



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

**Case Reference** : **CHI/45UH/MNR/2020/0084**

**Property** : **Flat 8, 8 High Street, Worthing, West Sussex,  
BN11 1NU**

**Type of Application** : **Determination of market rent:  
Housing Act 1988**

**Tenant** : **Jonas Lind and Celine Adams**

  

**Landlord** : **Franck Duroleck**

  

**Landlord's Agent** : **Michael Jones Residential Lettings**

  

**Tribunal Member** : **W H Gater FRICS MCI Arb (Chairman)  
Judge J Dobson**

  

**Date of Decision** : **18 February 2021**

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## **SUMMARY OF DECISION**

- 1. The Tribunal determines that it has jurisdiction to determine the application.**
- 2. The Tribunal determines a market rent of £900 per month to take effect from 8 November 2020.**

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## **REASONS FOR THE DECISION**

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### **Background**

1. By an application dated 6 November 2020 the Tenants referred to the Tribunal a Notice of Increase of rent (“the Notice”) served on behalf of the Landlord under section 13 of the Housing Act 1988 (“the Act”) dated 29 September 2020. The Notice proposed a rent of £950.00 per calendar month with effect from 8 November 2020 in place of the previous rent of £850.00 per calendar month.
2. Within the application the Tenants asserted that the tenancy was outside of the Act. If that were to be the case the Tribunal would have no jurisdiction to determine the matter.
3. The Tribunal decided that the case should be dealt with by telephone hearing and on 11 January 2021, it directed that such a hearing shall take place on 25 January 2021.
4. The Tribunal found that two issues were to be decided.
  - a. The nature of the tenancy
  - b. The rental value of the property if it found that the Tribunal has jurisdiction having regard to the finding in a) above.

5. The parties were directed to exchange evidence in advance of the hearing and provide copies to the Tribunal.

### **Inspection**

6. Government restrictions imposed in connection with the Covid 19 pandemic have caused a suspension of any inspection of the property.
7. The Tribunal did not inspect the property but, as advised, checked the area on Google Maps Street View and noted the written, oral and photographic evidence provided by the parties.

### **Hearing**

8. The final hearing was held by way of a telephone hearing and attended by the Tenants, Mr Jonas Lind and Ms Celine Adams. The Landlord was not present but was represented by the agent for the Landlord, Mrs Sue Harris of Michael Jones & Company.
9. It noted as a preliminary issue that the Tenant had submitted a supplementary bundle the day before. The Tenant had included within their initial submission an application to stay the proceedings on the grounds that they had not had enough time to produce all necessary evidence. The Tribunal had not seen this request until considering the submissions the day before the hearing
10. The Tribunal established that the supplementary bundle contained evidence on rental and confirmed with the Tenants that they were satisfied that their evidence was now complete. This confirmation was later withdrawn at the end of the hearing on the grounds that the Tenants wished to obtain expert evidence on mould in properties.
11. The Tribunal held as a preliminary matter that, in the absence of objections by the respondent, it could accept the supplementary bundle and the matter should proceed.

12. It further finds that, having heard the evidence from both parties, the submission of expert evidence as described would not be necessary or proportionate for the purposes of determining this case and confirms its preliminary decision at the hearing.
13. The Tribunal has considered the Tenants' objection to the submission of without prejudice correspondence by the Landlord. The correspondence relates to a dispute which was the subject of a settlement agreement disclosed by the Tenants. In the event that a dispute arises as to the existence of a settlement or its terms, the content of the without prejudice negotiations may be admissible.
14. In this instance, the objection appears to relate to the fact of the correspondence being headed as "Without Prejudice" as opposed to any issue being taken with the content as such. The Tenants referred, for example, to the dispute in their Submission for the hearing, dated 15th January 2021. The July 2019 Agreement deals with the elements of the terms of agreement that were previously marked without prejudice. The Tribunal finds that the without prejudice correspondence disclosed adds nothing of note to the information volunteered by the Tenants at the hearing and in the evidence produced by them in relation to the nature of the dispute or the settlement terms.
15. The parties gave oral evidence and were questioned by the other party and the Tribunal.

### **January 2019 Tenancy Agreement**

16. The tenancy agreement dated 8 January 2019 ("The January 2019 Tenancy Agreement") let the property to the Tenants for a term of one year from 8 January 2019.
17. Clause 8.1 was a break clause operable on at least one months' notice by the Tenant and to be given on the rent due date or by two months' notice by the Landlord, in either case such notice not to expire prior to 7 July 2019. The rent due date was the 8th of any given month.

18. The Tribunal notes that the January 2019 Tenancy Agreement was an Assured Shorthold Tenancy under the Act.

### **The Property**

19. The Tribunal was not able to inspect the property but noted its location from Google Street view. From this, the evidence provided in the bundle, which included photographs, and at the hearing it notes that this is a purpose built third floor flat in a central location fronting Worthing High Street.

20. The building is constructed with brick elevations and box bay windows under what appears to be a flat or low- pitched roof.

21. There is a former church next door now converted for use as a nightclub.

22. The inventory attached to the Landlord's submission contains photographs of the interior immediately prior to letting and lists the accommodation as

Entrance Hall, Bathroom /WC, Lounge/Kitchen, 2 Bedrooms.

23. The inventory photographs show that the flat has good quality modern fittings.

24. The flat was let unfurnished. There is central heating, a hob, oven, fridge-freezer, laminate floors, but no washing machine, no carpets and no curtains. The flooring in place is laminate.

25. The Tenants confirm in their application that they have made no improvements to the property.

### **Evidence**

26. The Tribunal will not recite all the evidence here but has considered all written and oral submissions in determining this matter.

## **The nature of the tenancy**

### The Tenants submissions

27. The Tenants state that there had been an ongoing dispute with the Landlords during the tenancy conducted through a series of without prejudice communications.

28. The January 2019 Tenancy Agreement was ended in July 2019, using a break clause. A further agreement was made dated 2 July 2019 (“the July 2019 Agreement”).

29. That agreement contained a list of terms settling the dispute, summarised here as follows:

- A refund of £210 on vacating
- No fees to be charged on checkout
- No end of tenancy cleaning
- No repairs to take place prior to vacating
- If the Tenants find a suitable property marketed by the Landlord’s agents, Tenants to be treated as other prospective Tenants.
- The Tenants can remain in the flat past 7 July 2019 and pay rent at a day rate which will be calculated as £850\*12/365. The Tenants will not be charged any administration fees for this.

30. Legal advice from a specialist in tenancy law was that the agreement of 2 July 2019 created a new tenancy with the following characteristics:

- Of infinite duration, with no clause for repossessing the property
- With a fixed rent of £850 PCM, and no clause for raising the rent
- Not created under the Act

31. The Tenants state that as this tenancy was not created under the Act, the Section 13 Notice for a rent increase cannot be used. As defined in the Act, a Section 13 notice can only be used for tenancies created under the Act.

32. For this reason, the Tenants contend that the case is outside of the Tribunal’s jurisdiction.

33. In the event that the Tribunal found that it must determine the level of the rent, the Tenants requested that it refrain from deciding the issue of the tenancy in order for that matter to be adjudicated in a court.
34. Without prejudice correspondence was disclosed by the Landlord and the tenants objected to this.

#### The Landlords submissions

35. The Landlord's evidence on the tenancy was that on the 8 January 2019 Celine Adam and Jonas Lind entered into the January 2019 Agreement, an Assured Shorthold Tenancy.
36. The Tenants then submitted their break notice on the 9 June 2019 and were due to vacate the property on the 7 July 2019 but were, at the date of the hearing, still in occupation.
37. In a letter marked Without Prejudice dated 11 June 2019 the Landlords agent sets out terms to settle the ongoing dispute, although not quite the same as those later agreed, including the comment "We are happy for a longer period of tenancy past 7 July 2019 with rent payable for this..."
38. The Landlord states that, at the tenant's request, confirmation was subsequently provided to reflect a daily rate of rent payment, as they were uncertain of their exact moving date and wanted reassurance as to how the rent should be paid under the tenancy.
39. The document was agreed in order for the tenancy to continue on a periodic basis.
40. The original contract, the January 2019 Tenancy Agreement, was not ended and a new agreement was not entered into in July 2019, or at any time during the Tenants' occupation of the property.

41. As neither party surrendered the tenancy or renewed the contract, the original tenancy became a Statutory Periodic Tenancy under the terms of the Housing Act 1988 and remains in force.

42. The Landlords stated that none of the four main principles of a Non-Housing Act tenancy were not met. The four main principles being:

- The rent has to be in excess of £100,000 Per Annum.
- The property would not be the Tenants' main and principal home.
- The Landlord is a resident Landlord.
- The Tenants are a Company not individuals.

43. None of these principles apply to the tenancy in question.

44. ARLA Property Mark have confirmed the tenancy is a Statutory Periodic Tenancy under the terms of the Act.

### **Consideration of the nature of the Tenancy**

45. The Tenants requested that the Tribunal refrain from deciding the issue of the tenancy in order for that matter to be separately adjudicated in a court.

46. However, in order to deal with the application before it, the Tribunal must first establish whether it has jurisdiction to hear the matter.

47. The Tenants have challenged the status of the tenancy agreement. It is necessary for the Tribunal to deal with that issue in order to answer the question of jurisdiction. The Tribunal finds that it is an appropriate forum to determine that issue.

48. The Tribunal has determined the question of the nature of the tenancy with regard to the evidence presented.

49. A tenancy is an assured shorthold tenancy agreement pursuant to the Act unless specific features make it not one. There that no such features which would render the tenancy to fall outside of the Act.



50. An assured shorthold tenancy is a type of assured tenancy. Section 1 of the Act explains that a tenancy under which a dwelling- house (which includes a flat such as this one) is let as a separate dwelling house is for the purpose of the Act an assured tenancy provided that three criteria are met.
51. The first is that the tenant(s) is (/are) individuals. The second is that the tenant (or at least one) occupies the dwelling- house as his/her only or principal home. Those criteria are plainly met in this instance.
52. The third of the criteria is that the tenancy is not one which is precluded from being an assured tenancy. Such tenancies are identified in Part 1 of Schedule 1 to the Act. There are circumstances in which a tenancy would not be an assured tenancy. Those include, but are not limited to, circumstances described by the Respondent such as where the rent is above £100,000 per year and where the Landlord is resident.
53. None of the circumstances which would create exceptions to the tenancy falling within the Act arise in this case.
54. The duration of the agreement, or lack of one is of no consequence. The requirement for such an agreement to be for a fixed term was abolished many years ago when the Act was amended to remove the need for a section 20 notice to create an assured shorthold tenancy and certain other amendments were made, for example also removing the need for the agreement to be in writing. The Act includes tenancies which are periodic from the outset.
55. The lack of specific rent review provision does not place the tenancy outside of the Act.
56. There is nothing else pointed to by the Tenants or otherwise identifiable to the Tribunal which could have the effect of the tenancy falling outside the Act.
57. An assured tenancy will more particularly be an assured shorthold tenancy pursuant to section 19A of the Act where granted since the Housing Act 1996 came into force. The tenancy in this case plainly did.

58. None of the exceptions to a tenancy being an assured shorthold tenancy pursuant to the Act set out in Schedule 2A to the Act apply (and if they did, the tenancy would simply be an assured tenancy rather than an assured shorthold one).
59. Consequently, even if the Tenants are correct and the July 2019 Agreement created a new tenancy to that created by the January 2019 Tenancy Agreement, such agreement would be an assured shorthold tenancy pursuant to the Act. If it did not and the January 2019 Tenancy Agreement continued, that remained an assured shorthold tenancy pursuant to the Act.
60. In those circumstances, there is no need to address the question of whether or not the July 2019 Agreement did create a new tenancy because the tenancy fell within the Act whichever way.
61. There was no term specified in the July 2019 Agreement other than that the tenant may “remain past 7 July 2019”. The practical effect of this is that if the July 2019 Agreement created a new tenancy, the assured shorthold tenancy would be a statutory periodic tenancy under the Act. In this case, the period was monthly.
62. Alternatively, after 7th January 2020, the fixed term of the assured shorthold tenancy created by the January 2019 Tenancy Agreement had expired and continuation of it was necessarily as a statutory periodic tenancy, again on a monthly basis.
63. Either way, there was a statutory periodic (assured shorthold) tenancy as at September 2020 when the Landlord served the Notice pursuant to section 13.
64. The Landlords service of a Notice of Rent Increase was compliant with the requirements of section 13 of the Act, proposing a rent increase on the 8 November 2020, the start of new period and giving two months’ notice.
65. Accordingly, the Tribunal has determined that it possesses jurisdiction to determine the rental value of the Property at the relevant date.

## **The rental value of the flat**

### The Tenant's submission on rental value

66. The Landlord had submitted evidence of 2- bedroom flats within a half mile radius of the property and did not include lower priced flats available. The Tenants submitted, from internet research, a list of 2- bedroom properties, with internet details, let within the Worthing area which they considered provided a better picture of rent levels

67. The lettings submitted were

	Per calendar month ("pcm") rent
• Bedford Row	£825
• Broughham Walk	£850
• Centrecourt Road	£800
• Crabtree Lane	£800
• Downview Road	£850
• Fair oak Court	£850
• Heene Place	£850
• High Pines	£850
• Ladywell Court	£850
• Littlehampton Road	£825
• Pavilion Road	£800
• Queens Road	£770
• Rugby Road	£775
• Thorn Road	£845
• Valencia Road	£850
• West End Way	£800
• Worthing, no street	£825

68. The current rental is affected by Covid, there are a lot of flats for sale as the stamp duty holiday ends in March, repossessions are resuming and some rents are high. The Tenants asked the Tribunal to find a normal rent allowing for the extraordinary circumstances.

69. When the flat was first viewed it was modern and looked in good order. It is centrally located, although there is a nightclub, currently closed due to Covid, which when open, caused disturbance until 3 a.m.
70. The Landlord served a Section 21 notice requiring possession in May 2021 and any rental value should be reduced to reflect the short term remaining.
71. It is unconscionable for the landlords to attempt to raise the rent by twelve percent in the midst of a global pandemic which has had (and continues to have) a devastating impact on society as a whole.
72. The Tenants stated that there is a significant problem with mould in the flat. In their application they refer to mould in and on the walls in the corners of the flat.
73. This was of particular concern to the Tenants who suffer from respiratory health issues. They believe that remedial works should be undertaken by a qualified expert to lessen the risk of disturbing mycotoxins causing further health issues. The tenants were reluctant to allow anyone other than a qualified mould remediation expert to assess and remedy the matter for fear of exacerbating the issue.
74. The Tribunal was told that there were mould spots in the corners of external walls to the flat but the main problem was concentrated under the kitchen sink due to an old leak. The Tenants had ceased to use that sink but if they did, the mould problem would return.
75. During the hearing, the Mr Lind opened the cupboard under the sink and said that the back board was badly damaged by humidity but dry. There was not much active mould.
76. The Tribunal was told by the Tenants that they only looked at the flat for 10 to 15 minutes when deciding to rent and did not inspect fully until they received the keys. They then found mould in three rooms and under the sink. They contacted the letting agents and reported their asthma concerns. The agent said this was caused by

condensation during a previous tenant's occupation of the flat.. The Tenants disagree and say this is a larger issue. Distributed mould releases micro toxins.

77. In answer to a question from the Tribunal the Tenants indicated that the rent should be a maximum of £850 per calendar month.

#### The Landlord's submission on rental value

78. The subject property, Flat 8, 8 High Street was newly developed in 2016, being finished to a high-quality standard. The flat is served by a lift and is a good sized 2 bedroom flat in a central location, close to shops, leisure facilities and the seafront. It was let to the Tenants in good clean decorative order.

79. Currently, there are not any 2-bedroom flats for let within the postcode area of 8 High Street, within 1/2 mile distant.

80. Flats are currently letting quickly, and thirteen flats taken on the market last week are all let. A further 15 flats have just been taken on by the Landlord's agents.

81. Flat 4 in the building, a similar sized 2- bedroom flat had let in September 2020 for £950 per calendar month. Flat 5 had let in January 2019 for £900 per calendar month. In both cases there had been no mention of mould problems.

82. Examples of recent lettings were provided as follows:

- Chapel Road Worthing 2 Bed flat, listed 22/07/20, Let Agreed at £925 pcm – Simply Lettings.
- Cavendish House – 2 Bed flat, listed 03/10/20, Let Agreed at £1,050 pcm – Winkworth.
- Brighton Road Worthing – 2 Bed flat Let, listed 05/01/21, Let Agreed at £1,050 pcm – Robert Luff & Co
- Crescent Road Worthing – 2 Bed flat, listed 15/01/21, For Let at £1,000 pcm – Howard & Co.
- East Sidings Station Road – 2 Bed flat, listed 14/01/21, Let Agreed at £1,200 pcm – Leaders.

- For Let:
- Cambridge Road Worthing – 2 Bed flat, listed 11/01/21, For Let at £950 pcm – Your Move.

83. With regard to the mould issue, the Tribunal was told that the agents had sent a plumber to investigate but were told by the Tenants that it was inconvenient. They would happily deal with the problem if they had the opportunity.

### **The Law in relation to Rental Valuation**

84. The rent the Tribunal has to fix is defined as a market rent which is the rent at which the subject property might reasonably be expected to be let in the open market by a willing Landlord under an assured tenancy. The personal circumstances of the Landlord or of the Tenant are not relevant to this issue. In making a determination, there shall be disregarded any effect on the rent attributable to a relevant improvement carried out by a person who at the time it was carried out was a tenant.

85. Thus, in the first instance the Tribunal must determine what rent a Landlord could reasonably be expected to obtain for this property in the open market if it were let today on the terms and in the condition that is considered usual for such an open market letting.

### **Determination and Consideration**

86. The Tribunal notes the strong concerns expressed by the tenants regarding the health issues surrounding mould at the flat. They feel strongly that the only remedy is for a qualified expert to deal with the matter. The Landlord has made reasonable efforts to attend to the problem.

87. The task of the Tribunal is to determine the rental value in the manner described in 67 above. It must disregard the personal circumstances of the Tenants and consider the wider rental market.

88. Mould in properties is not an unusual occurrence and may be caused by leakage, lifestyle or constructional issues.
89. The evidence at the hearing was that the situation had stabilised once the kitchen sink was not used. Since it has not been possible for remedial works to be undertaken the problem has continued. In the ordinary course of a letting this would have been attended to.
90. In the circumstances, the Tribunal finds that the mould issue is not one that would result in a reduction in the rental value under the Act.
91. The Tenants' assertion that the market is affected by the Covid pandemic is not born out by the Landlords evidence of recent lets.
92. The Tenant has invited the Tribunal to adjust the rent downwards for the fact that the Landlords Section 21 notice expires in May 2021.
93. Section 14 of the Housing Act sets out the terms of the Tribunal's rental valuation and states that it must assume the term of the tenancy begins at the beginning of the period specified in the new notice. In this case the new period started on 8 November 2020. This would leave an assumed term of 6 months to May 2021. This is not an unusual length of term for assured shorthold tenancies. The Tribunal determines that the length of this assumed term would not adversely affect rental value.
94. The Tribunal carefully considered the representations from the parties and evidence of lettings and used its own judgement and knowledge of rental values and valuations.
95. The close proximity of the nightclub is a factor which may deter some prospective tenants.
96. The evidence of lettings in the building is the best evidence of rental values of flats of this type in the particular location and is compelling. The letting of flat 5 in January 2019 at £900, when Flat 8 was let at £850, indicated a differential for the top floor flat of £50 pcm. The letting of flat 4 in September 2020 at £950 pcm therefore indicates the appropriate rent for flat 8 at £900pcm.

97. The Tribunal considers that level of rent to be consistent with the range of rents put forward by the parties, having regard to factors affecting rental value.

98. The Tribunal therefore determines that the rent at which the subject property might reasonably be expected to be let in the open market by a willing Landlord under the terms of this assured tenancy is £900 per calendar month.

99. The new rent of **£900.00 per calendar month** is to take effect on **8 November 2020**, the date specified in the Landlord's S.13 notice.



## **Annex- Schedule of relevant legislation**

### **Housing Act 1988**

#### **s1 Assured tenancies**

(1) A tenancy under which a dwelling-house is let as a separate dwelling is for the purposes of this Act an assured tenancy if and so long as—

(a) the tenant or, as the case may be, each of the joint tenants is an individual; and

(b) the tenant or, as the case may be, at least one of the joint tenants occupies the dwelling-house as his only or principal home; and

(c) the tenancy is not one which, by virtue of subsection (2) or subsection (6) below, cannot be an assured tenancy.

(2) Subject to subsection (3) below, if and so long as a tenancy falls within any paragraph in Part I of Schedule 1 to this Act, it cannot be an assured tenancy; and in that Schedule—

(a) “tenancy” means a tenancy under which a dwelling-house is let as a separate dwelling;

(b) Part II has effect for determining the rateable value of a dwelling-house for the purposes of Part I; and

(c) Part III has effect for supplementing paragraph 10 in Part I.

(3) Except as provided in Chapter V below, at the commencement of this Act, a tenancy—

(a) under which a dwelling-house was then let as a separate dwelling, and

(b) which immediately before that commencement was an assured tenancy for the purposes of sections 56 to 58 of the Housing Act 1980 (tenancies granted by approved bodies), shall become an assured tenancy for the purposes of this Act.

((6) repealed (20.1.1997) by 1996)

#### **19A Assured shorthold tenancies: post-Housing Act 1996 tenancies**

An assured tenancy which—

(a) is entered into on or after the day on which section 96 of the Housing Act 1996 comes into force (otherwise than pursuant to a contract made before that day), or

(b) comes into being by virtue of section 5 above on the coming to an end of an assured tenancy within paragraph (a) above, is an assured shorthold tenancy unless it falls within any paragraph in Schedule 2A to this Act.

#### **s14 Determination of Rent by First-tier Tribunal**

(1) Where, under subsection (4) (a) of section 13 above, a tenant refers to a First-tier Tribunal a notice under subsection (2) of that section, the Tribunal shall determine the rent at which, subject to subsections (2) and (4) below, the 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-  
was carried out otherwise than in pursuance of an obligation to his immediate landlord,  
or
- (c) (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
- (d) 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.

(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.

## **PERMISSION TO APPEAL**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) on a point of law must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.