

**SOUTHERN RENT ASSESSMENT PANEL
& LEASEHOLD VALUATION TRIBUNAL**

HOUSING ACT 1988 SECTION 13

DECISION OF THE RENT ASSESSMENT COMMITTEE

Case No:	CHI/29UM/MNR/03/89
Property:	10 Lakeside Gardens Chapel Road Hothfield Common Ashford Kent
Applicant:	Mrs. J.E. Cousins
Respondent:	Avonpark Retirement Centre Ltd.
Date of Consideration:	18th June 2003
Members of the Committee:	Mr. R. Norman, Lawyer (Chairman) Mr. I.W. Collins, FRICS IRRV Ms. L. Farrier
Date decision Issued:	23 June 2003

**RE: 10 LAKESIDE GARDENS, CHAPEL ROAD, HOTHFIELD COMMON,
ASHFORD, KENT**

Background

1. The Applicant referred to the Rent Assessment Committee a notice proposing a new rent under a statutory periodic tenancy.

The Consideration

2. On the 18th June 2003 the Rent Assessment Committee inspected the subject property and met to deal with the application but we first had to consider whether or not we had jurisdiction to do so.

3. Neither of the parties requested a hearing at which oral representations could be made.

4. We considered the written representations received from the Applicant's representative and which had been copied to the Respondent. Those representations did not raise the question of jurisdiction. No written representations were received from the Respondent.

5. Where there is a tenancy of the type as in this application, the landlord can only increase the rent either with the agreement of the tenant or by using the procedure provided for in Section 13 of the Housing Act 1988 ("the Act").

6. We had to determine whether or not a notice in the prescribed form under Section 13 (2) of the Act had been properly served, because if we were not satisfied that such a valid notice had been properly served then we would not have jurisdiction to deal with the application.

7. Section 13 (2) of the Act, as amended with effect from the 11th February 2003 by the Regulatory Reform (Assured Periodic Tenancies) (Rent Increases) Order 2003 provides as follows:

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.

8. The "prescribed form" is now prescribed by the Assured Tenancies and Agricultural Occupancies (Forms) (Amendment) (England) Regulations 2003.

9. This was not the form served by the Respondent in this case.

10. The date specified in the form served as the starting date for the new rent was the 25th April 2003 which was not, from the evidence before us, the beginning of a new period of the tenancy.

11. The form of notice was enclosed with a letter to the Applicant dated 21st March 2003 yet the form of notice was dated 24th March 2003.

12. Section 13 (3) of the Act provides that:

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.

13. The minimum period therefore varies according to the circumstances but it can never be less than one month.

14. We had no evidence of the date the notice was sent by the Respondent or received by the Applicant and in the absence of such evidence, the use of different dates on the letter and the notice left us in doubt as to when the notice had been served and whether or not there had been compliance with Section 13 (2) (a) of the Act. This was of particular importance as the purported date of commencement of the new rent was 25th April 2003 and the date on the notice was the 24th March 2003; just one month and one day before that date.

Determination

15. We considered all the evidence produced to us and came to the following conclusions:

(a) The notice was not in the new prescribed form. Had the new prescribed form been used then the Applicant would have been alerted by guidance note 17 to the requirement that the proposed new rent must start at the beginning of a period of the tenancy. Consequently, we were not satisfied that the form served by the Respondent was substantially to the same effect as the prescribed form.

(b) We were not satisfied that the date for the commencement of the new rent was the beginning of a new period of the tenancy.

(c) We were not satisfied that the notice had been served at least one month before the date given in the notice for the commencement of the new rent, namely 25th April 2003.

16. Having reached these conclusions, we were not satisfied that the notice proposing a new rent was a valid notice and consequently we found that we did not have jurisdiction to deal with the application.

Signed. R. Norman
Chairman