



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

Case Reference : **LON/00AL/MNR/2019/0049**

Property : **15 Roberts Close, New Eltham,
London SE9 2HR**

Applicant : **Ms J Samaroo (Tenant)**

Respondent : **London & Quadrant Housing
Association (Landlord)**

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

Tribunal Members : **Mr S Brilliant
Mrs A Flynn MA MRICS**

**Date and Venue of
Meeting** : **7 June 2019
10 Alfred Place, London WC1E 7LR**

**Date of Written
Reasons** : **05 July 2019**

DECISION

The issue

1. The issue in these proceedings is whether or not a notice of increase of rent given to the tenant regarding her assured periodic tenancy can be referred by the tenant to the Tribunal?

The facts

2. On 29 March 2019, the tenant of 15 Roberts Close, New Eltham, London SE9 2HR (“the property”) referred to the Tribunal a notice of increase of rent served by the landlord under section 13 of the Housing Act 1988.

3. The landlords’ notice, which proposed a rent of £125.76, including service charges of £46.33, per week with effect from 01 April 2019 is dated 25 February 2019.

4. The tenant’s lease is a weekly tenancy dated 15 May 2017 (“the lease”).

5. On page 14 of the lease the following are set out:

Subject to clause 5.5 above,¹ we may increase your rent on the first Monday in April each year (or such other date as we decide). We will give you not less than 4 weeks notice of the increase. The notice will specify the revised rent. Any increase or decrease will normally date from the start of April. While we remain your landlord the revised rent will be set in accordance with our rent policy from time to time in force and in any event at a level no higher than the amount which would have been set for your home by the First – Tier Tribunal if it had jurisdiction to set the rent increase. The effect of this clause is that section 13 of the Housing Act 1988 does not apply to any rent increase under this clause and you do not have the right to refer any such increase to the First – Tier Tribunal.

5. On 10 April 2019, the Tribunal wrote to the parties informing them of the Tribunal’s preliminary opinion was that it might not have jurisdiction because the tenancy agreement contained a binding provision for a rent review. Neither party made submissions to us on the question of jurisdiction.

The law

6. The tenant cannot refer a notice of increase to the Tribunal unless section 13 of the Housing Act 1988 applies to the tenancy.

7. Section 13(1) provides as follows (our emphasis):

This section applies to-

(a) a statutory periodic tenancy² ... ; 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 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.**

¹ This appears to be the previous paragraph which is of no relevance in this case.

² No statutory periodic tenancy has arisen in these proceedings because the lease is a monthly one. The tenant is not holding over after the expiration of a fixed term.

8. The leading authority on the question of jurisdiction is the decision of the Court of Appeal in Contour Homes Ltd v Rowen [2007] EWCA Civ 842.

9. The facts of that case are as follows. The tenant held an assured tenancy of a property owned by the landlord. The lease included the following clause:

1.4 *Changes in rent and service charges*

1.4.1 The rent will be reviewed by the association in April of each year. The association shall give to the tenant no less than four week's notice of the revised amount payable. The revised net rent shall be the amount specified in the notice of increase.

The association agrees not to set a rent in excess of the prevailing market rent for the premises.

10. The landlord gave the tenant written notice of the revised rent for the year 2006–2007. The tenant referred the landlord's notice to a rent assessment committee which held that it was invalid since it was not in the prescribed form, as required by section 13(2) of the Housing Act 1988. The judge dismissed the landlord's appeal, holding that the rent review clause was not a provision under which the rent for a particular period of the tenancy will or may be greater than the rent for an earlier period, within the meaning of section 13(1)(b) of the 1988 Act, since it did not provide for a rent increase of a specified amount, and that, therefore, the tenancy was one to which the requirements of section 13(2) applied.

11. The Court of Appeal allowed an appeal from the judge. It held that the exception in section 13(1)(b) of the 1988 Act was not limited to rent review clauses which provided for an increase of a fixed amount but was also apt to include a provision which provided that rent might be increased by an unspecified amount if certain events occurred, such as the service by the landlord of a notice; that, therefore, the rent review clause in the tenancy agreement was a provision under which the rent for a particular period of the tenancy would or might be greater than the rent for an earlier period, within the meaning of section 13(1)(b) of the 1988 Act; and that, accordingly, the judge had erred in holding that the tenancy was one to which the requirements of section 13(2) applied.

Discussion

12. In our view, the case of Contour is on all fours with the facts of the case which is before us. The rent review clause was properly triggered by the giving of a notice as provided for in the lease.

Conclusion

13. We have no jurisdiction in this case.

Simon Brilliant

Dated: 05 July 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.