



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

**Case Reference** : **LON/00AJ/MNR/2019/0021**

**Property** : **9 Surry Crescent, Greenford UB6  
9FN**

**Applicants** : **Mr. Ali Elkharfaji  
Zahra Alkaside**

**Respondent** : **BMA Property Group**

**Type of Application** : **Determination of Market Rent  
under S.13 and S.14 Housing Act  
1988.**

**Tribunal Members** : **Judge Daley  
Mr J Barlow FRICS**

**DECISION**

**Background:**

1. By an application received on 26 February 2019, the tenant referred a Notice under S.13 of the Housing Act 1988. The Applicants became the tenant of the premises pursuant to an Assured Shorthold Agreement commencing on 27 October 2017.
2. The landlord served a Notice of Increase of Rent on the tenants. The Notice specified an increase in the market rent from £1,600.00 per month to £1,640.00 per month. The Notice was dated 31 January 2019 and gave an effective date for the commencement of the new rent of 27 February 2019.
3. The tribunal wrote to the parties on 7 March 2019 to inform them that its preliminary view was that it did not have jurisdiction to determine the rent, because the tenancy agreement contained a provision clause 9.1 for determining the manner and period for rent increases. The clause provided:- “ ...The Landlord may increase the rent by giving the Tenant notice in writing of the increase. The notice shall specify the new rent and the increase will take effect 1 December each year...”

4. The parties were asked to make any representations prior to 29 March 2019 following which the tribunal would consider whether it had jurisdiction to determine the market rent for the property.
5. No representations were received.
6. The tribunal has considered the papers and determines that it does not have jurisdiction to determine the rent in this matter. As clause 9.1 provided a period other than the period set out in Section 13 & 14 of the Housing Act 1988. (see appendix 1)
7. In addition, the notice period and timing of the notice is not in accordance with clause 9.1, the tribunal does not have jurisdiction to change any of the matters contained within the notice. The notice does not accord with the provisions in the tenancy agreement.

**Decision:**

8. The tribunal accordingly has no jurisdiction to determine the rent and has closed its files.

**Name:** Judge Daley

**Date:** 26 April 2019

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## Appendix one

### **Increases of rent under assured periodic tenancies.**

- (1) This section applies to—
  - (a) a statutory periodic tenancy other than one which, by virtue of paragraph 11 or paragraph 12 in Part I of Schedule 1 to this Act, cannot for the time being be an assured tenancy; and
  - (b) any other periodic tenancy which is an assured tenancy, other than one in relation to which there is a provision, for the time being binding on the tenant, under which the rent for a particular period of the tenancy will or may be greater than the rent for an earlier period.
- (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.
- [(3A) The appropriate date referred to in subsection (2)(c)(ii) above is—
  - (a) in a case to which subsection (3B) below applies, the date that falls 53 weeks after the date on which the increased rent took effect;
  - (b) in any other case, the date that falls 52 weeks after the date on which the increased rent took effect.

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- (3B) This subsection applies where—
  - (a) the rent under the tenancy has been increased by virtue of a notice under this section or a determination under section 14 below on at least one occasion after the coming into force of the Regulatory Reform (Assured Periodic Tenancies) (Rent Increases) Order 2003; and
  - (b) the fifty-third week after the date on which the last such increase took effect begins more than six days before the anniversary of the date on which the first such increase took effect.
- (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 a rent assessment committee; or
  - (b) the landlord and the tenant agree on a variation of the rent which is different from that proposed in the notice or agree that the rent should not be varied.
- (5) Nothing in this section (or in section 14 below) affects the right of the landlord and the tenant under an assured tenancy to vary by agreement any term of the tenancy (including a term relating to rent).

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**S14 Determination of rent by rent assessment committee.**

- (1) Where, under subsection (4)(a) of section 13 above, a tenant refers to a rent assessment committee a notice under subsection (2) of that section, the committee shall determine the rent at which, subject to subsections (2) and (4) below, the committee consider that the dwelling-house concerned might reasonably be expected to be let in the open market by a willing landlord under an assured tenancy—
  - (a) which is a periodic tenancy having the same periods as those of the tenancy to which the notice relates;
  - (b) which begins at the beginning of the new period specified in the notice;
  - (c) the terms of which (other than relating to the amount of the rent) are the same as those of the tenancy to which the notice relates; and
  - (d) in respect of which the same notices, if any, have been given under any of Grounds 1 to 5 of Schedule 2 to this Act, as have been given (or have effect as if given) in relation to the tenancy to which the notice relates.
- (2) In making a determination under this section, there shall be disregarded—
  - (a) any effect on the rent attributable to the granting of a tenancy to a sitting tenant;
  - (b) any increase in the value of the dwelling-house attributable to a relevant improvement carried out by a person who at the time it was carried out was the tenant, if the improvement—
    - (i) was carried out otherwise than in pursuance of an obligation to his immediate landlord, or
    - (ii) was carried out pursuant to an obligation to his immediate landlord being an obligation which did not relate to the specific improvement concerned but arose by reference to consent given to the carrying out of that improvement; and
  - (c) any reduction in the value of the dwelling-house attributable to a failure by the tenant to comply with any terms of the tenancy.

- (3) For the purposes of subsection (2)(b) above, in relation to a notice which is referred by a tenant as mentioned in subsection (1) above, an improvement is a relevant improvement if either it was carried out during the tenancy to which the notice relates or the following conditions are satisfied, namely—
- (a) that it was carried out not more than twenty-one years before the date of service of the notice; and
  - (b) that, at all times during the period beginning when the improvement was carried out and ending on the date of service of the notice, the dwelling-house has been let under an assured tenancy; and
  - (c) that, on the coming to an end of an assured tenancy at any time during that period, the tenant (or, in the case of joint tenants, at least one of them) did not quit.
- (3A) In making a determination under this section in any case where under Part I of the Local Government Finance Act 1992 the landlord or a superior landlord is liable to pay council tax in respect of a hereditament ("the relevant hereditament") of which the dwelling house forms part, the rent assessment committee shall have regard to the amount of council tax which, as at the date on which notice under section 13(2) above was served, was set by the billing authority—
- (a) for the financial year in which that notice was served, and
  - (b) for the category of dwellings within which the hereditament fell on that date,
- but any discount or other reduction affecting the amount of council tax payable shall be disregarded.
- (3B) In subsection (3A) above—
- (a) "hereditament" means a dwelling within the meaning of Part I of the Local Government Finance Act 1992,
  - (b) "billing authority" has the same meaning as in that Part of that Act, and
  - (c) "category of dwellings" has the same meaning as in section 30(1) and (2) of that Act.
- (4) In this section "rent" does not include any service charge, within the meaning of section 18 of the Landlord and Tenant Act 1985, but, subject to that, includes any sums payable by the tenant to the landlord on account of the use of furniture, in respect of council tax or for any of the matters referred to in subsection (1)(a) of that section, whether or not those sums are separate from the sums payable for the occupation of the dwelling-house concerned or are payable under separate agreements.
- (5) Where any rates in respect of the dwelling-house concerned are borne by the landlord or a superior landlord, the rent assessment committee shall make their determination under this section as if the rates were not so borne.