



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

Case reference : **LON/00BD/MNR/2021/0094 and
LON/00BD/MNR/2022/0020**

Property : **Flat 28 Darby House, Mereway Road ,
Twickenham, TW2 6SA**

Applicant : **Mr Ian Johnson**

Representative : **In Person**

Respondent : **Richmond Housing Partnership**

Representative : **In person**

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

**Tribunal
member(s)** : **Mr Richard Waterhouse MA LLM
FRICS**

**Date and venue of
hearing** : **7th June 2022 Remote hearing on the
papers**

Date of Decision : **7th June 2022**

DECISION

Decision of the tribunal

The tribunal determines that the Notice(s) of Increase of Rent dated 19th February 2021 and 22nd February 2022 are not valid and the tribunal has no jurisdiction to determine rent for Flat 28 Darby House, Mereway Road, Twickenham, TW2 6SA.

Background

1. The tribunal received two applications from the Applicant tenant made under sections 13 and 14 of the Housing Act 1988 (the 1988 Act). The Tribunal issued standard directions on 29th March 2022 for the first application (0094) and, by letter dated 17th March 2022 gave directions for the determination of a preliminary issue on jurisdiction in the second (0020). The preliminary issue was described as follows:
2. “ The landlord’s notice proposing a new rent may be defective, as it does not appear to take effect at the commencement of a new period of the tenancy. The tenancy is a weekly tenancy and the starting period for each period of the tenancy appears to be a Tuesday. However, the Notice of Rent Increase indicates the new rent is payable from 4 April 2022, which is a Monday. In practical terms, this means that the proposed new rent may not be payable from the date specified.”
3. The Respondent has asked that the two cases be consolidated and the same preliminary issue be considered for both together.
4. The Applicant is agreeable to this.
5. Judge Nichol issued directions on 21st April 2022.
6. The directions required the Respondents by the 13th May 2022 to e mail the Tribunal and the Applicant a bundle of all relevant information.
7. By the 27th May the Applicant must e mail the Tribunal and the Respondent a bundle of any further document to allow the tribunal to determine the preliminary issue.
8. On the 26th of May the Applicant sent the tribunal a bundle of 140 pages.
9. The tribunal received two applications under section 13 of the Housing Act 1988 on 1st April 2021 and 24th February 2022 respectively.
10. The first was subsequently furnished on the 18th May 2021 with a Notice of Increase of Rent dated 19th February 2021 proposing a new rent of £114.18 per week, in place of £112.49 per week coming into effect on 5th April 2021.

11. The second landlord's notice dated 16th February 2022 proposing a new rent to commence on 4th April 2022. The increased rent is £118.62 per week an increase from £114.18 per week. The rent included £0.40 for "water charges".
12. The Application in respect of the 2021 rent increase was received by the tribunal accompanied with a copy of the Notice of Increase of Rent for the year 2020, the previous year. Subsequently but after the start of the new rent period, the Notice of Increase of Rent for 2021 was received. The FTT by way of decision dated 6th July 2021 determined that the Application was invalid and the FTT had no jurisdiction.
13. Subsequently the Appellant appealed to the Upper Tribunal (Lands Chamber) on the jurisdiction point. The Upper Tribunal (Lands Chamber) through decision of 14 March 2022 determined that the original application was not fatally flawed and that the FTT did have jurisdiction. This Application is the first of two that are the subject of this determination.
14. From the application form, the property comprises one living/sleeping area, a kitchen area and a separate WC with wash hand basin. There are shared bathing facilities, access to laundry and a lounge.
15. The tenancy is a weekly tenancy commencing on Tuesday 19 December 2017 with the provision that rent should be payable on Mondays.
16. **Applicant submissions.**

The Applicant bundle of 140 pages contained;

Covering letter dated 26th May 2022

Report by the Housing Ombudsman number COMPLAINT 201909899 dated 28 June 2021, Richmond Housing Partnership Ltd. The complaint centred on works which were subject of service charges and the handling of audited accounts.

Applicants Bundle for Determination of Preliminary Issue

Email to FTT 15th May 2022

Tenancy Agreement

Guidance on Rents for Social Housing

Welfare Reform Act 2016

Rent Standard April 2020

Notice of Rent Increase 2018 to 2022

Application to the FTT

FTT Helena Partnership (2015)

FTT Directions (21st April 2022)

16. The tenancy agreement shows the tenancy commenced on Tuesday 19th December 2017.

17. Section A – General Terms, Payments for your home at 1.2 states “you must pay the weekly rent, service and other charges, for your home each Monday ahead”.

Section A – General Terms – Changing your rent at 2.1 states ... “We may increase your rent on the first Monday in April, after this tenancy is granted by giving you not less than one calendar's notice in writing. The revised rent shall be the amount set out in the rent increase notice given to you by us.”

At 2.2 “after the first rent increase, we may increase the rent in accordance with section 13 and 14 of the Housing Act 1988. We will give you one calendar months written notice of the proposed new rent. The revised rent will be the amount set out in the rent increase notice unless you refer it to the Rent Assessment Committee to have a market rent determined. In that case the maximum rent payable for the following year, shall be the rent determined by the Rent Assessment Committee.”

18. There were copies of a number of Notice of change in Rent from 2018 to 2022. Applications were made in respect of the 2021 and 2022 Notices.

The 2021 Notice was dated 19th February 2021, for a rent increase to £114.18 per week, with the addition of service charges this resulted in a charge of £163.89 per week. The date the proposed rent was due to come into force was Monday 5th April 2021.

The 2022 Notice was dated 16th February 2022, for a rent increase from £114.18 per week to £118.62 which contained £0.40 for “water charges”. With the addition of service charges this resulted in a charge of £170.44 per week. The date the proposed rent was due to come into force was Monday 4th April 2022.

19. Respondent’s submission

20. The respondent has submitted an e mail 16th May 2022 from Nick Billingham of Devonshires who act for Richmond Housing Partnership. The communication noted that “our client does not wish to pursue the preliminary issue the validity of the section 13 Notices for 2021 and 2022.”

“The decision is based on purely avoiding legal costs, involved in pursuing the issue, (preparing submissions, bundles etc). These costs are likely to outweigh the value of the rent increases at issue.

On that basis alone (and without regard to the legal position, as to whether the Notices are valid, our client does not wish to challenge the jurisdiction issue.”

“We therefore invite the tribunal to make its decision on jurisdiction, both in relation to section 13 point, and in relation to the additional point, (referred to in the tribunals previous correspondence) that Mr Johnson’s applications in both 2021 and 2022, seek to challenge the variable service charge rather than the rent, and so applications are not admissible in any event.”

The Law

21. The tribunal in this hearing is concerned with the preliminary matter of whether the Notice of Rent Increase is valid and whether the Application to the tribunal is valid, both prerequisites for the tribunal having jurisdiction under S14 of the Housing Act 1988. In short, the tribunal must determine that the Landlord’s notice under Section 13(2) satisfied the requirements of that section and was validly served.

22. The Act provides in section 13 (2) as amended by the Regulatory Reform (Assured Periodic Tenancies) (Rent Increases) Order 2003 that the date in paragraph 4 of the Landlord’s notice (the date the new rent becomes payable) must comply with three requirements.

23. The first requirement is that a minimum period of notice must be given before the proposed new rent can take effect.

24. The second requirement is that the starting date must not be less than 52 weeks after the date on which the rent was last increased using this procedure although there are exceptions to this.

25. The third requirement is that the proposed new rent must start at the beginning of a period of the tenancy.

Housing Act 1988 section 13 (2) states;

“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,”

26. Section 14 of the Housing Act 1988 requires the tribunal to determine the rent at which it considered the subject property might reasonably be expected to be let on the open market by a willing landlord under an assured tenancy.

27. Only if a landlord's notice complies with each of the requirements referred to above does a tribunal have jurisdiction to determine a rent under section 14 of the Act.

The Decision

In respect of the 2021 Notice of Increase of Rent which was scheduled to come into effect on Monday 5th April 2021. The tenancy was a weekly tenancy commencing on Tuesday 19th December 2017. The tenancy specified under section 1.2 that payment should be made in advance on Mondays.

In respect of the second Notice of Increase of Rent which was scheduled to come into effect on Monday 4th April 2022. The tenancy was a weekly tenancy commencing on Tuesday 17th December 2017. The tenancy specified under section 1.2 that payment should be made in advance on Mondays.

The tenancy being a weekly tenancy, the beginning of a tenancy period is therefore a Tuesday, For the Notice of Increase of Rent to be valid, it must therefore commence similarly on a Tuesday. The Notices state the increase to be a Monday and so the Notice is not valid.

The Landlord cannot therefore rely upon the Notices dated 19th February 201 and 22nd February 2022.

30. Additional matters, much of the material within the Bundle pertains to service charge. The UC Case included likewise.

Should the Appellant wish to pursue an action in respect of service charge they should make the appropriate application under section 27A of the Landlord and Tenant Act 1985 .

Name: Tribunal Judge Waterhouse **Date:** 7th June 2022

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—]

[

(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.

]

(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.

[

(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 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.

]

(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.

[

(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.