



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

Case Reference : **CHI/43UH/MNR/2022/0128**

Property : **62 Swan Walk
Shepperton
Surrey
TW17 8LY**

Applicant Tenants : **Mr I Kokins and Mrs T Kokina**

Representative : **Mr R Fomins (UK Law Advisor)**

Respondent Landlord : **Mr J H W Anderson**

Representative : **None**

Type of Application : **Determination of a Market Rent sections
13 & 14 of the Housing Act 1988**

Tribunal Members : **Mr I R Perry FRICS
Judge Whitney
Mrs A Clist MRICS**

Date of Hearing : **6th February 2023**

Date of Decision : **6th February 2023**

DECISION

Summary of Decision

1. On 6th February 2023 the Tribunal determined that the Landlord's Notice proposing a new rent under an Assured Periodic Tenancy of premises situated in England dated 8th October 2022 had not been served correctly and strikes out the Landlord's claim for a new rent from 9th November 2022.

Background

2. The case concerned the determination of a market rent for the subject property following a referral of the Landlord's notice of increase of rent by the Tenant pursuant to sections 13 and 14 Housing Act 1988.
3. On 8th October 2022 the Landlord served a notice ("the Notice") under Section 13(2) of the Housing Act 1988 which proposed a new rent of £1,700 per month in place of the existing rent of £1,250 per month to take effect from 9th November 2022.
4. On 4th November 2022 the Tribunal received an application from the Tenants under Section 13(4) (a) of the Housing Act 1988. A second copy of the application dated 3rd November 2022 was sent on 16th November 2022, signed by Mr Kokins and Mrs Kokina.
5. The Coronavirus pandemic and considerations of health have caused a suspension of inspections and Tribunal hearings unless specifically requested by either party.
6. The Tribunal issued directions on 2nd December 2022 informing the parties that, unless either party objected, the Tribunal intended to determine the rent based on written representations. The parties were invited to make submissions which could include photographs or videos.
7. On 13th December 2022 the Tribunal received a letter from the Applicant asking that the Tribunal hold a hearing to consider the matter. The reason given was that the Notice was invalid as it was dated and posted on 8th October 2022, a Saturday, and could not have been received before Monday 10th October 2022 which is less than one month before the date of the proposed rent increase.
8. Both parties submitted detailed papers by the specified dates given within the Directions setting out their respective cases in respect of the proposed rent for the property. The papers were also copied to the other party.
9. Further Directions were issued by the Tribunal on 3rd January 2023 informing the Parties that the matter would be dealt with by way of a remote hearing which was subsequently arranged for 6th February 2023.
10. At the start of the Hearing the Tribunal first had to decide whether the Notice had been correctly served on the Tenants. If correctly served a valuation date

would have been fixed, if incorrectly served then there would be no valuation date and the Tribunal could not decide the rent.

The Property

11. From the information provided the property is a second floor flat within a purpose-built block of properties, itself within a gated community close to the river Thames.
12. The accommodation is described within the papers as including a living room with private balcony, kitchen, master bedroom with en-suite shower room, second bedroom, family bath/shower room, hall, private landing to staircase and entrance hall. There is also a communal garden.
13. The Tribunal was provided with photographs of a secure common entrance Hall which shows some Perspex display racks which are used to divide up post received through a main letter box on the outside of the property.
14. The Tribunal was told in the hearing by the Respondent that the entrance door to the flat itself also has a letterbox, although it may be difficult to post letters through as he believes the Applicants may have partially sealed the same. Mr Anderson suggested an envelope may get screwed up in the process of posting through the door.
15. The original tenancy agreement dated 8th January 2016 defines the property as Flat 4, 62 Swan Walk, Shepperton, Middlesex(sic), TW17 8LY and states that the property shall include only the right to use the communal parts, paths and drives. That is the common parts are not part of the property.

Evidence and Submissions

16. Within the papers provided Mrs Kokina is also named as Mrs Kokins. The Tenancy agreement refers to Mrs Kokins although we accept she is properly known as Mrs Kokina.
17. In papers provided by the Landlord, Mr Anderson, stated that he had served the Notice three separate ways.
18. On Saturday 8th October 2022 he had posted two copies of the Notice via Royal Mail, one for Mr Kokins and one for Mrs Kokins. The Tribunal was supplied with copies of the envelopes postmarked 8th October 2022. Both envelopes were addressed to both parties.
19. Mr Anderson told the Tribunal that he realised that the Notice would not be received until Monday 10th October 2022 at the earliest, and that this was outside the period required to make the Notice valid. He had then delivered by hand two copies of the Notice to the property itself, one for Mr Kokins and one for Mrs Kokins.

20. Mr Anderson stated that he had placed the letters in the Perspex display racks within the secure common entrance hall. He was aware that the door to the flat itself had a letterbox, but he had not posted the Notices through that door.
21. The Landlord said that he had also emailed copies of the Notice to the Tenants.
22. The Tenants were represented at the Hearing by Mr R Fomins who asked the Tribunal to strike out the claim because the Notice had not been served correctly.
23. Mr Fomins referred to two previous Tribunal cases between the Parties and stated that, as they are entitled to do, the Tenants had made it clear that they did not accept service of documents by email. He stated that the letters sent by Royal Mail were outside the qualifying dates and that neither Mr Kokins nor Mrs Kokins had received any hand delivered notices from the Landlord.
24. Mr Fomins also suggested these further proceedings should be struck out as being an abuse of process.
25. The tenancy agreement states that any notice sent by post shall be deemed to have been served 48 hours after it was posted or deemed served on the day it was hand delivered to the Property.

The Law

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-
 - (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.
- (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.

Consideration and Determination

- 26. The Tribunal was asked to determine 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 Parties are not relevant to this issue.
- 27. The Tenants ask the Tribunal to strike out the Application as the Notice of rent increase was served outside the required time frame. Further, that the application should be struck out as an abuse of process as it arose from the same facts.
- 28. The Tenants had said, as they were entitled to do, that they would not accept service of papers via email.

29. The Landlord had served the Notice via Royal Mail but knew that this was outside the required time frame so had visited the Property to hand deliver the Notices to both Tenants. However, he had left the Notices in the ground floor common Entrance Hall rather than posting them through the door of the property itself.
30. The Tenants say that they did not receive the Notices and the Landlord cannot demonstrate or show that they were correctly served.
31. The Tribunal finds that the Respondent could and should have delivered the Notice by posting through the letterbox to the Property. This is what the tenancy agreement required and leaving the Notice in the Perspex holders we find does not amount to leaving at the Property.
32. Accordingly, the Tribunal decided that the Notice of increase of rent had not been served correctly and that it should not proceed to decide the rent. The case is struck out.
33. For completion we are not satisfied that the Notice fails as an abuse of process. Mr Anderson was entitled to serve a further notice upon his previous notice having being found to be invalid. These proceedings whilst arising from the same tenancy relate to a new notice notwithstanding that we have found the same to be invalid.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) 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. Where possible you should send your application for permission to appeal by email to rpsouthern@justice.gov.uk as this will enable the First-tier Tribunal Regional office to deal with it more efficiently.
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.