submitted, that the market rent for similar properties was between £3,500 and £4,000 in good condition. The differential between them appeared to depend on the layout as much as the size and the date the rent was set.
58. The Tribunal determined that the market rent for the Property was in the region of £3,800 per calendar month if in good condition as might be expected for a rent of that amount. However, taking in to account the overgrown ivy, the condition of the terraces, the plumbing repairs required, the want of repair to the porch and its lights, damage to the hallway wall, the need to adjust the study and third floor doors and the apparent need to re-affix the second floor bathroom floor tiles the Tribunal determined that a market rent of £3,500 per calendar month.

59. The Tribunal determined that the rental value for the Property taking into account its present condition to be **£3,500 per calendar month week to take effect from 5<sup>th</sup> May 2019.**

**Judge JR Morris**

**Caution:** The Tribunal inspected the subject property for the purposes of reaching this decision. The inspection was not a structural survey and any comments about the condition of the property in this statement must not be relied upon as a guide to the structural or other condition of the property.

**APPENDIX - RIGHTS OF APPEAL**

1. If a party wishes to appeal the 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.
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4. 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.



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

**Case Reference** : **CAM/12UB/MNR/2019/0005**

**Property** : **54 Aberdeen Avenue Cambridge CB2 8DZ**

**Applicant (Tenants)** : **Mr Theron de Ris & Dr Lara de Ris**

**Respondent (Landlord):** **Mr & Mrs Kirkpatrick**  
**Agent** : **Bidwells**

**Type of Application** : **Determination of a market rent under  
Section 13 of the Housing Act 1988**

**Tribunal Members** : **Judge JR Morris**  
**Mrs M Hardman FRICS IRRV (Hons)**  
**Regional Judge R Wayte**

**Date of Decision** : **2<sup>nd</sup> May 2019**

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**DECISION**

---

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**DECISION**

1. The Tribunal determines a market rent of £3,500.00 per calendar month to take effect from 5<sup>th</sup> May 2019.

**REASONS**

**THE PROPERTY**

2. The Property is a modern end of terrace house constructed circa 2010 of brick under a flat roof. The terrace of houses is set in communal grounds.

**Accommodation**

Entrance to the house is under a large porch.

The Property comprises as follows:

- On the ground floor there is an entrance lobby to a hallway off which is a kitchen, study, bathroom, laundry cupboard, garage and a terrace.
- From the hallway rise stairs to the first, second and third floors and to an annexe.
- On the first floor is a living room and terrace.

- On the second floor there are two bedrooms (bedroom 2 and 3), a bathroom, a boiler room and a terrace.
- On the third floor there is a bedroom (master bedroom) with en suite bathroom and a terrace.
- The annexe which is at first floor level comprises a bedroom and shower room and opens onto the first floor terrace.

#### Services

Space heating is by an underfloor gas central heating system and water is heated by the same gas heating system. The Property has mains electricity, water and drainage.

#### Furnishing

The Property is let unfurnished.

#### Location

The Property is situated on the Accordia Development in Cambridge which is a large estate of 378 dwellings 166 of which are flats and 212 are houses.

### **THE TENANCY**

3. The Tenancy commenced as a contractual Assured Shorthold Tenancy for a fixed term of 24 months from 5<sup>th</sup> September 2015. A copy of the agreement dated 21<sup>st</sup> August 2015 was provided. This tenancy was extended for a further 12 months from 5<sup>th</sup> September 2017. From 5<sup>th</sup> September 2018 a statutory tenancy on the terms of the written agreement appears to have arisen. Section 11 of the Landlord and Tenant Act 1985 applies in respect of Landlord's repairing obligations.

### **THE REFERRAL**

4. The current rent is £3,625.00 per calendar month from the commencement of the tenancy payable on the 5<sup>th</sup> day of each month. The Landlord by a notice in the prescribed form dated 7<sup>th</sup> March 2019 proposed a new rent of £3,725.00 per calendar month from 5<sup>th</sup> May 2019. On 13<sup>th</sup> March 2019 the Tenant referred the notice proposing a new rent to the Tribunal. The referral was by written representations and a hearing.

### **THE INSPECTION**

5. The Tribunal inspected the Property in the presence of the Tenants, the Landlords and representatives of the Landlord's Agents. The house extends over four floors and is spacious.
6. Externally the Property is in fair condition. However, there is a substantial growth of ivy climbing to all four floors of the Property and around its windows. The underside of the porch to the front of the Property is timber which has signs of water damage which appears to be due to ingress of water through the roof of the porch.
7. The communal area around the Property has a substantial growth of ground cover plants. The area immediately around the house is said to be part of the Property but the boundary did not appear to be defined.

8. Internally the Property is in fair decorative order. The windows are mostly floor to ceiling and all are double glazed metal alloy. The ivy on the outside of the house encroaches around the windows on all except the third floor. One of the living room windows does not open. There is timber flooring throughout except in the bathrooms which are tiled. There was a section of the timber flooring in the hallway on the ground floor which did not fit to the wall.
9. The door to the study snags on the floor. The door to the master bedroom from the second floor landing is liable to snagging on the jamb due to some displacement of the hinged door post. There was some minor cracking where the skirting met the wall on the stair case. The door handle to the laundry cupboard on the ground floor had punctured the hallway wall.
10. There are two water marks on the ceiling in the living room which appear to be due to ingress of water from the bathroom above. The exact cause could not be identified. The kitchen is modern with integrated units. The bathrooms are also modern. The bathroom floor tiles on the second floor move and the tiles do not feel securely affixed when walked on. There had been a leak in the annexe bathroom which is over the garage and an inspection hatch has been fitted to deal with any future problems.
11. On each floor there is a terrace which has timber deck floors. These are covered with algae. There are trees in the vicinity and leaves could be seen between the deck timbers.

## **THE LAW**

12. 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
13. 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.

## **REPRESENTATIONS**

14. The hearing was attended by the Tenants, Mr de Ris and Dr de Ris, Mrs Leisha Kirkpatrick, one of the Landlords and by Ms Kersha Douglas, Senior Property Manager and Mr Alex Bloxham, Head of Letting, from the Agents.
15. The Tribunal explained that its jurisdiction came from the Housing Act 1988 which required it to assess a market rent for the 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. The legislation makes it clear that the Tribunal cannot take into account the personal circumstances of either the Landlord or the Tenant.

16. The Tribunal noted from the Tenants' written representations that they were aggrieved that although some repairs had been carried out, they felt that they had had to wait an unreasonable time for the work to be done and that there had been some dispute between the Tenants and the Agent as to the extent or nature of the repairs to be carried out. At the hearing the Landlord said in response that the Tenants had not given access to undertake repairs promptly or, more recently, at all.
17. The Tenants had stated in written representations that they were dissatisfied with the management by the Agent. The Tribunal explained that it only had jurisdiction to determine the rent and could not address any complaints regarding the management.
18. The Tribunal stated that it determines the rent based on the condition of the Property as at the day of the inspection.
19. A tribunal cannot take into account any repairs the landlord intends to do or that the tenant had been waiting a long time for the repairs to be carried out. Even where access to undertake repairs is refused, the assessment based on the condition as at the day of inspection is justified on the basis that although the landlord is not able to achieve a full rental value nevertheless money has not had to be expended on the particular repairs. The tenant may perhaps have a lower rent for the want of repair but lives in a property which is not in the best condition.
20. The points relevant to the assessment of the rent raised by the tenants in their written and oral representations were responded to by the Landlords and their Agent at the hearing.
21. The issues regarding the condition of the Property were addressed room by room followed by a consideration of the evidence of rents of comparable properties submitted by the Landlord's agent.

## **Condition**

### ***Porch***

22. The Tenants said that the porch at the entrance to the house suffers from an ingress of water. Mr de Ris said he had replaced the bulbs in the inset lights but they had failed within a short time. The Tenants said that this meant the area outside the house was unlit creating a safety and security risk but their main concern was that lights short circuited and there was a risk of electrocution from the operating switch.
23. Ms Douglas said that the Agent was not aware that there was a problem with the porch or the lights.

## **Ground Floor**

### *Entrance Lobby and Hallway*

24. The Tenants said that there was a section of the timber flooring in the hallway which did not fit to the wall and that the gap had resulted in an ant infestation.
25. Ms Douglas said that this was a matter for action by the Tenants laying ant killer.
26. The door handle to the laundry cupboard on the ground floor had punctured the hallway wall. The Tenants said that this had been caused by the workman who came to ease the door.
27. Ms Douglas said that the Agent had not been aware of the damage to the wall.

### *Kitchen*

28. The Tenants had said that the appliances had failed to operate but these had been repaired. Their main concern was that the ivy encroached on the windows. They had attempted to pull it away but it was particularly vigorous. The ivy grew at the corner of the house and extended over all the floors and therefore this complaint was made with regard to all the windows in all the rooms at that corner of the house.
29. The Landlords' view appeared to be that it was the Tenants responsibility to tend the ivy by removing it from the windows.
30. The Tribunal was not clear whether the ivy had extended from and was part of the communal grounds and therefore should be tended under the auspices of any service arrangement or whether it grew from the Property and so was the responsibility of the owner. It was not clear what the extent of the Property was and where the Estate took over. No plans were provided. If the ivy had grown from the Property and was the owner's responsibility there was uncertainty with regard to the terms of the Lease as to whether the Tenants had responsibility for it.
31. Clause 19.1 of the Tenancy Agreement requires the Tenants "To keep the garden...if any in the same condition and style as at the commencement of the Tenancy". However, Clause 19.5 requires the Tenant "Not to top, prune, remove or destroy any existing plants, trees or shrubs, unless it is required to keep the garden in good order without the consent of the Landlord or the Agent". As noted, it was not clear whether there was a garden to the Property. The ivy is an existing plant and therefore should not be cut back without the consent of the Landlord or Agent.
32. The Tribunal was of the opinion that the terms of the Tenancy Agreement were unclear and therefore were to be construed against the party inserting the clause (as per the principle of *contra proferentum*) i.e. the Landlord. In this instance the ivy required some specific provision within the Tenancy Agreement.

### *Study*

33. The Tenant stated the door snagged against the floor and could not be fully opened.
34. Ms Douglas said that the Agent had not been aware of the door snagging the floor.



*Bathroom, Laundry Cupboard, Garage*

35. There were no specific defects with regard to the bathroom, laundry cupboard or garage.

*Terrace (issue applicable to all terraces)*

36. An issue was raised with regard to all the terraces. The Tenants said that the terraces are dangerous in that the gap between the boards is unduly wide, the wood is beginning to rot and the decking is and has since the beginning of the tenancy been covered with algae making it slippery when wet. The Tenants attributed the condition of the terraces to the failure by the Landlords to apply a protective sealant. The terraces were also affected by leaves, pollen and debris falling from a large tree nearby, which is not part of the Property, making the terraces unusable as an area on which to sit out.
37. Ms Douglas said that the Agent was aware of the condition of the terraces but considered their maintenance to be the responsibility of the Tenants under clause 19.1 of the Tenancy Agreement (see above).

***First Floor***

*Living Room*

38. The Tenants said that the ivy encroached on the living room windows and that one of the windows did not open. In addition, there were signs of two leaks on the living room ceiling. They said that they received a letter dated 25<sup>th</sup> October 2018 from Cambridge Water Company stating that a plumbing fault was suspected at the Property due to the increase in the water supply. The Tenants said that the patches of damp continued to be wet notwithstanding investigations.
39. Ms Douglas said that the Agent was aware of the leaks but access was needed to carry out works to remedy them.

***Second Floor***

*Bathroom*

40. The Tenants stated that the bathroom floor on the second floor moves and the tiles do not feel securely affixed when walked on. The w.c. requires two attempts before it flushes satisfactorily. The Tenants said that an attempt had been made to repair it but that had only made it worse. The grout has mould which the Tenants believe is due to its poor condition and possibly ingress of water from behind. The Tenants believed the water mark on the living room ceiling is due to a leak from this bathroom.
41. Ms Douglas said that so far as the Agent was aware the w.c. had been repaired. The Agent was aware of the water marks in the living room and attempts had been made to investigate them but any remedial work would mean the bathroom would be out of commission until the repairs were complete and the Tenants had made it clear that this was not acceptable to them. Dr de Ris explained that her son needed access to a bathroom on the same floor as his bedroom.

### *Boiler Cupboard*

42. The Tenants said that there had been a leak on one of the pipes in the boiler room and they were concerned that it may still be leaking.
43. Ms Douglas said that the leak from the boiler had been investigated and repaired. The plumber had said that it was a result of a minor seepage which did not affect the operation the heating and that the pipes were not corroded.

### *Bedrooms*

44. There were no issues with bedrooms 2 and 3 except in respect of the ivy referred to above.

### ***Third Floor & Annex***

45. The Tenants said that the seals on the showers in the en suite bathroom to the master bedroom and the annexe appear to have failed as the cubicles leak and the fall of the floor causes the water to settle, rather than flowing back to the shower, causing a slipping hazard.
46. The Tenants said that the door from the landing to the third floor was a fire door but did not always close properly.
47. Ms Douglas said that the showers had been re-sealed but the agent had not been aware of the door to the third floor not closing properly.

### **Rents of Comparable Properties**

48. The Landlord's Agent submitted details of rental values for comparable properties as follows:
  - a. 9 Aberdeen Avenue, a four storey four bedroom terraced house let at a rent of £3,500 per calendar month since 2014. This was said to have a smaller floor area compared to the Property,
  - b. 20 Aberdeen Avenue, a four storey four bedroom terraced house let at a rent of £3,800 per calendar month in 2018. This was said to be the most comparable to the Property. The house had been occupied by the owner until it was let and was in very good condition having recently been prepared for letting.
  - c. 4 Aberdeen Avenue, a four storey four bedroom terraced house currently on the market at an asking rent of £3,500 per calendar month. This was said to be the most comparable to the Property.
  - d. 1 Harrison Drive, a three storey five bedroom terraced house currently on the market at an asking rent of £4,000 per calendar month. This was said to have a different layout.
  - e. 15 Henslow Mews details were not provided but it was said to be let at a rent of £3,700 per calendar month.
49. All the houses were either on the Aberdeen Avenue or a street nearby. They are all modern constructed in a similar style on the same Estate with one or more en suite bathrooms in addition to the main bathroom.

50. The Landlord's Agent said that 20 Aberdeen Avenue was the most similar and was let in 2018 at a rent is £3,800 per calendar month. Therefore, an increased rent for the Property of £3,725 per calendar month was a reasonable market rent especially since it was the first increase since the letting commenced in 2015.
51. The Tenants in response said that they knew the Tenant of 9 Aberdeen Avenue and considered that to be similar to the Property except that it was in better condition and had a more attractive layout.

## **DETERMINATION**

52. The Tribunal found that the Property had deteriorated from fair wear and tear in the course of the letting. Some of the resulting defects, which the Tribunal found would affect the rental value, had been addressed by the Landlord and its Agent but some were still outstanding at the time of the inspection.
53. The plumbing requires attention and this was evident from the water marks on the living room ceiling which appeared to come from the second floor bathroom. Also, some of the sealant on the showers had been replaced but the sealant and grout throughout needed to be checked as sections were showing signs of deterioration and may or wear resulting in water ingress.
54. The ivy was overgrown and was intrusive and therefore required to be substantially cut back. The Tribunal was of the opinion that, taking in to account the terms of the lease, this was a task for the Landlord.
55. The terraces were in poor condition and needed attention. The Tenants stated that they had been in this condition since the commencement of the tenancy. This was not contradicted by the Landlords or their Agent and, from its inspection, this appeared to the Tribunal to be entirely credible. The Tribunal noted that the Lease at clause 19.1 required the patios, which might be interpreted to include the terraces, to be kept "in the same condition and style as at the commencement of the Tenancy". It appeared to the Tribunal that this is how they had been kept.
56. The Tribunal found that there was evidence that the porch was leaking and that this was likely to cause the lights to fail. The laundry cupboard door handle had damaged the wall due to the lack of a door stop. The study door required attention as did the door to the third floor, which was of particular concern as it is a fire door. The Tribunal also found that the second floor bathroom floor tiles moved when walked on and probably ned to be re-affixed.
57. The Tribunal found from the evidence of rental values for comparable properties submitted, that the market rent for similar properties was between £3,500 and £4,000 in good condition. The differential between them appeared to depend on the layout as much as the size and the date the rent was set.
58. The Tribunal determined that the market rent for the Property was in the region of £3,800 per calendar month if in good condition as might be expected for a rent of that amount. However, taking in to account the overgrown ivy, the condition of the terraces, the plumbing repairs required, the want of repair to the porch and its lights, damage to the hallway wall, the need to adjust the study and third floor doors and the apparent need to re-affix the second floor bathroom floor tiles the Tribunal determined that a market rent of £3,500 per calendar month.

59. The Tribunal determined that the rental value for the Property taking into account its present condition to be **£3,500 per calendar month week to take effect from 5<sup>th</sup> May 2019.**

**Judge JR Morris**

**Caution:** The Tribunal inspected the subject property for the purposes of reaching this decision. The inspection was not a structural survey and any comments about the condition of the property in this statement must not be relied upon as a guide to the structural or other condition of the property.

**APPENDIX - RIGHTS OF APPEAL**

1. If a party wishes to appeal the 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.
2. 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.
3. 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.
4. 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.