



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

Case reference : **LON/00AU/MNR/2019/0145**

Property : **7 Archway Road, London N19 3TX**

Applicant : **Ms Helen Bean**

Representative :

Respondent : **Templiss Properties**

Representative :

Type of application : **Market Rent under s13 & 14 of the
Housing Act 1988**

Tribunal member(s) : **Tribunal Judge Brandler
Mr R Shaw (Valuer Member)**

Date of inspection : **28th February 2020**

Date of decision : **17th December 2020**

DECISION

Decision of the tribunal

The Tribunal does not have jurisdiction to determine this application for the reasons stated below. The respondent landlord cannot therefore rely on their invalid notice dated 13th November 2019.

Background

1. The tribunal received the applicant/ tenant's application under section 13 of the Housing Act 1988 on 2nd December 2019. This included the respondent's notice proposing a new rent to commence on 12th December 2019. That notice appeared to be undated and there was no evidence of when the notice had been served other than the applicant's assertion that the notice had been served by email only. No evidence of the email was received.
2. Neither party requested an oral hearing. The Tenant made no further representations. The Respondent made no written representations.

Inspection

3. The Tribunal inspected the property on 28th February 2020 in the company of the applicant, Ms Bean. The respondent did not attend. Details of the inspection are set out below:
4. The property is accessed from Archway road which is also known as the A1. It is busy dual carriage way with nowhere to park directly in front of the property. The property is a flat on the 1st and 2nd floors, accessed from its own front door. There is a narrow staircase, with very narrow treads, and the top two steps are fairly difficult to negotiate safely to enter the flat itself. The property has no central heating and has not been modernised.
5. The first room almost directly opposite the top of the stairs is a bedroom. Further along the corridor is a fair-sized living room with a gas fire overlooking the A1. To the rear of the property is the kitchen. The fridge, dishwasher, washing machine and microwave are the tenants own. The cooker and the cupboards in the kitchen have been there unchanged since approximately the 1970's. There is a bathroom with a handbasin and a separate WC with no handbasin.
6. There is a further staircase up to the 2nd floor. The landing provides access to what appears initially to be two rooms. However, there is access to a further room from one of those rooms.

Adjournment and further directions

7. The Tribunal were not satisfied that all of the relevant information was available to them, and adjourned the matter on directions dated 1st March 2020 as follows:
- (1) By 21st March 2020 the following information must be received by the Tribunal with copies having been sent to the opposing party:
 - (2) Each party must produce evidence to support the type of tenancy they rely upon. The Landlord asserts by way of their S.13 notice that this is not a regulated tenancy. Ms Bean asserts that it is. In particular:
 - i. The Landlords must provide evidence that Ms Bean's tenancy is Assured, and all evidence they have in relation to her deceased partner, Mr Norton's, succession to the tenancy;
 - ii. Ms Bean must provide evidence of when Mr Norton succeeded to the tenancy and any other evidence she has to support her assertion that she has a regulated tenancy.
 - (3) Each party must provide documentary evidence of the amount of the current rent paid.
 - (4) The Respondent must provide evidence of how and when the s.13 Notice was served upon Ms Bean, as the copy available to the Tribunal appears to be undated.
 - (5) The matter be relisted for a hearing remotely via video link, date and time to be notified.
 - (6) The matter be reserved to Judge Brandler and Mr Shaw.
8. In early October 2020, the respondent having contacted the Tribunal asking for details of the outcome of this matter, it came to light that the directions dated 1st March 2020 had not been issued because of the chaos caused by Covid-19. Amended directions dated 16th October 2020 were accordingly drafted and issued with amended deadlines. The amended deadline for submissions was directed by 30th November 2020.

Submissions from the parties

9. On 16th November 2020 the Applicant wrote to the Tribunal. She writes that the landlord is aware that she is awaiting a vacancy for sheltered accommodation but that services had closed during Covid. She included details about regulated tenancy in the name of Mr Norton's regulated tenancy.

10. Under cover of an email dated 19th November 2020, the respondent confirmed that they were receiving the sum £209.50 per week in rent. They attached the notice dated 13.11.2019 as well as some correspondence dated 2018 from their legal representative to the RCJ who were assisting Ms Bean at that time. No evidence was provided as to service.
11. Neither party expressed an intention to attend the hearing listed by way of the directions. That hearing will therefore be vacated.
12. The Tribunal considered the submissions from both parties.

Reasons for decision

13. The Notice of increase is dated 13th November 2019, as confirmed by the respondent in their email dated 19th November 2020. They remain silent on how and when that notice was served.
14. The respondent landlord in their notice, seek to increase the rent to £450 per week from 12.12.2019. This provides less than one month's notice to the tenant of the proposed increase. [*Dodds v Walker [1981] 1 WLR 1027*]
15. The Landlord had an opportunity to address the Tribunal on the date and method of service, as set out in the directions issued on 16th October 2020, but failed to do so.
16. The Tribunal find that the notice relied upon by the respondent landlord provides insufficient notice to the tenant and is therefore invalid as it is in breach of s.13(3) of the Housing Act 1988.
17. The Tribunal therefore have no jurisdiction to determine a market rent. The landlord cannot therefore rely on their invalid notice dated 13th November 2019.

D. Brandler

Name: Tribunal Judge Brandler

Date: 17th December 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 LEGISLATION

Housing Act 1988

s.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—]

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(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.

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(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.

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(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 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.

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(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).

s.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]³ shall determine the rent at which, subject to subsections (2) and (4) below, the [appropriate tribunal]³ 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.

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(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] 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]² propose to hear the two references together, the [appropriate tribunal] 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, 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] 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.