



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

**Case reference** : **CAM/00MC/MNR/2022/0034**

**HMCTS code** : **P:PAPERREMOTE**

**Property** : **56 Albert Road, Henley-on-Thames,  
Oxfordshire, RG9 1SD**

**Applicant (Tenant)** : **Hannah Carney**

**Respondent (Landlord)** : **Sepideh Nikzad**

**Type of application** : **Determination of a Market Rent:  
Sections 13 and 14 Housing Act  
1988**

**Tribunal members** : **Mr P Roberts FRICS CEnv**

**Date of Determination** : **25 August 2022**

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**DECISION**

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This has been a remote determination on the papers which the parties are taken to have consented to, as explained below. The form of determination was a paper only hearing described above as P:PAPERREMOTE. The documents that the Tribunal was referred to are in bundles from the Applicant and the Respondent. The Tribunal has noted the contents and the decision is below.

## **Decision**

**The Tribunal does not have jurisdiction in this matter and strikes the application out.**

## **Reasons**

### **Background**

1. The Landlord and Tenant entered into an Assured Shorthold Tenancy on 27 March 2021 which provided for a lease term commencing 24 April 2021 and expiring 23 April 2024.
2. The initial rent provided for within that Tenancy was £1,350 per month increasing annually by RPI. There was no provision in the lease for the rent increase to be challenged and/or referred for determination.
3. The Landlord served a notice pursuant to Section 21 (1) and (4) of the Housing Act 1988 (“1988 Act”) on 23 December 2021 requiring vacation of the property after 24 February 2022. No evidence has been provided to the Tribunal of an Order for Possession having been granted by any court.
4. The rent payable under the Tenancy was due to be increased from 24 April 2022.
5. The Tenant submitted an “Application referring a notice proposing a new rent under an Assured Periodic Tenancy” on 7 March 2022.
6. The Tribunal requested a copy of any notice served by the Landlord in accordance with section 13 of the Housing Act 1988 but was advised by the Tenant on 11 April 2022 that:

*“...there was no section 13- the rental increase was dictated in the contract attached earlier. However, due to the disrepair of property, we do not believe this should be carried out.”*
7. The Tribunal wrote to the Parties on 14 April 2022 advising that the Tribunal considered that it did not

*“...have jurisdiction to consider the matter because Section 13 of the Act applies only to periodic and statutory periodic tenancies and not fixed term tenancies. Since it appears that your tenancy is still within the fixed term period, the Tribunal may decide that your application which has been made under Section 13 is not valid and it does not therefore have jurisdiction to consider the rent.”*
8. The Tenant responded on 23 May 2022 stating

*“The pay increase was for the end of April (when fixed term tenancy ended) so I am not in a fixed term agreement and am on a rolling basis.”*

9. The central issue before the Tribunal is therefore whether the fixed term tenancy came to an end such that a statutory periodic tenancy had arisen thereby allowing the Tribunal jurisdiction and, if so, the date upon which this occurred.
10. The Tribunal issued directions on 21 June 2022, inviting the Parties to submit any further representations (including any photographs and details of rentals for similar properties) they wished the tribunal to consider.
11. This matter has been dealt with on the papers on the agreement of the Parties.

### **The Law**

12. The Tribunal’s jurisdiction to determine market rents is set out at Section 14 of the Housing Act 1988 (1988 Act).
13. Section 14 of the 1988 Act states that it 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.*
14. It does not apply to contractual tenancies. As such, the Tenancy would have had to have come to an end for Section 14 of the 1988 Act to apply.
15. A contractual tenancy can be terminated in accordance with Section 21 of the Act. In this context, Section 21 (1) of the 1988 Act states

*“Without prejudice to any right of the landlord under an assured shorthold tenancy to recover possession of the dwelling-house let on the tenancy in accordance with Chapter I above, on or after the coming to an end of an assured shorthold tenancy which was a fixed term tenancy, a court shall make an order for possession of the dwelling-house if it is satisfied*

  - a. *that the assured shorthold tenancy has come to an end and no further assured tenancy (whether shorthold or not) is for the time being in existence, other than an assured shorthold periodic tenancy (whether statutory or not); and*

b. *the landlord or, in the case of joint landlords, at least one of them has given to the tenant not less than two months' notice in writing stating that he requires possession of the dwelling-house.*

16. Section 14 (7) of the 1988 Act states:

*"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, with effect from such later date (not being later than the date the rent is determined) as the appropriate tribunal may direct."*

### **Determination**

17. Neither Party has submitted legal arguments as to the status of the Tenancy, but it appears to the Tribunal that the Tenant's argument depends upon an assumption that the service of the Section 21 Notice terminated the Tenancy such that the terms contained therein no longer apply.

18. The Tribunal notes that clause 5.1 of the Tenancy states:

*"Unless agreed otherwise between the parties if anyone is residing in the Property the Landlord will usually need to obtain a Court Order to retake physical possession of the premises and enforce the Right of Termination."*

19. Clause 5.2 of the Tenancy states:

*"the Landlord is entitled to re-enter the premises provided he has complied with his statutory obligations and has obtained a Court order and at that time the tenancy shall end..."*

20. The Landlord is therefore unable to terminate the Tenancy until the Property has been vacated either by agreement, or on the obtaining of a Court Order following the service of a notice and submission of an application in accordance with Section 21 of the 1988 Act.

21. The service of notice on the Tenant pursuant to Section 21 of the 1988 Act merely commences the process of obtaining a Court Order and does not terminate the Tenancy.

22. The Tenant could not therefore be forced to vacate the Property unless the Court responds favourably to the Section 21 application and grants a Court Order or voluntary agreement to vacate is reached. The

Tribunal understands, in this context, that no Court Order was issued, and the Tenant vacated voluntarily.

23. The Tenancy did not, therefore, come to an end until the date that the Tenant vacated. The Tenant therefore remained subject to the terms of that Tenancy after the service of the Section 21 notice.
24. It therefore follows that Section 14 of the Act does not apply and the Tribunal has no jurisdiction in this matter.
25. In the circumstances, the application is struck out.

**Name:** Peter Roberts FRICS CEnv

**Date:** 25 August 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).