FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**JM/LON/OOBG/MDR/2023/0017**
Property	**:**	**16 Stileman House , Ackfoyed Drive, E3 4AE**
Applicant	**:**	**Mr Anthony Steven Wermerling – T/A Orchard Properties**
Representative	**:**	**Kerry Roast**
Respondent	**:**	**Mr Aftab Miah**
Representative	**:**	**Mr Hussain**
Type of application	**:**	**Market Rent under s22 of the Housing Act 1988- Jurisdiction**
Tribunal member(s)	**:**	**Mr Richard Waterhouse MA LLM FRICS** **Mr C Piarroux**
Date and venue of hearing	**:**	**Video Hearing - 13th September 2023**
Date of decision	**:**	**13th September 2023**

DECISION

Background

1. On the 30th May 2023 the tribunal received an application by the Tenant of the above property under section 22(1) of the Housing Act 1988. The application was dated 5th May 2023.

2. The tenancy of the subject property commenced on the 20th November 2013 and has been replaced by subsequent tenancies the last noted on the application form was 12 months from 19th June 2022.

3. The tribunal were provided with a copy of the tenancy agreement with the application. This showed the tenancy ran from 19th June 2022 for 12 months at £2325.00 per month.

4. No other documents were submitted with the application form.

5. A hearing was requested by both parties.

6. The tribunal had provided to the two parties its preliminary view regarding jurisdiction. Noting by letter on 11th July 2023;

7. "it is the Legal Officers preliminary opinion that the tribunal may not have jurisdiction to consider the matter because:

8. Section 22 of the Act applies only to assured shorthold tenancies during the first six months since the beginning of the original tenancy. Since it appears the premises are occupied under the terms of a replacement assured shorthold tenancy agreement – Section 22(2) (aa) , a tribunal may decide that your application made under section 22 is not valid and that it does not therefore have jurisdiction to consider the rent."

9. Only the jurisdiction point was considered at the hearing.

The Evidence

Appellants Submission

10. The applicant tenant was represented by his son Mr Hussain. It was submitted that the application was made following advice from the local authority. It was acknowledged that the tenant had been in occupation of the property in excess of 6 months at the date of the application. Further it was submitted that the intention of the tenant was to challenge the rent increase.

11. Mr Hussain explained that the intended purpose of the application had been to contend the rent increase. It was accepted that no Notice of

Increase of Rent had accompanied the application form, nor had the application been made before the date of the rent coming into effect.

The Respondents Case

12. The respondent landlord's representative noted the application under section 22 was not valid because the tenant had been in occupation more than 6 months.

13. Additionally, if the tribunal were minded considering the application as being made under section 13 of the Housing act 1988 it too would be invalid as out of time.

The Law

14.

22 Reference of excessive rents to appropriate tribunal.

(1)Subject to section 23 and subsection (2) below, the tenant under an assured shorthold tenancy may make an application in the prescribed form to the appropriate tribunal for a determination of the rent which, in the appropriate tribunal's opinion, the landlord might reasonably be expected to obtain under the assured shorthold tenancy.

(2) No application may be made under this section if—

(a)the rent payable under the tenancy is a rent previously determined under this section;

(aa)the tenancy is one to which section 19A above applies and more than six months have elapsed since the beginning of the tenancy or, in the case of a replacement tenancy, since the beginning of the original tenancy; or

(b)the tenancy is an assured shorthold tenancy falling within subsection (4) of section 20 above (and, accordingly, is one in respect of which notice need not have been served as mentioned in subsection (2) of that section).

(3)Where an application is made to the appropriate tribunal under subsection (1) above with respect to the rent under an assured shorthold tenancy, the appropriate tribunal shall not make such a determination as is referred to in that subsection unless they consider—

(a)that there is a sufficient number of similar dwelling-houses in the locality let on assured tenancies (whether shorthold or not); and

(b)that the rent payable under the assured shorthold tenancy in question is significantly higher than the rent which the landlord might reasonably be

expected to be able to obtain under the tenancy, having regard to the level of rents payable under the tenancies referred to in paragraph (a) above.

(4)Where, on an application under this section, the appropriate tribunal make a determination of a rent for an assured shorthold tenancy—

(a)the determination shall have effect from such date as the appropriate tribunal may direct, not being earlier than the date of the application;

(b)if, at any time on or after the determination takes effect, the rent which, apart from this paragraph, would be payable under the tenancy exceeds the rent so determined, the excess shall be irrecoverable from the tenant; and

(c)no notice may be served under section 13(2) above with respect to a tenancy of the dwelling-house in question until after the first anniversary of the date on which the determination takes effect.

(5) Subsections (4), (5) and (8) of section 14 above apply in relation to a determination of rent under this section as they apply in relation to a determination under that section and, accordingly, where subsection (5) of that section applies, any reference in subsection (4)(b) above to rent is a reference to rent exclusive of the amount attributable to rates.

Decision

15. The first consideration to be addressed by the tribunal was Section 22(2)(aa) of the Act. For the application to be valid under section 22, the tenant must have been in occupation of the property for less than 6 months before the date of application. The tribunal notes from the submission that the tenant has been in occupation since 2013 which is in excess of 6 months and so an application under sec 22 (20 (aa) is not valid.

16. In the alternative should the application be argued as section 13 Housing Act 1988. Such an application to be valid would need to include the Notice of Increase of rent. The application does not contain this document. As such under the alternative contention that the application is made under section 13, is also invalid, and the tribunal has no jurisdiction to consider the rent.

R. Waterhouse

Name: Tribunal Judge Waterhouse **Date: 13th September 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).

THE LEGISLATION

Housing Act 1988

s.13.— Increases of rent under assured periodic tenancies.

(1) This section 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.

(2) For the purpose of securing an increase in the rent under a tenancy to which this section applies, the landlord may 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; and

(b) except in the case of a statutory periodic [tenancy—]

[

(i) in the case of an assured agricultural occupancy, the first anniversary of the date on which the first period of the tenancy began;

(ii) in any other case, on the date that falls 52 weeks after the date on which the first period of the tenancy began; and

]

(c) if the rent under the tenancy has previously been increased by virtue of a notice under this subsection or a determination under section 14[below—]

[

(i) in the case of an assured agricultural occupancy, the first anniversary of the date on which the increased rent took effect;

(ii) in any other case, the appropriate date.

]

(3) The minimum period referred to in subsection (2) above is—

(a) in the case of a yearly tenancy, six months;

(b) in the case of a tenancy where the period is less than a month, one month; and

(c) in any other case, a period equal to the period of the tenancy.

[

(3A) The appropriate date referred to in subsection (2)(c)(ii) above is—

(a) in a case to which subsection (3B) below applies, the date that falls 53 weeks after the date on which the increased rent took effect;

(b) in any other case, the date that falls 52 weeks after the date on which the increased rent took effect.

(3B) This subsection applies where—

(a) the rent under the tenancy has been increased by virtue of a notice under this section or a determination under section 14 below on at least one occasion after the coming into force of the Regulatory Reform (Assured Periodic Tenancies) (Rent Increases) Order 2003; and

(b) the fifty-third week after the date on which the last such increase took effect begins more than six days before the anniversary of the date on which the first such increase took effect.
]
(4) Where a notice is served under subsection (2) above, 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.
(5) Nothing in this section (or in section 14 below) 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).

s.14.— Determination of rent by [tribunal] .

(1) Where, under subsection (4)(a) of section 13 above, a tenant refers to [the appropriate tribunal] a notice under subsection (2) of that section, the [appropriate tribunal][3] shall determine the rent at which, subject to subsections (2) and (4) below, the [appropriate tribunal][3] 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.
[
(3A) In making a determination under this section in any case where under Part I of the Local Government Finance Act 1992 the landlord or a superior landlord is
liable to pay council tax in respect of a hereditament ("the relevant hereditament") of which the dwelling-house forms part, the [appropriate tribunal] shall have regard to the amount of council tax which, as at the date on which the notice under section 13(2) above was served, was set by the billing authority—
(a) for the financial year in which that notice was served, and
(b) for the category of dwellings within which the relevant hereditament fell on that date,
but any discount or other reduction affecting the amount of council tax payable shall be disregarded.
(3B) In subsection (3A) above—
(a) *"hereditament"* means a dwelling within the meaning of Part I of the Local Government Finance Act 1992,
(b) *"billing authority"* has the same meaning as in that Part of that Act, and
(c) *"category of dwellings"* has the same meaning as in section 30(1) and (2) of that Act.
(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 of the dwelling-house concerned or are payable under separate agreements.
(5) Where any rates in respect of the dwelling-house concerned are borne by the landlord or a superior landlord, the [appropriate tribunal] shall make their determination under this section as if the rates were not so borne.
(6) In any case where—
(a) [the appropriate tribunal] have before them at the same time the reference of a notice under section 6(2) above relating to a tenancy (in this subsection referred to as "the section 6 reference") and the reference of a notice under section 13(2) above relating to the same tenancy (in this subsection referred to as "the section 13 reference"), and
(b) the date specified in the notice under section 6(2) above is not later than the first day of the new period specified in the notice under section 13(2) above, and
(c) the [appropriate tribunal][9] propose to hear the two references together,
the [appropriate tribunal] shall make a determination in relation to the section 6 reference before making their determination in relation to the section 13 reference and, accordingly, in such a case the reference in subsection (1)(c) above to the terms of the tenancy to which the notice relates shall be construed

as a reference to those terms as varied by virtue of the determination made in relation to the section 6 reference.

(7) 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, 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 committee may direct.

(8) Nothing in this section requires [the appropriate tribunal] to continue with their determination of a rent for a dwelling-house if the landlord and tenant give notice in writing that they no longer require such a determination or if the tenancy has come to an end.

(9) This section shall apply in relation to an assured shorthold tenancy as if in subsection (1) the reference to an assured tenancy were a reference to an assured shorthold tenancy.