

MIDLANDS RENT ASSESSMENT PANEL

File Reference No: BIR/17UH/MNR/2005/0088

RENT ASSESSMENT COMMITTEE

Housing Act 1988 S.13

DECISION NOTICE REGARDING JURISDICTION

18 Maguire Avenue, Hadfield, Glossop, Derbyshire SK13 1DE

1. On the 1st March 2005 the Landlord of the above properties, **“Johnnie” Johnson Housing Trust Ltd**, served on the Tenant a notice proposing a new rent in respect of the above property to be payable from 26th April 2005. The Tenant is **Ms. J. Clark**.

2. 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

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'

3. 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).....'

4. Section 45 of the Act states that 'prescribed' 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'.

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

6. The Landlord's notice is not in Form 4B but is in the form 4A prescribed by the Assured Tenancies and Agricultural Occupancies (Forms) (Amendment) (England) Regulations 2002. However, as the main amendment in Form 4B relates to weekly tenancies, and the subject tenancy is monthly, the Committee determine that the Landlord's notice is in a form 'substantially to the same effect' as the prescribed form 4B.

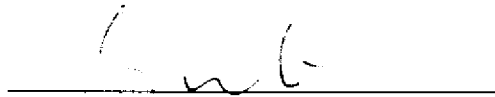
7. The Committee have not been able to ascertain from either party whether the guidance notes which accompany the prescribed forms were sent with the statutory notice. As the application is part of a group of similar applications on the same estate, and that the guidance notes were sent with other statutory notices, the Committee determine that, on the balance of probabilities, the notes were included in this case.

8. In order to satisfy the provisions of Section 13 (2) and (3) of the Act the proposed new rent must (a) commence at the beginning of a new period of the tenancy and (b) the proposed commencement date must be at least 52 weeks after the date the tenancy commenced or the date the rent was last increased. The Tenant, despite requests, did not provide the necessary information, but the Landlord produced a schedule of rent increase dates for this and other properties on the estate which shows a commencement date for the tenancy of 26th April 2004 and that it is a calendar monthly tenancy. The Tenant's application refers to a commencement date of 'April 2004' and

in all the circumstances the Committee accepted that the commencement date in the notice is correct and that accordingly the Landlord's notice satisfies the statutory requirements and is therefore valid.

8. By a notice dated 18th April 2005 but received in the Panel Office on 22nd April 2005 the Tenant referred the proposed rent to the Committee under Section 13 (4) of the Act. As the notice was dated and received before the commencement date of 26th April 2005 the Committee determine that the Tenant has made a valid reference to them in accordance with Section 13(4) of the Act and that they have jurisdiction to make a determination under section 14 of the Act.

9. Accordingly a Committee will be appointed to inspect the property with a view to making a determination under Section 14 of the Act at a future date to be confirmed.



W. J. Martin: Chairman

Date of Decision: 21st July 2005

Committee Members:

Mr. W. J. Martin
Mr. J. Ravenhill F.R.I.C.S
Mrs. A. Bartram