



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

Case Reference : **CAM/11UB/MNR/2021/0063**

Property : **52, Huntley Crescent, Milton Keynes,
Buckinghamshire MK9 3FZ**

Applicant (Tenant) : **Dr Eirini Giarvi**

Respondent (Landlord): **Campbell Heights Estates Limited**
Representative : **Mr Benjamin Cowen**

Type of Application : **Determination of the issue of jurisdiction
under sections 13 and 14 of the Housing Act
1988**

Tribunal Members : **Judge JR Morris**
Mr Gerard Smith MRICS FAAV REV

Date of Decision : **18th October 2022**

DECISION

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DECISION

1. The Tribunal finds that it does not have jurisdiction to make a determination under section 13 of the Housing Act 1988 and therefore the Tribunal strikes out these proceedings pursuant to Rule 9(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

REASONS

The Tenancy

2. The Tenancy commenced as a contractual fixed term Assured Shorthold Tenancy of 12 months on 7th February 2020 until 6th February 2021 and has continued as a statutory periodic tenancy. A copy of the Tenancy Agreement dated 13th February 2020 was provided.
3. Clause 41 of the Tenancy Agreement states as follows:

“RENT INCREASE

- 41 The Landlord can increase the Rent every twelve months on the date on which the Tenancy began (“the Rent Increase Date”). For the avoidance of doubt this means that the Rent will increase on 7th February each year. The increase will be 5% in addition to the current Rent payable. The Landlord must serve written notice on the Tenant in accordance with clause 39.4 at least one month prior to the Rent Increase Date (“the Rent Increase Notice”). If the Landlord chooses not to increase the rent in any year it will not affect the Landlord’s right to increase the Rent in any subsequent year of the Tenancy.”

The Referral

4. The current rent is £1,000.00 per calendar month from the commencement of the tenancy. The Landlord by a notice in the prescribed form dated 11th May 2022 proposed a new rent of £1,200.00 per calendar month from 7th July 2022. Before 7th July 2022 the Tenant referred the notice proposing a new rent to the Tribunal.
5. On 11th July 2022 a Procedural Judge wrote to the parties stating that in the Procedural Judge’s preliminary opinion the tribunal did not have jurisdiction to consider the matter and that the Landlord’s notice proposing a new rent may be defective as it appeared that the Tenancy Agreement contained a provision, namely clause 41 Rent Increase, that said that the rent for a particular period will or may be greater than the previous rent (i.e., a rent review mechanism). The Direction went on to state that if the tribunal dealing with the application referring the notice proposing a new rent decides it does not have jurisdiction, then the application will be struck out as it cannot assess a market rent. A Direction was issued for the parties to make representations on this point with which both complied. It was clear that the parties were not in agreement and that the matter would need to be referred to a tribunal.
6. Directions dated 2nd August 2022 were issued requiring the parties to provide evidence and submissions regarding both the jurisdiction issue and relating to an appropriate market rent. If the tribunal dealing with the matter considered it did not have jurisdiction the matter would be struck out. If it decided it did have jurisdiction the it would determine a market rent.
7. With regard to the jurisdiction issue the parties’ representations made the following representations.

Tenant’s Representations

8. The Tenant made written representations as follows:
 - Firstly, the Tenancy Agreement states at clause 41 that the Landlord can increase the rent every 12 months on the date on which the tenancy began which is 7th February of any year.
 - Secondly, clause 41 states that the Rent increase will be 5% annually in addition to the current rent payable. The Landlord should increase the rent by £50.00 annually to start on 7th February. Therefore, the rent should not be increased by £200.00 on 9th July.

Landlord's Representations

9. The Landlord made written representations as follows:
 - Clause 41 of the Tenancy Agreement does not preclude the Landlord from increasing the rent more than 5% but it does allow the Landlord to increase the rent by 5% without warning.
 - The Landlord said that it was believed that a notice under section 13 of the Housing Act 1988 can be served at any time and that the Tenancy agreement did not preclude the service of a notice under section 13.

The Law

10. Section 13 of the Act deals with rent increases under assured periodic tenancies. Subsection (1) provides that it applies to:

“(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.”
11. In *Contour Homes Limited and Rowen* [2007] EWCA Civ 842, the Court of Appeal considered whether the exclusion in section 13(1)(b) applies only to tenancies with a fixed agreed uplift or whether it also applied to increases of unspecified amounts to be arrived at in a particular way, for example by the landlord serving a notice. The Court of Appeal held that the exclusion applied to both types of tenancy provision and that the purpose of the exclusion is to “uphold the freedom of parties to agree as to how rent reviews should take place.” per Arden LJ at paragraph 21. The Court concluded that “if Mr Rowen wishes to pursue his challenge to the rent increase, he would not be able to go to the rent assessment committee, he would have to start a separate action in the county court” per Arden LJ at paragraph 24.

Decision

12. The Tribunal considered the provisions of clause 41 of the Tenancy Agreement dated 13th February 2020 between the parties.
13. It then applied Section 13(1) of the Housing Act 1988 under which this application is made which states that it applies to “any...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. The Tribunal then considered the interpretation of this statutory provision in the Court of Appeal decision in *Contour Homes Ltd v Rowen* [2007] EWCA Civ 842; [2007] 1 WLR 2982. It was held in the case that section 13 preserved the parties' freedom to contract by only giving the Tribunal the jurisdiction to determine a market rent if the parties had not made any provision within their agreement.
15. The Tribunal found that under clause 41 of the Tenancy Agreement, the parties had made an agreement as to how the rent is to be increased. This states that on giving one month's notice the Landlord may increase the rent by 5% annually to commence on 7th February. If the Landlord does not do so in any one year then the Landlord may in the following year give one month's notice to increase the rent by

5% on 7th February of that year. The current rent is understood to be £1,000.00 per calendar month, therefore under clause 41 the Landlord can only increase the rent by £50.00 (5% of £1,000.00) to commence on 7th February 2023 on giving at least one month's notice

16. Therefore, the Tribunal found that it did not have jurisdiction to make a determination in respect of this Application.
17. Pursuant to Rule 9(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 the Tribunal must strike out the whole or a part of the proceedings or case if the Tribunal—
 - (a) does not have jurisdiction in relation to the proceedings or case or that part of them; and
 - (b) does not exercise any power under rule 6(3)(n)(i) (transfer to another court or tribunal) in relation to the proceedings or case or that part of them.
18. The Tribunal does not have jurisdiction and has no power to transfer the proceedings to another court or tribunal therefore the proceedings are struck out.

Judge JR Morris

APPENDIX - RIGHTS OF APPEAL

1. If a party wishes to appeal the 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.
2. 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.
3. 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.
4. 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.