



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

Case Reference : MAN/00BN/MNR/2024/0144

Property : Flat 7 Hazelwood, 51/53 Alness Road, Whalley Range, Manchester, M16 8HW

Applicant : Jane Greer

Respondent : Great Places Housing Association

Representative : Ms Routledge (Counsel for the Respondent)

Type of Application : Determination as to whether the Tribunal has jurisdiction/Application by the Applicant under s.14 Housing Act 1988

Tribunal Members : Tribunal Judge K. Falder, Tribunal Member J Gallagher

Dates of Hearing : 29th April 2025

Date of Decision : 30th April 2025

DECISION

The issue

1. The issue in these proceedings is whether or not a notice of increase or rent given to the Tenant regarding her assured periodic tenancy can be referred by the Tenant to the Tribunal.

The facts

2. On 26th March 2024 the Tenant (Ms Jane Greer) of Flat 7, Hazelwood, 51/53 Alness Road, Whalley Range, Manchester, M16 8HW ("the property") referred to the Tribunal a notice of increase of rent served by the Landlord (Great Places Housing Association) under s.13 Housing Act 1988.
3. The Landlord's notice was dated 28th February 2024 and proposed a rent of £90.81 per week (including service charges of £18.77 per week) with effect from 1st April 2024.
4. The Tenant's tenancy is an assured non shorthold weekly tenancy dated 11th May 1998 ("the Tenancy"). On page 2 of the tenancy there is a clause entitled "Changes in Rent" which states the following:

"The Association may increase or decrease the Rent by giving the Tenant not less than 28 days notice in writing of the increase or decrease. The notice shall specify the Rent and the included Service Charge proposed. The Service Charge shall be received on the basis of the costs incurred during the period from the date that the service charge was last reviewed hereunder to the date of the notice of review and any anticipated or known increase in costs. Any underpayment from the previous Service Charge period shall be added to the costs to be recovered in the next Service Charge period. The Rent shall not be increased more than once a year and no increase shall take effect less than a year after the last increase or the date of this Agreement. The revised Rent shall be the amount specified in the notice of increase unless the Tenant exercises his/her right to refer the notice to a Rent Assessment Committee to have a market Rent determined in which case the maximum Rent payable for one year after the date specified in the notice shall be the Rent so determined."

The law

5. The Tenant cannot refer a notice of increase to the Tribunal unless s.13 Housing Act 1988 applies to the tenancy.
6. S. 13(1) states:

"This section applies to

(a) A statutory periodic 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 binding on the tenant, under which rent for a particular period of the tenancy will or may be greater than the rent for an earlier period."

7. The leading authority on the question of jurisdiction in cases such as this is the decision of the Court of Appeal in *Contour Homes Ltd v Rowen* [2007] EWCA Civ 842.
8. In that case the tenant held an assured tenancy of a property owned by Contour who were the landlord. The tenancy included a clause which stated:

"1.4 Changes in rent and service charges

1.4.1 The rent will be reviewed by the association in April of each year. The association shall give to the tenant no less than four weeks notice of the revised amount payable. The revised net rent shall be the amount specified in the notice of increase. The association agrees not to set a rent in excess of the prevailing market rent for the premises."

9. The landlord gave the tenant written notice of the revised rent for the year 2006-2007 and the tenant referred the notice to a Rent Assessment Committee (the precursor to the First Tier Tribunal). The Committee held that the notice was invalid as it was not in the prescribed form as required by s.13(2) Housing Act 1988. The landlord's appeal was dismissed on the basis that the rent review clause was not a provision under which the rent for a particular period of the tenancy will or may be greater than the rent for an earlier period within the meaning of s.13(1)(b) of the 1988 Act since it did not provide for a rent increase of a specified amount, and therefore the tenancy was one to which the requirements of s.13(2) applied.
10. The Court of Appeal allowed an appeal from that decision. It held that the exception in s.13(1)(b) of the 1988 Act was not limited to rent review clauses which provided for an increase of a fixed amount but was also apt to include a provision which provided that rent might be increased by an unspecified amount if certain events occurred, such as the service by the landlord of a notice. As such the Court of Appeal determined that the rent review clause in the tenancy agreement was a provision under which the rent for a particular period of the tenancy would or might be greater than the rent for an earlier period within the meaning of s.13(1)(b) of the 1988 Act. As such the original judge had made an error in finding that the tenancy was one to which the requirements of s.13(2) applied.

Submissions from the parties on this issue

11. The Tenant submitted that the Tribunal did have jurisdiction to deal with case because of the latter part of the clause referred to in paragraph 4 above which set out that a Rent Assessment Committee could determine the matter. She

outlined her concerns about the manner in which she had been treated by the Landlord and the conditions she had to put up with at the Property.

12. Ms Routledge on behalf of the Landlord submitted that the jurisdiction of the Tribunal is statutory and that the case of *Contour Homes v Rowen* applies. She submitted that the tenancy cannot confer jurisdiction on the Tribunal when the same has not been granted by Parliament.

Decision

13. In our view the case of *Contour Homes v Rowen* is binding on us and applies to this matter. As such the Tribunal determines that it has no jurisdiction in this case to determine the rent.
14. Notwithstanding the above, even if we were incorrect as regards jurisdiction, we consider that the proposed rent of £72.04 plus £18.77 service charge totalling £90.81 per week is reasonable and well below market value.
15. We have considered evidence of comparable properties within the local area of this Property. All of those comparable properties had significantly higher rents. Even taking into account the condition of the Tenant's property and the complaints she raised about damp, decoration and neighbour disputes, a fair market rent would still be well in excess of the sum sought by the Landlord and had the Tribunal determined such a rent it would have been £155.00 per week.

Name: Judge Falder Date 30th April 2025

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 should be made on Form RP PTA available at <https://www.gov.uk/government/publications/form-rp-pta-application-forpermission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber>

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).