

**MIDLANDS RENT ASSESSMENT PANEL**

**File Reference No: BIR/00CQ/MNR/2006/0155**

**RENT ASSESSMENT COMMITTEE**

**Housing Act 1988 S.13**

**DECISION NOTICE REGARDING JURISDICTION**

**21 Elm Tree Avenue, Coventry, CV4 9EU**

1. On 9<sup>th</sup> November 2006 the Tenant of the above property, **Mrs. D. S. Bernard** referred to a Rent Assessment Committee a notice served on her by the Landlord's Agent, **Brickman Yale** proposing a new rent to be payable from 15<sup>th</sup> December 2006. The notice is dated 1<sup>st</sup> November 2006.

2. The Notice proposes a new rent of £450 per calendar month in place of the existing rent of £303 per calendar month. The Notice states that the first rent increase date after 11<sup>th</sup> February is 'not known'.

3. Section 13(2) of the Housing Act 1988 ('the Act') as amended by the Regulatory Reform (Assured Periodic Tenancies) (Rent Increases) Order 2003 ('the regulatory reform order 2003') provides:

*'(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 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 sub-section 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 one month, one month; and*

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

The 'appropriate date' is defined in a new section 3A and 3B:

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

*(a) in the 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 subsection 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'*

5. Section 13 (4) of the Act provides that:

*'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.....refers the notice to a rent assessment committee: or*

*(b).....'*

6. Section 45 of the Act states that 'prescribed', as in Section 13 (2), means prescribed by regulations made by the Secretary of State by statutory instrument. The Assured Tenancies and Agricultural Occupancies (Forms) Regulations 1997 ('the 1997 Regulations') provide by paragraph 2 that any reference to the form in the Regulations is a reference to the form bearing that number in the Schedule 'or to a form substantially to the same effect'.

7. The form currently prescribed is Form 4B contained in The Assured Tenancies and Agricultural Occupancies (Forms) (Amendment) (England) Regulations 2003.

8. The Landlord's notice is in the form 4B, but because the notes which form part of the prescribed form had not been forwarded by the Tenant to the Panel Office, she was asked to confirm whether they were sent with her notice. The Tenant replied by letter dated 15<sup>th</sup> November 2006, in which she states:

*'My landlord's agent did not provide any other notes, only one page of form 4B proposing the increase of rent date 1.11.06. Guidance notes were not provided.*

*N.B. Also my rent is weekly rent (£70), I pay monthly for convenience (28 days) not calendar months as the landlord has written on the proposed form.'*

9. Because it appeared that the guidance notes had not been provided, and because, following the tenant's letter, it appeared that the periods of the tenancy might be weekly rather than calendar monthly, a Committee was appointed to determine whether the Landlord's notice was effective as their jurisdiction depends upon its validity.

### **DETERMINATION**

10. The Committee determine that they do not have jurisdiction in respect of the Tenant's application to them for the following reasons:

(1) The Committee accept the evidence of the Tenant that no guidance notes were provided. It is noted that the form used by the Landlord was downloaded from the internet, and labelled 'Page 1 of 4'. Accordingly, the guidance notes were clearly not printed on the reverse of the form, as can happen when the Landlord uses a printed form published by a law stationer. The guidance notes contain essential information to the Tenant and the Committee determine that the Landlord's Notice is invalid without them.

(2) (a) The Committee also accept the Tenant's evidence that her tenancy is weekly. Therefore, the Landlord has not proposed a new rent to commence at the 'beginning of a new period of the tenancy'. In this regard, the Committee note that the tenancy commenced in March 1992, when the present tenant succeeded from her grandmother. This situation is dealt with by section 39 (6) of the Act which provides:

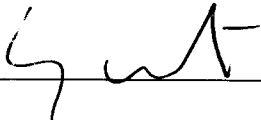
*'Where ....the successor becomes entitled to an assured periodic tenancy of a dwelling-house by succession, that tenancy is one-*

*(a) taking effect in possession immediately after the death of the protected or statutory tenant or protected occupier (in the*

*following provisions of this section referred to as “the predecessor”) on whose death the successor became so entitled;*

- (b) deemed to have been granted to the successor by the person who, immediately before the death of the predecessor, was the landlord of the predecessor under his tenancy;*
- (c) ....*
- (d) under which the periods of the tenancy are the same as those for which rent was last payable by the predecessor under his tenancy;’*

(2) (b) As it would appear that the tenancy is one to which section 39 (6) applies, any future notice of increase must propose a weekly rent commencing on the same day of the week as the date of the death of the tenant’s grandmother.

Signed  \_\_\_\_\_

W. J. Martin: Chairman

Date of Decision: 18<sup>th</sup> January 2007

Committee Members:

Mr. W. J. Martin  
Mr. D.J. Satchwell F.R.I.C.S  
Dr. A. Veduyn