



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

Case reference : **LON/00AY/MNR/2020/0091**

HMCTS CODE ; **Paper**

Property : **35a Paulet Road, Brixton, London
SE5 9HP.**

Applicant : **Ms. T. K. Tarbie**

Representative : **In person.**

Respondent : **Notting Hill Genesis.**

Representative : **In person.**

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,**

Date of decision : **7 May 2021.**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote determination on the papers. A face-to-face hearing was not held because it was not practicable, and all issues could be determined on the papers.

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, Ms Tarbie entered into a five-year fixed term tenancy agreement on 10 December 2018.
2. The landlord served a Notice of Increase under S.13 of the Act on the tenant on or around 17 February 2020 purporting to increase the rent from £197.94 per week to £203.28 per week with effect from 6 April 2020.
3. The tenant referred that Notice to the tribunal together with other documents.
4. On 16 April 2021 the tribunal informed the parties that it's preliminary view was that it did not have jurisdiction to determine the rent, because S.13 of the Housing Act 1988 only applies to periodic and statutory periodic tenancies. The subject tenancy is still within the five-year fixed term, and the rent increase notice served was not required, because the increase is a contractual one within the tenancy agreement.
5. In the circumstances the tribunal does not have jurisdiction to determine the rent. It is also worth noting for the parties that the tribunal's jurisdiction extends to setting 'market rents' that is the full rent that a property would achieve if let on the open market. In this tribunal's experience, Housing Associations do not charge full market rents and had this matter been decided under S.13, it is likely that the rent would have exceeded that within the Notice of Increase.
6. The application is therefore dismissed for lack of jurisdiction.

Name: Aileen Hamilton-Farey **Date:** 7 May 2021.

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 tenancy⁶ 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.

