



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

**Case reference** : **LON/00BG/MNR/2020/0050**

**HMCTS CODE** ; **V : Remote Video Hearing.**

**Property** : **24 Smythe Street, London E14 0HF.**

**Applicant** : **Mr. M. S. Haque**

**Representative** : **In person.**

**Respondent** : **Landlord Advice UK**

**Representative** : **Landlord Advice UK.**

**Type of application** : **Decision in relation to jurisdiction  
under section 13 of the Housing Act  
1988**

**Tribunal member(s)** : **Ms. A. Hamilton-Farey LLB, FRICS,  
Mr. J. Francis QPM.**

**Date of decision** : **21 August 2020.**

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**DECISION**

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## **Covid-19 pandemic: description of hearing**

This has been a remote video hearing which has been consented to/not objected to by the parties. The form of remote hearing was V: Video Remote. A face-to-face hearing was not held because it was not practicable, and all issues could be determined during a remote hearing. The documents which were referred to us are in a bundle of **40** pages, including the tenancy agreement, notice of increase and correspondence with the tribunal. The contents of these documents have been noted by the tribunal.

### **Decision:**

The Tribunal determines that it does not have jurisdiction to determine the market rent under S.14 of the Housing Act 1988 in relation to this application, for the reasons stated below.

### **Background:**

1. The tenant, Mr. Haque, entered into a six-month assured shorthold tenancy agreement on 1 May 2012.
2. Through the elapse of time and the fact that Mr. Haque remains in possession, the tenancy has become a statutory periodic tenancy, that requires a Notice before the landlord can increase the rent.
3. On 30 January 2020, Mr. Haque received a S.13 Notice under the Housing Act 1988, and which informed him of the landlord's proposal to increase his rent from £1650.00 per month to £1,950.00 per month, with effect from 1 March 2020.
4. Mr. Haque disagreed with the proposed rent and completed Form 6 'Application referring a Notice proposing a new rent under an Assured Periodic Tenancy or Agricultural Occupancy to a Tribunal.' That form is dated 21 February 2020.
5. Mr. Haque says that, having spoken to a person in the Stratford Housing Centre, he was told to submit his form to Clerkenwell and Shoreditch County Court, which he did by Royal Mail on 20 February. He has supplied proof that his documents were received by the Court on 24 February.
6. Mr. Haque then says that, having browsed the internet, on 11 March 2020 he found another form that could be used to refer a rental dispute, not knowing what to do, he found the telephone number for this tribunal, and was informed to send/bring in his Form 6.
7. Having received the documents, the tribunal wrote to Mr. Haque on 16 June 2020 to say that its' preliminary view was that it has no jurisdiction to determine the rent because the application had been received after the date when the rent was due to take effect.

8. Mr. Haque made written representations to the tribunal, these were expanded at the hearing.
9. He says that he should not be penalised for sending the referral to the incorrect court, and that the Notice of Increase did not include an address for the tribunal.
10. The tribunal is bound by the legislation. S.14 of the Act, which is repeated below requires a tenant to refer the S.13 Notice to 'the appropriate tribunal' and having done so the 'appropriate tribunal' would make a determination.
11. The tribunal has no discretion to accept late referrals of S.13 Notices, and we cannot take into consideration the fact that Mr. Haque sent his form to the incorrect court. He did not, in our view, refer the Notice of Increase to the appropriate tribunal as required.
12. We also take into account that the notes that accompanied the Notice of Increase (note 6) does clearly state that 'tribunal' means the First-tier Tribunal or the Upper Tribunal, and although this note might be confusing, we still consider that Mr. Haque could have found the correct address and submitted his application in time.
13. We are also bound by the case of Regina (Lester) v London Rent Assessment Committee [2003] EWCA Civ 319., in which the Court of Appeal, determined that the term 'refer' to the tribunal meant that the application to the tribunal must be received before the date when the new rent comes into effect. Despite the age of this case, the decision remains binding on this tribunal.
14. The effect therefore is that the Notice of Increase was not referred to the tribunal before the new rent took effect, and consequently the tribunal has no jurisdiction to accept the Notice and go on to determine the rent.
15. The application is dismissed.

**Name:** Aileen Hamilton-Farey      **Date:** 21 August 2020.

### **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

## **THE LAW:**

S.13 The Housing Act 1988. – Increases of rent under assured periodic tenancies:

13(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.

13(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<sup>6</sup> 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 –
  - a. In the case of an assured agricultural occupancy, the first anniversary of the date on which the first period of the tenancy began;
  - b. 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 S.14
    - 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 tenancy is less than a month, one month, and
- (c) in any other case, a period equal to the period of the tenancy.

(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.

#### **S.14 Determination of rent by the tribunal:**

(1) Where under subsection (4)(a) of Section 13, **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 section (2) and (4) above, 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 notices relates; and

(d) in respect of which the same notices, if any, have been given under any of the grounds 1 to 5 of Schedule 2 to the 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 cost 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.

