FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AE/MNR/2019/0086**
Property	**:**	**222 Preston Hill Harrow Middlesex HA3 9UJ**
Applicant/Tenant	**:**	**Mr R Lichten and Mrs M Lichten**
Representative		**Mrs Lichten in person and by Miss Emma Lichten (her daughter).**
Respondent/Landlord	**:**	**Mr R J Moseley**
Representative		**Ms Sara Jabbari, Counsel instructed by Vyman Solicitors, Harrow**
Type of application	**:**	**Section 13 and 14 Housing Act 1988**
Tribunal members	**:**	**Mr Charles Norman FRICS (Valuer Chairman)** **Mrs Jacqueline Hawkins**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of hearing	**:**	**28 February 2020**
Date of decision	**:**	**6 May 2020**

DECISION

DECISION

(1) The Tribunal determines that the rent in response to the section 13 notice is £1,790 per month

(2) The rent is to take effect from 1 August 2019.

REASONS

Background

1. The case was originally heard on 13 December 2019 with the Tribunal making a decision on that day. At that hearing the landlord did not attend. The Tribunal subsequently held that that arose from a procedural irregularity. Consequently, on 29 January 2020 the Tribunal set aside the decision of 13 December 2019 (for which reasons had not been provided) and directed a re-hearing. This decision with reasons follows the re-hearing.

2. This matter follows separate proceedings in the County Court in respect of the subject tenancy which culminated in a Consent Order dated 21 March 2019. The case related to possession, disrepair, return of a deposit and status of the tenancy. In those proceedings, Mr Stephen M Lawrence MSc MCIEH FRSPH of Stephen Lawrence EHC Ltd, Environmental Health Consultants and Surveyors, Axminster, was appointed as a single joint expert. In summary, the matter was settled on the basis that (i) possession was not granted (ii) the defendant tenants would receive £19,000 damages (iii) the landlord would undertake repair works within 42 days as specified in a report by Stephen Lawrence dated 1 December 2018, using properly qualified contractors and professional workmen (iv) the tenant would provide reasonable access for repairs (v) if the repairs were delayed or further defects discovered the parties would agree a mutual extension (vi) if the delays exceeded 3 months Stephen Lawrence would carry out a further inspection and determine a reasonable timeframe. Further, the status of the tenancy was left undetermined. In the event, Mr Lawrence produced two further reports dated 12 August 2019 and 16 December 2019 ("the December report"). The reports were cumulative so that the December report included corresponding entries from previous inspections.

The Tenancy

3. A copy of a document described as an assured shorthold tenancy agreement between the parties dated 1 September 2004 was supplied by the landlord, together with previous agreements.

The Hearing

4. At the re-hearing the Applicant, Mrs Lichten appeared in person accompanied by her daughter, Ms Emma Lichten. Mr Lichten lacks

capacity[1] and did not attend. The Respondent Mr Moseley attended and was represented by Ms Jabbari of counsel. Mr Moseley's business partner Mr Ali Sayed was also in attendance.

5. By agreement with the parties, the Tribunal admitted the December 2019 report, the previous Lawrence reports already being in evidence. The Tribunal also allowed into evidence a third witness statement from Mr Moseley as it was short, and a one page letter from the Applicant dated 24 February 2020. This appended the December 2019 report and some other correspondence, much of which was already in evidence. Counsel for the Respondent handed up a skeleton argument.

The Law

6. The Tribunal sets out sections 13 and 14 of the Housing Act 1988 in the Appendix below.

The Respondent's case

7. The Respondent's case may be summarised as follows. Mr Moseley who is now aged 77 and retired acquired the freehold of the property in 2000. The applicants occupy the property under a series of assured shorthold tenancies, the latest expiring on 1 September 2004. Thereafter, the applicants remained in occupation as statutory periodic tenants pursuant to section 5 of the Housing act 1988. Mr Lichten is in full-time care and the property is occupied by Mrs Lichten and her adult son. The rent passing is £1,375 per month which has not increased since 2000. The notice of increase was for £2,500 per month with effect from 1 August 2019 which is the valuation date. The property is approximately 85 years old.

8. Following the consent order, contractors were appointed by the Respondent who encountered difficulties with the applicant. These hindered their ability to carry out works, evidenced by letters from those contractors exhibited to Mr Moseley's first witness statement (see below). Subsequently, Mr Moseley has completely replaced the leaking roof. The Tribunal was invited to take into consideration the steps taken by the Respondent to improve the condition of the property and give credit for those improvements. The valuation date was 1 August 2019. As to valuation, a local estate agent Salter McGuinness were instructed to provide a valuation by the Respondent and advised that it should be placed on the market for £2,350 per calendar month. The Applicant had submitted two estate agent appraisals, the first dated 17 August 2019 from Hamilton Estates who suggested marketing at £1,850 with a view to achieving £1,700 per calendar month. The second dated 19 August 2019 from Christopher Rawlinson & Co advised advertising the property at £2,000 with a view to achieving £1,900 per calendar month. Counsel submitted that these were limited in value being unsupported by comparables. As to the Applicant's claim for undue hardship, the

[1] From Consent Order

Applicant has invited the Tribunal to exercise its discretion[2] not to backdate the rent increase to 1 August 2019. However, the Applicant had not produced any evidence of means or hardship. The Applicant had benefited from a low rent for a long time. Payment of £19,000 to the Applicant was also relevant to the question of her suffering hardship. Relevant hardship had to be "undue".

9. In opening submission Ms Jarrabi expanded upon these matters. Counsel submitted that no weight should be placed on the valuation letters provided by estate agents. There was no perfect valuation evidence. There was no evidence of undue hardship.

10. Mr Moseley was called to give evidence having given witness statements dated 11 November 2019, 4 December 2019 and 26 February 2020. Much of this evidence related to the factual history of the matter upon which the Tribunal does not need to make findings. However, in his first witness statement, Mr Moseley stated that around 95% of works had been completed with remaining issues to be completed "this week" and the outstanding issues were only snagging items. The property had a valid gas certificate and EPC [energy performance certificate]. Mr Moseley continued "I note that the tenant is attempting to reduce the market rent as a result, however her position is wholly unreasonable as delays have been through a combination of her aggressive and obstructive behaviour to the contractors and further the tenant has simply denied access for no valid reason. I have exhibited hereto pages 31 to 38 of JM1, copies of letters from the contractors and emails with the tenant."

11. The letters were critical of the tenant in terms of her attitude, alleged difficulties in gaining access, the fact that she had a dog, and suggested that she had been aggressive.

12. In his second witness statement, given in response to a written submission by the tenant, Mr Moseley referred to a letter received from his roofer following a visit on 13 November 2019 to the effect that deliberate damage had been caused to the flat roof. Mr Moseley's position was that the tenant or the occupants had caused deliberate damage.

13. In his third witness statement Mr Moseley repeated this allegation. In this witness statement, Mr Moseley referred to para 6.2.4 of the December report which identified outstanding works as at 19 December 2019. These were as follows:

    i. Roof required repair;

    ii. Refixing of gutter and cleaning out of the conservatory gutter;

    iii. Completion of outstanding pointing/render repairs;

[2] As provided for under s 14(7) Housing Act 1988, see below and Appendix

iv. Reduction of the ground level to the left side of the front bay;

v. easing and adjusting the garage door;

vi. easing and repairing back garden store cupboard doors;

vii. plastering repair to provide a doorstop/ decoration to 2nd floor front bedroom;

viii. carrying out ceiling plaster repair and redecoration in the second floor rear bedroom;

ix. carrying out ceiling redecoration to the second floor landing;

x. undertaking a window repair to the second floor rear bedroom;

xi. Carrying out an electrical installation test and repair as required;

xii. Securing door hinges.

14. Mr Moseley said that he did not entirely agree with the December report but that all these matters had now been resolved save for xi where contractors were in the process of having the electrical installation examined. The roof had been completely renewed and he appended a copy of a roof guarantee from Rubber4Roofs Limited.

15. Mr Moseley had spent over £20,000 undertaking the works to the property. Mr Moseley complained that the tenant had made numerous false assertions in her letter of 24 February 2020 (see below). At paragraph 11 of his third witness statement he stated "whilst the works have taken longer than anticipated as a result of various factors, it cannot be denied that I have used reasonable endeavours to have the works completed. Whilst I believe the history of the matter should have no bearing on the determination made by the Tribunal as it should be on the condition of the property at the date of inspection, the tenant has rightly pointed out that I have sent in contractor (sic) on numerous occasions, which she purports to be around 79 times. This would illustrate the opposite of what she is suggesting, as it is evident that I would want works completed as soon as possible rather than paying contractors thousands of pounds to continuously attend the property."

16. During questioning, Mr Moseley told the Tribunal that he had asked the three contractors to write their letters (see above). He also stated that the work did not get done because the tenant was being so difficult and there were difficulties in gaining access. These delays had prolonged the time needed to carry out the work. However, Mr Moseley also stated that he was not denied access and that reference to 79 visits by the Applicant showed his dedication to carrying out the work. He also said that the scaffolding went all round the building. The flat roof was fixed after

August 2019. The kitchen was put in in 2002. He was not clear when the bathrooms were installed.

17. Following the Tribunal expressing concern about the serious allegations of criminal damage to the roof by the tenant or a member of her household for which there was no admissible expert evidence, (no permission having been sought and no compliant report served) that part of the Respondent's case was withdrawn.

18. In closing, counsel submitted that the Tribunal should rely on the December report as to the extent of Mr Lawrence's visual observations on 29 July 2019, which were also tabled in that report. There was no evidence to support the tenants' submission that the rent should be £1,890 per calendar month. Counsel submitted that the Tribunal should draw an inference that landlords are letting properties in a less than newly renovated condition. Where the property is newly renovated the landlord has an incentive to make that clear so where that information is absent it suggests that properties are not newly renovated. No weight should be given to the estate agents' letters. Mr Moseley's estate agent's letter was put in only to show the type of rent level he expected. A hypothetical tenant at the valuation date would see from scaffolding that works were being carried out and although there were difficulties with water ingress and dampness the tenant could see that the property will be addressed within a reasonable period of time. The Lawrence report of 25 July 2019 did not mention water patches only a damp patch. The overall impression was that the property was in a reasonable condition. The main works were to the roofs and were not internal. Delays were caused by the tenant's behaviour and some element should therefore be disregarded. The comparables are best evidence and show that the estate agents' views are out of line. The rent should exceed £2000 per month. As to hardship, this requires more than normal hardship. Hardship needed to be "undue". There must be some documentary evidence. There is no witness statement identifying the type of hardship. The tenant had received £19,000 damages.

The Applicant's case

19. The Applicant did not serve a witness statement, but a written statement received by the Tribunal on 25 November 2019 and a further letter dated 24 February 2020. These may be summarised as follows. The tenant aged 64 has occupied the property for 23 years. Her husband suffers from Alzheimer's disease and lives in a care home. Her adult son who is autistic lives with her and she is his carer. The house was let unfurnished and she has supplied all carpets curtains and some light fittings. Scaffolding had been up for over six months. There are problems particularly with the roof. The house is draughty and cold as supported by damp readings in the expert's report. She provided keys to the workmen. The landlords' comparables are all far better and not comparative. The increase and back payment would cause considerable financial hardship and Mrs Lichten only works part time and her benefit is capped.

20. The letter of 24 February 2020 made adverse comments about the way Mr Moseley had conducted proceedings upon which the Tribunal does not need to make findings. The tenant referred to the December report finding that the roof was not watertight. Mrs Lichten submitted that the landlord's workman had access to her home on 79 occasions following 21 March 2019 (date of consent order). In opening submission these statements were expanded. In August 2019, the roof was still leaking. The scaffolding was still up. There was debris and paintwork splatter on the property. This would worry a hypothetical tenant. The workmanship was crude and slapdash. There was damp over the second floor. The kitchen is old and there is debris within the property. In relation to the comparables, many were not on main roads unlike the subject property. Kenton Lane had five bedrooms of and was of a high standard. This was to be let as an HMO which would command a higher rent. Branksome Way was in a conservation area. All the comparables were only asking rents.

21. The Applicant submitted that the Respondent's contractors had made 82 different visits between 28 May and 2 July 2019. In terms of hardship the Applicant had funded the County Court litigation on the basis of "no win no fee", had used the money to pay off debts and was only in work part-time. In addition, the Applicant was a carer for her disabled son.

22. There was continuing water damage in three places, multiple cracks, poor decoration with old shabby bathrooms and kitchen. White goods were outdated. There was no assurance that planned repairs of a high standard would take place given the substandard work noted by Mr Lawrence. A tenant would be worried about their belongings being damaged by paint splatter and debris. As per Mr Moseley's statement, access been provided every time requested and therefore there was no reason for works to take place later than 1 August 2019. The roofing works had not been completed until 20 February 2020. In relation to comparables, many will have a far higher standard of decor better facilities in better areas. The rent should be set at £1,890 per calendar month or less.

23. As to undue hardship, the tenant did not wish to give details of her means but stated that damages received had been used to pay debts.

Inspection

24. The Tribunal inspected the property on 28 February 2020 shortly after the conclusion of the hearing. The Tribunal was accompanied by the tenant, Mrs Lichten, Miss Emma Lichten, Mr Moseley and Mr Moseley's business partner Mr Ali Sayed. The property is an interwar semi-detached house with separate garage, driveway and front and rear gardens. It is of brick construction under a mixture of flat and pitched roofs. The property has been the subject of historic conversion works to add additional bedrooms at second floor level and now comprises five bedrooms, two bathrooms, kitchen, two ground floor reception rooms, a conservatory, hallways on ground and first floor, ground floor WC,

separate garage and driveway. It is situated on a hill on a main road close to a roundabout which is a busy and noisy location. Externally the Tribunal noted debris on the front garden and paint splashes on the front elevation. The scaffolding had been removed the previous day. The footpath paving was uneven. There was debris in front of the garage and the doorbell was not functioning. The rear garden was sizeable and largely laid to lawn. The rear patio area had cracked slabs. There was a former coal store to the rear of the building. The garage was narrow but electrically lit.

25. The downstairs hall gave access to a rear kitchen, front living room, rear dining room and downstairs WC. The kitchen was fitted with basic floor and wall units. White goods belong to the landlord, but the dishwasher was not working, and fridge was in poor condition. There was a gas cooker and hood. The floor was stone tiled. Windows were UPVC double glazed, with one exception. It included a Potterton gas boiler, which appeared to be at least 20 years old. Access to the garden was via a door in the kitchen. There was a dining room of fair size with radiator. Off the dining room was a square conservatory of UPVC construction. There were single glazed timber French doors crudely painted from the dining room to the conservatory. The conservatory was unheated and unlit and with a laminate floor. The tenant pointed out slight water staining from the gutter. The front living room included a radiator and laminate floor. There was a square bay double glazed and the Tribunal noted a large crack in the ceiling and some deterioration to the joint between the window frame and the window. There was a large timber ornamental fireplace. The Tribunal noted cracks in the cornicing and loose power sockets. The hallway included a radiator, laminate floor and timber banister. The WC fittings appeared to be about 15 years old and the Tribunal noted that the wallpaper was peeling.

26. The Tribunal noted paint splashes on the staircase carpet. The first floor comprises a bathroom and three bedrooms. The bathroom comprised bath with mixer taps, bidet, wash hand basin and bath. There was a stone floor. The fittings were over 25 years old and were not a matching suite with different colour units. The Tribunal noted that the sink taps were not installed correctly. There was paint splatter on the bidet. The rear bedroom was a large double and included a radiator and UPVC window. The front bedroom was a large double with built-in wardrobes UPVC windows and a curtain rail which was damaged. There was a laminate floor. The second rear bedroom included a radiator, double glazed windows and a built-in cupboard which in part comprised an airing cupboard housing an immersion heater. The second floor comprised two bedrooms and a bathroom. The front bedroom had a very low ceiling height owing to the slope of the roof giving a single room with radiator and two timber frame dormer windows. The light switch was loose. The rear room comprised a double bedroom and radiator with double glazed windows. Externally the windowsill was discoloured. The second floor bathroom comprised bath, sink and bidet which were original and a much more recent WC. There was a radiator. The Tribunal also noted a Triton electric shower approximately six years old. The floor was new as

was the shower screen. There was some wall tiling. The bathroom was unfinished and in poor condition, with paint marks on the mirror.

Findings

27. Although the Tribunal has no jurisdiction to make a determination of the status of the tenancy, which is a matter for the Court, the Tribunal accepts the landlord's submission, for the purpose of the Tribunal's jurisdiction, that the tenancy is an assured shorthold tenancy. However, if the tenancy were an assured tenancy, this would not affect the rent determination by the Tribunal.

28. The Tribunal is required to determine the rental value of the property as at the valuation date in accordance with sections 13 and 14 of the Act but may take subsequent matters into account if they shed light on issues at that date. This approach was raised with Counsel who did not disagree.

29. The Tribunal has disregarded the personal circumstances of both parties save for the issue of undue hardship (see below). The Tribunal takes notice that the extensive scaffolding was not removed until 27 February 2020 and that twelve outstanding items of disrepair were reported by Mr Lawrence in December 2019.

30. The overall condition of the property was poor, and the Tribunal noted examples of poor workmanship within the property, such as the over painting of old wallpaper, the poor quality painting of the French doors leading to the conservatory and loose sockets. The kitchen white goods were either non-functional or in poor condition. One bathroom suite was non-matching and the other was in an unfinished condition. There were paint marks on the carpet and externally.

31. The Tribunal did not accept the landlord's submission and evidence that the tenant had breached her tenancy agreement by refusing the landlord access to carry out repairs. The evidence of Mr Moseley was that much access by his contractors had in fact taken place. The letters from contractors referred to above were procured by Mr Moseley. Those letters did not include the makers' addresses nor in two cases the full names of the contractors. None of those contractors gave witness statements or attended the hearing. Therefore, no weight can be given to those letters. The expenditure, contractors' letters and Mr Lawrence's reports all also show that access was given. The Tribunal found that Mr Moseley's evidence was somewhat contradictory and that he was prepared to make allegations in these proceedings in relation to criminal damage without appropriate expert evidence. This allegation was not supported by Mr Stephen Lawrence. The Tribunal finds that poor workmanship and poor project management were the effective cause of delays, with many items still outstanding in December 2019. The allegation that obfuscation by the tenant prolonged the repair works was not proved.

32. The Tribunal gave the Applicant's submissions less weight than had she given evidence but did not find it necessary to rely on such submissions

in relation to the prolongation of works point. The onus was on the Respondent to prove his case which he had failed to do.

33. As to valuation, the Tribunal made clear that it would not be placing weight on the valuation letters from estate agents because these letters did not comply with form and content of expert reports under rule 19 of the Tribunal Rules[3]. In addition, the Tribunal had no basis of knowing the background to the instructions or any comparables relied upon by the agents. The only other source of evidence was Rightmove printouts which in most cases provided limited information about the relevant properties. As the condition of properties may be highly variable, the Tribunal prefers to rely upon comparable properties known to be in good condition and use its expertise to make adjustments for condition, location and any other relevant factors. Therefore, the Tribunal requires some information about the condition of comparables before it can rely upon them. The Tribunal does not accept counsel's submission that it can infer the condition.

34. Therefore, of the comparables in evidence, the Tribunal found the most useful to be the five bedroom semi-detached house at Kenton Lane asking rent £2750 per calendar month and the five bedroom house at Branksome Way, Harrow asking rent £2,700 per calendar month. These are described as being of a very high standard or as immaculately presented. The Tribunal considers that the property at Branksome Way is in a better location being much quieter. The Tribunal has insufficient information in relation to the location of the comparable in Kenton Lane which is a very long and variable Road to make an equivalent adjustment. The Tribunal assesses Branksome Way as having a 5% positive adjustment because of the better location. Against this, Branksome Way does not have a garage and the Tribunal finds that these factors balance each other out. Branksome Way is described as having three bathrooms, 2 ensuite. The Tribunal considers that the third bathroom is worth an additional £50 per month as against a third WC only in the subject property, giving an adjusted rent of £2750 per month for Branksome Way. The Tribunal noted that the accommodation in Kenton Lane did not include a garage but did include an office room. The Tribunal considers that these balance each other out so that no further adjustment is required. The Tribunal has no better evidence than the asking terms.

35. Therefore, the Tribunal adopts as a starting point for the subject property, a rent of £2,750 per calendar month if it was in very good condition as at the valuation date. However, the Tribunal did not consider that the property was in good condition for the reasons given above. The Tribunal found that the condition would have adversely affected a hypothetical tenant as at the valuation date and that the following downward adjustments for rent were required:

    a. condition of kitchen and white goods, 10%,

[3] The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Ru les 2013

b. poor condition of the bathrooms, 10%

c. uneven paving, scaffolding, water ingress, paint splatter, 10%

d. Poor accommodation at second floor front room 5%

36. These aggregated to 35% or £962.50 per calendar month. Therefore, the Tribunal found that the resulting rental value was £1,787.50 per calendar month. This the Tribunal rounds to £1,790 per calendar month.

37. As to undue hardship, the Tribunal accepted the submission of counsel that supporting evidence from the tenant was required. Although the tenant is facing many difficulties, no evidence of her financial circumstances was provided. Further it is undisputed that the tenant received £19,000 gross damages from the landlord in 2019. For these reasons, the Tribunal is unable to find that the tenant will suffer undue financial hardship if the rental increase takes place from 1 August 2019. Therefore, the Tribunal determines that the rent increase should take place with effect from that date.

Mr Charles Norman FRICS

ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.

- If a party wishes to appeal against 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.

- 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.

- 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.

- 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.

Appendix

13.— 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

][1]

(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—][2][

(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.

(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 [the appropriate Tribunal] ; 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).

14.— Determination of rent by [Tribunal] .

(1) Where, under subsection (4)(a) of section 13 above, a tenant refers to [the appropriate Tribunal] a notice under subsection (2) of that section, the [appropriate Tribunal] shall determine the rent at which, subject to subsections (2) and (4) below, the [appropriate Tribunal] 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 [appropriate Tribunal]5 shall have regard to the amount of council tax which, as at the date on which the 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 relevant 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 [appropriate Tribunal] shall make their determination under this section as if the rates were not so borne.

(6) In any case where—

(a) [the appropriate Tribunal] have before them at the same time the reference of a notice under section 6(2) above relating to a tenancy (in this subsection referred to as "the section 6 reference") and the reference of a notice under section 13(2) above relating to the same tenancy (in this subsection referred to as "the section 13 reference"), and

(b) the date specified in the notice under section 6(2) above is not later than the first day of the new period specified in the notice under section 13(2) above, and

(c) the [appropriate Tribunal][9] propose to hear the two references together,

the [appropriate Tribunal][9] shall make a determination in relation to the section 6 reference before making their determination in relation to the section 13 reference and, accordingly, in such a case the reference in subsection (1)(c) above to the terms of the tenancy to which the notice relates shall be construed as a reference to those terms as varied by virtue of the determination made in relation to the section 6 reference.

(7) Where a notice under section 13(2) above has been referred to [the appropriate Tribunal] , then, unless the landlord and the tenant otherwise agree, the rent determined by [the appropriate Tribunal] (subject, in a case where subsection (5) above applies, to the addition of the appropriate amount in respect of rates) shall be the rent under the tenancy with effect from the beginning of the new period specified in the notice or, if it appears to [the appropriate Tribunal] that that would cause undue hardship to the tenant, with effect from such later date (not being later than the date the rent is determined) as the committee may direct.

(8) Nothing in this section requires [the appropriate Tribunal][13] to continue with their determination of a rent for a dwelling-house if the landlord and tenant give notice in writing that they no longer require such a determination or if the tenancy has come to an end.

(9) This section shall apply in relation to an assured shorthold tenancy as if in subsection (1) the reference to an assured tenancy were a reference to an assured shorthold tenancy.