



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

Case Reference : **MAN/30UK/MNR/2019/0079**

Property : **26 Southern Avenue, Preston,
Lancashire PR1 4NL**

Landlords : **Riaz Desai & Salma Desai**

Tenants : **Ershad Khan & Nahida Khatoon**

Type of Application : **Determination of rent under section
14 of the Housing Act 1988**

Tribunal Members : **Judge C Green
Ken Kasambara**

**Date and venue of
Hearing** : **Determination on the papers**

Date of Decision : **23 January 2020**

REASONS FOR DECISION

DECISION

The application for determination of a new rent is struck out.

REASONS

Background

1. The Property is held on an assured tenancy of which Riaz Desai and Salma Desai claim to be landlords and Ershad Khan and Nahida Khatoon, tenants.
2. By a notice to the tenants dated 18 September 2019, the landlords gave notice of an increase in rent for the Property from £600.00 per month to £650.00 per month, with effect from 19 October 2019.
3. On 16 October 2019, the tenants referred the landlords' notice to the Tribunal under section 13(4) of the Housing Act 1988. The tenants' application was in the prescribed form and was made before the date specified in the landlords' notice for the start of the proposed new rent. Although paragraph 4(a) of the Application states that the tenancy began on 19 May 2017 and in paragraph 9 that there was a written tenancy agreement, no copy of any tenancy agreement was included with the Application.

Law

5. Where a tenant has referred a valid landlord's notice to the Tribunal under section 13 of the Housing Act 1988, section 14 of that Act requires the Tribunal to determine the rent at which it considers that the property might reasonably be expected to be let on the open market by a willing landlord under an assured tenancy. In so doing the Tribunal is required, by section 14(1) of the Act, to ignore the effect on the rental value of the property of any relevant tenant's improvements as defined in section 14(2).

Jurisdiction

6. Although neither party challenged the Tribunal's jurisdiction to determine the rent for the Property under section 14 of the 1988 Act, the Tribunal must first determine that the landlord's notice under section 13(2) of the 1988 Act satisfied the requirements of that section and was validly served. Those requirements are that the notice was given in the prescribed form and was accompanied by the relevant guidance notes, that it gave at least one month's notice of the proposed increase, and that it must specify a starting date for the proposed new rent which coincides with the beginning of a period of the tenancy, and that starting date is not earlier than 52 weeks after the date on which the rent was last increased using the statutory notice procedure.

7. Prior to inspection on 19 December 2019 it was realised that the copy of the landlords' notice that had accompanied the tenants' Application contained paragraphs 1 and 2 of the guidance notes but nothing further. During the inspection an additional page of notes was shown to the Tribunal, and a photograph taken, which consisted of an A4 page with paragraphs 3 to 6 but which had been cut off so that paragraphs 7 to 18 were not included. On consideration of the matter after inspection, the Tribunal took the preliminary view that the landlords' notice was not accompanied by all the guidance notes and therefore that it might not have jurisdiction to determine the application. By letters dated 23 December 2019 the Tribunal wrote to the parties in such terms, including the photograph of the truncated page of guidance notes mentioned above, and invited written representations on the point. In an email of 2 January 2020 Mr. Desai did not take issue that the notice had been served without paragraphs 7 to 18 of the guidance notes. No representations have been received from the tenants. It now falls to the Tribunal to decide this jurisdictional issue.
8. Section 13(2) requires the notice to be in the prescribed form, and Form 4 has been used by the landlords in this case. The form includes guidance notes at the end, which are divided into three parts: *Guidance Notes for tenants*, *Guidance Notes for landlords on how to complete the notice*, and *When the proposed new rent can start*. In the present case, the landlords' notice included the first set of guidance notes, but not the second or third, that is: paragraphs 1 to 6 of the guidance notes but not paragraphs 7 to 18.
9. This issue was considered in respect of a different property in the case of *Natasha Andrews v. Emily Baxter* (MAN/00CZ/MNR/2018/0006). In that case, the Tribunal had to consider two matters: that the landlord's notice was unsigned (which is not the case in respect of the landlords' notice here) and that the guidance notes were incomplete. In paragraph 9 of the interim decision (confirmed after the parties were given an opportunity to make representations), Deputy Regional Valuer N. Walsh stated as follows:

“Leading Court of Appeal and House of Lords authorities have provided significant guidance as to the relevant considerations to be taken into account in deciding whether a notice is valid or not because of an omission, error or departure from the statutory prescribed form. They conclude that one should adopt a purposive approach and that the impression which the notice would have made on a reasonable recipient, is a relevant consideration when determining the validity of a notice. The test to be applied is therefore whether, notwithstanding any errors or omissions that have been demonstrated, the section 13(2) Notice is substantially the same as a Notice in the proper form which has been completed correctly. To reach this conclusion the Tribunal must bear in mind the statutory purpose of the Notice, which is at its most basic:

 - a. *To tell the tenant the rent which the landlord proposes.*

- b. *To identify the date from which the landlord proposes the new rent is to take effect.*
 - c. *To inform the tenant if he or she has grounds to challenge the increase on procedural or validity grounds.*
 - d. *To tell the tenant what he or she must do if he or she disagrees and wishes to challenge the proposed rent.”*
10. In applying such considerations to the omission of paragraphs 14 to 18 of the guidance notes in that case, it was found that an essential purpose of the notice, specifically as detailed in paragraph 9 c. above, was not met by the failure to include these paragraphs.
11. Although that decision is not binding on this Tribunal, it is persuaded by such reasoning and would apply it in the present case. The landlords’ notice was invalid because the accompanying guidance notes omitted paragraphs 14 to 18 concerning when the proposed new rent can start, which amounts to a substantial omission. Accordingly, the Tribunal has no jurisdiction to determine the tenants’ application, which is struck out pursuant to rule 9(2)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Colin Green
23 January 2020