



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

Case Reference : **CHI/23UC/MNR/2023/0073**

Property : **62 Countess Lillas Road
Cirencester
Gloucestershire
GL7 1UB**

Applicant Tenant : **Ms Barbara Morrison**

Representative : **None**

Respondent Landlord : **Bromford Housing**

Representative : **Trowers & Hamlin LLP**

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

Tribunal Members : **Mr I R Perry FRICS
Mr S J Hodges FRICS
Mrs A Clist MRICS**

Date of Inspection : **None. Paper determination**

Date of Decision : **31st May 2023**

DECISION

Summary of Decision

1. On 31st May 2023 the Tribunal determined that it does not have jurisdiction in this matter and the Application is struck out.

Background

2. The case concerned the determination of a 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 20th February 2023 the Landlord served a notice under Section 13(2) of the Housing Act 1988 which proposed a new rent of £115.06 per week for the property including services in place of the existing rent of £101.79 per week to take effect from 3rd April 2023.
4. On 28th March 2023 the Tribunal received an application from the Tenant under Section 13(4) (a) of the Housing Act 1988.
5. The Tribunal does not consider it necessary and proportionate in cases of this nature to undertake inspections or hold Tribunal hearings unless either specifically requested by either party or a particular point arises which merits such an inspection and/ or hearing.
6. The Tribunal issued directions on 26th April 2023 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. Both parties submitted detailed papers by the specified dates very clearly setting out their respective cases. The papers were also copied to the other party.
8. Neither party objected to the matter being determined without an oral hearing, so the Tribunal considered the matter on 31st May 2023 based on the written representations received.

Submissions

9. The property is a one-bedroom bungalow within a development of similar properties in Cirencester, originally owned by Fosseyway Housing Association but later transferred to Bromford.
10. Ms Morrison took occupation of the property on 17th January 2012 by way of a tenancy agreement dated 17th January 2012.
11. The Landlord's representative provided a statement of case that included a copy of the tenancy agreement which includes a rent increase clause specifically excluding sections 13 and 14 of the 1988 Housing Act and arguing that the Tribunal does not have jurisdiction in this case. This in spite of the Respondent serving a notice under this provision.
12. The Landlord's Agent specifically refers to the case of *Contour Homes Ltd v Rowen* [2007] EWCA Civ 842

13. Having received the Landlord's Agent's submission the Applicant made further representation to the Tribunal dated 25th May 2023 stating that as she does not have the legal training, nor can she afford legal advice, so she is unable to comment upon the assertion that the Tribunal does not have jurisdiction.

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 Decision

- 14. The Tribunal first considered whether it felt able to reasonably and fairly decide this case based on the papers submitted only with no oral hearing. Having read and considered the papers it decided that it could do so.
- 15. The Tribunal considered the representations made by the Landlord's Agent and agrees that the 1988 Housing Act provisions do not apply in this case as they are specifically excluded within the Tenancy Agreement.
- 16. Accordingly, the Tribunal accepts that it does not have jurisdiction and the matter is struck out.
- 17. The Tribunal would suggest that the respondent Housing Association consider the merits of using section 13 Notices to notify rent increases in future, and to then argue that s13 does not apply. A suitable alternative letter might reduce stress and anxiety for their tenants and reduce wasted time and costs for both parties.

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.