



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

Case reference	:	CAM/00CN/MNR/2022/0096
Property	:	443 College Road, Kingstanding, Birmingham B44 0HD
Applicant (Tenant)	:	Karen Sewell
Representative	:	Rosaleen Kilbane, Solicitor The Community Law Partnership
Respondent	:	Theresa Anyanful
Representative	:	Chris Daniel, Solicitor's agent
Type of application	:	Determination of a market rent under section 14 of the Housing Act 1988
Tribunal members	:	Judge K Seward Mary Hardman FRICS IRRV(Hons)
Date of hearing	:	28 February 2023
Date of decision	:	27 March 2023

DECISION AND REASONS

Description of hearing

This has been a remote video hearing which the parties are taken to have consented to, as explained below. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The Tribunal's decision is below.

Decision of the Tribunal

The Tribunal does not have jurisdiction to determine the application for the reasons given below. The application is therefore struck out under Rule 9(2)(a) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013.

REASONS

Background

1. By a notice dated 27 August 2022, a new rent of £995.00 per month was proposed to be effective from 28 September 2022. The notice was issued by the landlord's agent without identifying the landlord.
2. On 27 September 2022, the tenant referred the notice to the Tribunal. In the application form, the tenant identifies Richard Andorful as the landlord. Theresa Anyanful claims to be the landlord on whose behalf the notice was issued. The proceedings have progressed on this basis with Mrs Anyanful the named respondent.
3. No inspection took place because it was not necessary to determine the issues before the Tribunal.
4. Directions were issued by the Tribunal on 7 November 2022 inviting the parties' comments on the validity of the notice and jurisdiction of the Tribunal. The Directions also invited signed witness statements of fact and the submission of any further representations (including the identity of the landlord, any photographs and details of rentals for similar properties).
5. Pursuant to the Directions, the applicant submitted a bundle of 153 pages plus a completed 'reply form' dated 7 December 2022 and 6 pages of submissions. At the start of the hearing, a copy of a County Court Order from 16 January 2023 was also produced. For the respondent, an indexed bundle composed of 217 pages was produced. The Tribunal has noted the content of all these documents.
6. As part of the Directions, the views of the parties were sought on the form of hearing by remote means. The applicant expressed a preference for a video hearing and the respondent raised no objection. The hearing thus proceeded via remote video conferencing.

Preliminary Matters

7. When the hearing was opened, the Tribunal agreed to a short adjournment in order to allow the respondent's legal representative opportunity to consider the applicant's bundle, which had not been forwarded to him by his client's agent. Upon resumption, the

respondent sought an adjournment pending the outcome of ongoing proceedings in the County Court.

8. Those proceedings originated in a claim for possession of the property brought by Mr Andorful against Ms Sewell in Birmingham County Court. Ms Sewell had counterclaimed. By a consent order agreed by the parties on 21 February 2022 (and subsequently sealed by the Court), it was ordered that the claim for possession be dismissed and Ms Sewell's counterclaim be stayed upon terms set out in the Schedule to the order ("the Tomlin Order").
9. Those terms included provision for the parties to enter into an assured shorthold tenancy for a fixed term of one year from the date of agreement at a rent of £650 per month once certain remedial works had been completed by Mr Andorful.
10. The new tenancy agreement has not been entered. There are active County Court proceedings initiated by the tenant seeking to enforce the Tomlin Order. The Tribunal was informed that Mrs Anyanful has been joined as a party to those proceedings.
11. Having heard submissions from both sides, the Tribunal refused the application for an adjournment. As acknowledged by Mrs Anyanful's legal representative, the matter before the Tribunal is a stand-alone application which does not depend upon the outcome of the County Court proceedings. Whilst the position taken by the tenant is "tied up" with those proceedings, they are separate and distinct matters. No adjournment was sought by the tenant. The Tribunal was satisfied that no prejudice would arise to either party from it determining the application, as an expert tribunal, pursuant to the statutory framework within the Housing Act 1988. Moreover, having regard to the overriding objective to deal with cases fairly and justly it was proportionate to proceed and avoid delay.
12. At the start of the hearing the Tribunal, identified a two stage approach to consideration of the application. Firstly, whether the Tribunal has jurisdiction to determine the application, which would include consideration of: (i) whether there is a tenancy and, if so, what type (ii) who is the landlord? (iii) whether the notice is valid, and (iv) the effect of the Tomlin Order. Secondly, and subject to jurisdiction, the amount of market rent. The parties agreed these as the relevant issues.

The Property

13. The property is a two storey end of terrace house with 2 bedrooms located on a major feeder road in central Birmingham. By the time that the notice had been served, the internal layout had been reconfigured

resulting in a kitchen and bathroom on both the ground and first floors. Such works are also the subject of the County Court proceedings.

Findings

14. The applicant has occupied the property since 2013. Ms Sewell signed an assured shorthold tenancy agreement with Quest 2 Rent Property Services (as landlord) on 1 August 2017 for a term of 2 years and 11 months from that date. When the fixed term expired, the tenant became the statutory periodic tenant paying rent of £550 per month.
15. The current freehold owner is Theresa Anyanful, who was previously joint owner with Mr Andorful. Official Copies from HM Land Registry confirm they were joint registered proprietors from 26 January 2022.
16. Mr Andorful attended the hearing and made submissions in support of the respondent. Having signed the Tomlin Order on 21 February 2022, Mr Andorful contended that he disposed of his interest in the property to Mrs Anyanful on 23 June 2022. Due to delays in land registration, the transfer is not yet registered. No copy of the transfer deed is produced, only a memorandum of agreement between the parties dated 17 January 2022. Under this agreement the parties “agreed to work together” for Mr Andorful to transfer the full ownership and/or use of the property to Mrs Anyanful by 23 June 2023 at nil value in return for funds to undertake required renovation works at the property.
17. The application for registration submitted to HM Land Registry gives the date of transfer as 8 September 2022. In the absence of any substantive evidence to the contrary, the Tribunal takes this as the correct date. Therefore, Mr Andorful remained a joint owner with Mrs Anyanful when the notice was issued on 27 August 2022.
18. It was a term of the Tomlin Order that Mr Andorful would carry out remedial works to the property as set out in the Schedule attached to the Order. The works were “to be completed as soon as reasonably possible, and in any event no later than 1 June 2022.” Provision was made for further extensions by agreement if necessary.
19. The schedule further provides that 3 days after receipt of a surveyor’s report upon completion of the works, the parties would enter an assured shorthold tenancy for a fixed term of one year from the date of agreement at a rent of £650 per month.
20. It is undisputed that the Tomlin Order has not been set aside.

The Law

21. Sections 13 and 14 of the Housing Act 1988 (“the 1988 Act”) make provision for the increase of rent under assured periodic tenancies.
22. Section 13 applies to (a) a statutory periodic tenancy [other than a crown or local authority tenancy]; and (b) any other periodic tenancy which is an assured tenancy..... (section 13(1)).
23. For the purpose of securing an increase in the rent, the landlord may under section 13(2) 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, being: (i) six months in the case of a yearly tenancy; (ii) one month in the case of a tenancy where the period is less than a month; (iii) in any other case, a period equal to the period of the tenancy.
 - (b) (except in the case of a statutory periodic tenancy) 52 weeks from the date of which the first period of the tenancy began; and
 - (c) 52 weeks from the date on which the last increase took effect.
25. Under section 13(4) where a notice is served, 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.
24. Section 13(5) provides that nothing in section 13 (or in section 14) 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).
25. By virtue of section 14 (1), the Tribunal is to determine a rent at which the dwelling-house concerned might reasonably be expected to be let in the open market by a willing landlord under an assured periodic tenancy - (a) 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 rent) are the same as those of the subject tenancy.
26. In making a determination, the Tribunal shall by virtue of section 14(2) disregard – (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 (as defined by section 14(3)) carried out by a tenant otherwise than as an obligation; and (c) any reduction in the value of the dwelling-house due to the failure of the tenant to comply with any terms of the subject tenancy.

Representations - Applicant

27. The tenant initially disputed that the notice is in the correct prescribed form. This argument was subsequently withdrawn at the hearing.
28. The main thrust of the tenant's case is that the section 13 notice is in breach of the Tomlin Order requiring a new assured shorthold tenancy to be entered at an agreed rent of £650 per month.
29. According to the tenant, any new landlord bought subject to the existing tenancy and would be bound by the Tomlin Order as a collateral agreement pursuant to the Landlord and Tenant (Covenants) Act 1995.
30. The tenant maintains that the landlord was estopped from serving notice having agreed a new rent less than 12 months previously under a tenancy which has not been entered by Mr Andorful's own default. Although a new tenancy had been offered, it was at a higher rent of £995. This was not acceptable to the tenant when a contract existed for a tenancy at a lower rent.

Representations - Respondent

31. The respondent claims not to be bound by the Tomlin Order as she was not a signatory despite being a joint beneficial owner when it was entered. The person who signed the Tomlin Order only had a limited interest in the property at that time. The tenant should have ensured that all legal owners were signatories if she wished Mrs Anyanful to be bound.
32. The failure to do so enabled the respondent to issue the section 13 notice (as landlord) because she was not an agreed party to the Tomlin Order, which had failed to take force or effect. Before the service of the notice, a new tenancy had been offered to the tenant but not taken.
33. Whilst Mrs Anyanful had entered a contract with Mr Andorful in January 2022 to transfer the property into her sole name prior to the Tomlin Order, the respondent disputes that this amounted to a collateral contract.
34. Further submissions were made in response to the tenant's arguments concerning works to the property and its valuation. Whilst potentially

pertinent to the issue of market rent, they are not elaborated upon here given the Tribunal's conclusions on jurisdiction below.

The determination

35. The tenant holds the property under a statutory periodic tenancy, being a type of assured tenancy. That is undisputed.
36. Ownership is not necessarily reflective of who the landlord is. In this instance, the Tribunal finds no need to establish definitively who the landlord was at the date of issue of the notice on 27 August 2022. Ultimately, both Mr Andorful and Mrs Anyanful had a legal interest in the property on that date.
37. There is provision within section 13(4)(b) and section 13(5) of the 1988 Act for a landlord and tenant to agree upon a variation of the rent. Irrespective of Mrs Anyanful not being a party to the Tomlin Order, her co-owner had entered the agreement as the landlord. As the Tomlin Order has not been set aside, there remains a legally binding agreement in place for a new rent of a different amount to that in the section 13 notice. That being so, the notice cannot take effect and the Tribunal has no jurisdiction to assess the market rent.
38. It follows that the application must be struck out under Rule 9(2)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 which states that the Tribunal must strike out the whole or a part of the proceedings or case if the Tribunal does not have jurisdiction in relation to the proceedings or case or that part of them.

Name: Judge K Saward

Date: 27 March 2023

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).