



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

Case Reference : **MAN/00CK/MNR/2019/0002**

Property : **11F Priors Terrace, Tynemouth,
North Shields NE30 4BE**

Applicant : **Miss Tina W Pole**

Respondent : **Mrs Gill Hedworth**

Type of Application : **Application by the Tenant - Housing Act
1988 Section 14**

Tribunal Members : **Mr S Moorhouse LLB
Mr I D Jefferson TD BA BSc FRICS**

Date of Determination : **11 April 2019**

DECISION

Background

- 1 The application was made on 21 January 2019 by the tenant of the Property (the Applicant), referring a notice of increase in rent ('the Notice') by the landlord of the Property (the Respondent) under Section 13 of the Housing Act 1988.
- 2 The Notice is dated 18 December 2018 and proposed a new rent of £750 per month instead of the existing rent of £550 per month to take effect from 28 January 2019.
- 3 The Tribunal acknowledged receipt of the Application and fixed the date of 2 April 2019 to both inspect the Property and deliberate. Neither party requested a hearing. Each party was invited to submit written representations and the Respondent did so. Along with her representations the Respondent submitted an opinion of rental value by residential letting agents Letsafe.
- 4 The Applicant made no further representations in response to the Tribunal's invitation to do so, however the Tribunal had the benefit of the representations made by the Applicant within the application form and a covering letter dated 21 January 2019. In her application form the Applicant indicated that on 28 October 2018 she took over the tenancy as second successor on the death of her mother on 27 October 2018. The Applicant stated further that her mother took over the tenancy from her late partner on 2 August 2011, whose tenancy began on 7 May 1970.

Inspection

- 5 The tribunal inspected the Property both externally and internally on 2 April 2019. Both parties were present, along with the Respondent's husband. The Applicant indicated at inspection that she had decided to leave the Property at the end of the month.

The Law

- 6 The Tribunal first had to determine that the Tribunal had jurisdiction to hear the Application in order to determine a rent under S14 of the Housing Act 1988. In short the Tribunal must determine that the landlord's notice under Section 13 (2) satisfied the requirements of that section and was validly served.
- 7 The Act provides in section 13(2) as amended by the Regulatory Reform (Assured Periodic Tenancies) (Rent Increases) Order 2003 that the date in paragraph 4 of the Landlord's notice (the date the new rent becomes payable) must comply with three requirements.

- 8 The first requirement is that a minimum period of notice must be given before the proposed new rent can take effect.
- 9 The second requirement is that the starting date must not be less than 52 weeks after the date on which the rent was last increased using this procedure although there are exceptions to this.
- 10 The third requirement is that the proposed new rent must start at the beginning of a period of the tenancy (see paragraph number 18 of the Guidance Notes forming part of the prescribed form of the landlord's notice).
- 11 In the present case, the Applicant submits within her application form that she is the second successor to a tenancy that originally commenced on 7 May 1970.
- 12 Paragraph 6 of Schedule 1 to the Rent Act 1977 makes provision for a second succession to a regulated tenancy. An eligible second successor under the terms of paragraph 6 is entitled to 'an assured tenancy of the dwelling house by succession'.
- 13 Section 39 of the Housing Act 1988 provides at subsection (5) that if a person, by virtue of any provisions of Schedule 1 of the Rent Act 1977 becomes entitled to an assured tenancy by succession, that tenancy shall be a periodic tenancy arising by virtue of section 39. Subsection (6) goes on to provide, inter alia, that the tenancy is one taking effect in possession immediately after the death of the person on whose death the successor became so entitled, and that the periods of the tenancy are the same as those for which rent was last payable by the predecessor under his tenancy.
- 14 Section 14 of the Housing Act 1988 requires the tribunal to determine the rent at which it considered the subject property might reasonably be expected to be let on the open market by a willing landlord under an assured tenancy.
- 15 Only if a landlord's notice complies with each of the requirements referred to above does a Tribunal have jurisdiction to determine a rent under section 14 of the Act.

The Tribunal's Decision

- 16 The tribunal determined that the third requirement referred to above had not been met. The start date for the new rent is stated to be 28 January 2019 within the notice of increase. Section 39(6) of the Housing Act 1988 clearly states that the periods of the tenancy are the same as those for which rent was payable by the predecessor, they do not necessarily align

with the date the parties have taken to be the date that the assured tenancy takes effect in possession. The tribunal determined that the start date for the new rent stated in the notice of increase is not correct having regard to the start date of the original tenancy referred to earlier.

- 17 The notice of increase is invalid and the tribunal does not have jurisdiction to determine a rent under section 14 of the Housing Act 1988. The increased rent is not payable. Had the notice been valid the tribunal is likely to have valued the rent at £550pcm given the complete absence of space heating provided by the landlord, no proper double glazing, very basic kitchen, very basic bathroom and the lack of internal refurbishment within the flat.

S Moorhouse
Tribunal Judge
11 April 2019