



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

Case Reference : **LON/00BB/MNR/2019/0053**

Property : **39 Holborn Road, Plaistow,
London E13 8PB**

Applicant : **Mr A Ahmed (Tenant)**

Respondent : **Karin Housing Association Ltd
(Landlord)**

Type of Application : **Determination as to whether the
Tribunal has jurisdiction**

Tribunal Members : **Mr S Brilliant
Mr J Barlow JP FRICS**

**Date and Venue of
Hearing** : **24 May 2019
10 Alfred Place, London WC1E 7LR**

**Date of Written
Reasons** : **17 June 2019**

DECISION

The issues

1. The issues in these proceedings are:
 - (a) Was a notice of increase served by the landlord on the tenant under section 13(2) of the Housing Act 1988 served in time or not? If it was not served in time, the notice is invalid and the Tribunal has no jurisdiction.
 - (b) Was the tenant's application under section 13(4) of the Housing Act 1988 out of time because it was not received by the Tribunal before the date when the new rent specified in the notice of increase was to take effect? If it was not made in time, the Tribunal has no jurisdiction to determine a market rent and the new rent specified will take effect.

The facts

2. The tenant is the tenant of 39 Holborn Road, Plaistow, London E13 8PB ("the house") under a lease dated 5 May 2011. The tenancy began on 9 May 2011 as an assured short hold tenancy for an initial term of one week continuing weekly thereafter until determined.
3. The landlord has sent the tenant a notice dated 01 March 2019 proposing a new rent for the house. The notice stated that the starting date for the new rent would be from 1 April 2019.
4. Although the tenant's application is dated 29 March 2019, it was not received by the Tribunal until 3 April 2019.
5. On 17 April 2019, the Tribunal wrote to both parties informing them that the Tribunal's preliminary opinion was that the notice might be defective for not having been served in time. The Tribunal proposed to decide the issue on the basis of written representations. Neither party requested an oral hearing and neither party made any written representations.
6. In the absence of any evidence to the contrary, we must assume that the notice was sent to the tenant by post and, accordingly, only arrived on 2 March 2019 at the earliest.

The law

7. Section 13 of the Housing Act 1988 provides as follows:
 - (2) For the purpose of securing an increase in the rent under a tenancy to which this section applies, the landlord may serve on the tenant a notice in the prescribed form proposing a new rent to **take effect at the beginning of a new period of the tenancy specified in the notice, being a period beginning not earlier than—**
 - (a) the minimum period after the date of the service of the notice; and

- (b) except in the case of a statutory periodic tenancy—
 - (i) in the case of an assured agricultural occupancy, the first anniversary of the date on which the first period of the tenancy began;
 - (ii) in any other case, on the date that falls 52 weeks after the date on which the first period of the tenancy began; and
- (c) if the rent under the tenancy has previously been increased by virtue of a notice under this subsection or a determination under section 14 below—
 - (i) in the case of an assured agricultural occupancy, the first anniversary of the date on which the increased rent took effect;
 - (ii) in any other case, the appropriate date.
- (3) The minimum period referred to in subsection (2) above is—
 - (a) in the case of a yearly tenancy, six months;
 - (b) in the case of a tenancy where the period is less than a month, one month; and
 - (c) in any other case, a period equal to the period of the tenancy.
- (4) Where a notice is served under subsection (2) above, a new rent specified in the notice shall take effect as mentioned in the notice unless, before the beginning of the new period specified in the notice,—
 - (a) the tenant by an application in the prescribed form refers the notice to the appropriate tribunal; or ...

Was the notice served in time?

8. In this case it is proposed a new rent will take effect on 1 April. This is the beginning of a new period of the tenancy. This must be a period **beginning not earlier than a month after the date of the service of the notice.**
9. What does a month after the date of the service of the notice mean?
10. In Dodds v Walker [1981] 1 WLR 1027, HL, Lord Diplock said:

My Lords, reference to a " month " in a statute is to be understood as a calendar month. The Interpretation Act 1889¹ says so. It is also clear under a rule that has been consistently applied by the courts since Lester v Garland (1808) 15 Ves Jun 248, that in calculating the period that has elapsed after the occurrence of the specified event such as the giving of a notice, the day on which the event occurs is excluded from the reckoning. It is equally well established, and is not disputed by counsel for the tenant, that when the relevant period is a month or specified number of months after the giving of a notice, the general rule is that the period ends upon the corresponding date in the appropriate subsequent month, ie the day of that month that bears the same number as the day of the earlier month on which the notice was given. The corresponding date rule is simple. It is easy of application.

¹ Now Schedule 1 to the Interpretation Act 1978.

11. As we have said, the notice was served at the earliest on 2 March 2019. According to this authority, a month after the date of the service of the notice is 2 April 2019.
12. It follows that the new period of the tenancy which begins on 1 April 2019 is less than a month after the date of the service of the notice.
13. Accordingly, we find that the notice is invalid and we have no jurisdiction in these proceedings.

Was the tenant's application made in time?

14. The new period specified in the notice is 1 April 2019. It follows that the tenant's application must be **referred** to the Tribunal by 31 March 2019 at the latest. Whilst the application is dated 29 March 2019, it was not received and date stamped by the Tribunal until 3 April 2019.
15. In this context, **refers** means **hands over** and not **sends** and a notice sent by post before the date on which the new rent took effect, but which arrived at the Tribunal after that date, that was ineffective: R v London Rent Assessment Committee ex p Lester [2003] HLR 797, CA.

Conclusion

16. Accordingly, if we had found that we had jurisdiction in these proceedings on the first issue, we would have found we had no jurisdiction on the second issue, and the tenant would be unable to challenge the new rent.

Simon Brilliant

Dated: 17 June 2019

ANNEX - RIGHTS OF APPEAL

If a party wishes to appeal this 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.

- i. 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.
- ii. 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.
- iii. 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.

