

**Rent Assessment Committee Decision and Extended Reasons.****Address of Premises**

50 Bradbourne Vale Road  
Sevenoaks  
Kent  
TN13 3QL

**The Committee members**

Mr R T A Wilson LL.B (Chairman)  
Mr B Simms FRICS MCI Arb  
Miss J Dalal

**1. Background**

- 1.1 On or about 15<sup>th</sup> March 2004, Keith Drury of the above property referred to the Committee a notice of increase of rent served by the Landlord under section 13 of the Housing Act 1988.
- 1.2 The Landlord's notice, which proposed a rent of £675 per month with effect from 1<sup>st</sup> May 2004, is dated 12<sup>th</sup> March 2004.
- 1.3 Mr Drury's application states that his tenancy has been transferred from his parents, and that he has no written tenancy agreement from the Landlord.

**2. Inspection**

- 2.1 The Committee inspected the property on 10<sup>th</sup> June 2004 and found it to be only in fair condition.

**3. Evidence**

- 3.1 No written representations were received from either party.
- 3.2 A hearing was held at Sevenoaks Community Centre on 10<sup>th</sup> June 2004 at

2.00 pm at which oral representations were made by Mr Drury. The Landlord did not attend and was not represented.

- 3.3 Mr Drury said that his parents had lived in the subject property for over 22 years up until January 2004 when they had moved into sheltered accommodation.
- 3.4 Mr Drury had lived in the property as a child and had left when he married. Unfortunately his marriage had not lasted and when he divorced, due to financial circumstances, he found it necessary to move back into his parents house. He could not remember exactly when he had moved back but it was certainly over four years ago.
- 3.5 In January 2004 his parents entered into correspondence with the Landlord with a view to surrendering the tenancy. Mr Drury did not have copies of the paper work but he was quite sure that the Landlord agreed to accept a surrender of the tenancy as at the end of February 2004. At the same time he entered into negotiations with the Landlord to “take over the tenancy”. He had been asked by the Landlord to provide evidence that he had lived in the property for over four years and this he did. At the beginning of March this year the Landlord confirmed that he could ‘take over’ the property. At that time he was paying a rent of £90 per week. Very shortly after he had ‘taken over the property’ his rent increased to £110 per week which he had accepted.
- 3.6 On or about the 13<sup>th</sup> March 2004 he received a further notice from the Landlord purporting to increase his rent to £675 per month with effect from the 1<sup>st</sup> May 2004. It was this notice that he was challenging and which was the subject matter of his application.
- 3.7 Mr Drury stated that he had not been given a rent book and he did not have a written tenancy agreement. He paid his rent in four weekly instalments by cheque to the freeholders at the beginning of each month. Initially cheques were sent to an address in Epsom but of late he had been sending his cheques to an address in Newcastle.

- 3.8 Mr Drury assumed that he had succeeded to his parents' tenancy although he didn't really know what the precise terms of the tenancy were. He was however, certain that it was only in March of this year that the succession or transfer had taken place. He produced a letter from the freeholders dated 12<sup>th</sup> March 2004 which contained the following paragraph:-

*"This letter is to confirm that on 1<sup>st</sup> May 2004 your rent will be increased to £675 per calendar month. Please find Section 13 Notice enclosed".*

The letter was addressed to Mr Drury at the subject property and was headed rent review.

- 3.9 Prior to reaching its final decision, the Committee decided to adjourn the proceedings to allow the Landlord, who was not in attendance at the hearing and was not represented, an opportunity to comment on the evidence submitted by Mr Drury.
- 3.10 Accordingly, on the 22<sup>nd</sup> June 2004 a letter was sent to both parties ("the Well's letter") in the form set out in the Schedule hereto.
- 3.11 Mr Drury responded to the Well's letter by stating that he had nothing further to add.
- 3.12 The Landlord did not respond to the Well's letter.

#### **4. The Law**

- 4.1 Section 13 of the Housing Act 1988 ("the Act") makes provision entitling the landlord under an assured periodic tenancy to secure an increase in the rent payable by the tenant. Section 13 (2) requires that for the purpose of securing such an increase the landlord must first serve on the tenant a notice 'in the prescribed form'. This prescribed form is provided for by the Regulatory Reform (Assured Periodic Tenancies) (Rent Increases) Order 2003.

- 4.2 In addition to using the prescribed form the landlord may only secure an increase in rent if the form incorporates the prescribed information. Amongst other things a valid rent increase date must be stated in the form. Section 13 (2) of the Act sets out in detailed terms the date on which a rent increase can be secured. The rent increase date must fall on a rent payment day and in the case of a periodic assured tenancy (subject to one exception which does not apply here) cannot operate earlier than 52 weeks from the commencement of the periodic tenancy.
- 4.3 The above constitutes merely a summary of the law as is relevant to this particular case. However, we make it clear that in coming to our decision we have had regard to the exact wording of the Act throughout.

## **5. Consideration**

### **5.1 The Tenancy**

- 5.1.1 The Tribunal considered the status of the applicant and the validity of the application. In the Tribunal's opinion, Mr Drury's assumption that he had acquired his parents' tenancy by succession is wrong in law. If a tenant under an assured tenancy dies, there can be a tenancy transmission, but the Tribunal heard evidence that the applicant's parents, who were the previous tenants, are still alive. Therefore the question of succession does not arise.
- 5.1.2 A Section 13 application can only be made in respect of an assured tenancy. The requirements for assured status are set out in Section 1 of the Act. An assured tenancy will exist if and so long as there is a tenancy of a dwelling house let as a separate dwelling to an individual. That individual must occupy the dwelling house as his only or principal home and the tenancy must not fall within any of the statutory exemptions.

- 5.1.3 In our opinion the evidence presented to us by Mr Drury establishes that Mr Drury does have the benefit of a monthly periodic assured tenancy albeit an oral one. The letter from the Landlord to Mr Drury dated the 12<sup>th</sup> March 2004 is material. The letter enclosed a Section 13 notice and referred to “a rent review”, and stated that Mr Drury’s rent would be increased to £675 per calendar month. We consider this letter amounts to an acknowledgement by the freeholder that they accept Mr Drury as a tenant of the property. Their service of a Section 13 notice is further evidence of this acceptance.
- 5.1.4 We further find that Mr Drury’s tenancy was not created earlier than the 1<sup>st</sup> March 2004 following the surrender of the previous tenancy in favour of Mr Drury’s parents.
- 5.1.5 Mr Drury gave evidence that he pays his rent four weekly on the first day of each month which suggests that the rent payment day is the first of each month.

## **5.2 The Section 13 Notice**

- 5.2.1 Section 13 (2) of the Act enables the Landlord to secure an increase of rent under an assured tenancy by serving a notice on the tenant in prescribed form proposing a new rent to take effect at the beginning of a new period of the tenancy as specified in the notice.
- 5.2.2 The Section 13 notice must be in a prescribed form, although a form ‘substantially to the same effect’ is permissible.
- 5.2.3 On the 11<sup>th</sup> February 2003 following amendments made to Section 13 of the Act, on the same date, form 4A which had been applicable since the 20<sup>th</sup> February 2002 was replaced by two new prescribed forms; 4B & 4C together with explanatory notes. In this case the Landlord has used the old form 4A and not the new prescribed form.

5.2.4 The form must specify the new rent and the date from which it is to take effect, which must be the beginning of a new period of the tenancy. On the evidence put to us, the beginning of a new period of the tenancy in this case is the 1<sup>st</sup> day of each month.

5.2.5 The effective date of increase must not be earlier than

- a) The minimum period of one month after the date of service of the notice
- b) Fifty-two weeks after the date on which the first period of the tenancy began and
- c) Fifty-two weeks from the date when the last increase took effect.

There is a correction mechanism that substitutes fifty-three weeks intermittently in certain cases, but this mechanism does not apply here.

5.3 In our opinion the evidence put to us establishes that Mr Drury has a tenancy which began no earlier than the 1<sup>st</sup> March 2004. That being the case the first effective date of increase relating to the tenancy cannot be earlier than the 1<sup>st</sup> March 2005. As the Section 13 Notice in this case states the 1<sup>st</sup> May 2004 as being the rent increase date, the fifty-two week period referred to above has not been complied with and we therefore find that the Section 13 Notice served by the Landlord is invalid. Furthermore it was not in prescribed form.

## 6. The Decision

We find that the Section 13 Notice proposing an increase in rent of £675 per month issued by the Landlord on the 12<sup>th</sup> March 2004 is invalid and of no effect.

Chairman

  
Mr R T A Wilson LLB

Dated

10<sup>th</sup> August 2004

## **THE SCHEDULE**

### **'The Well's letter'**

#### **SOUTHERN RENT ASSESSMENT COMMITTEE**

To: B.P.T. Limited & Mr Drury  
50 Bradbourne Vale Road, Sevenoaks, Kent, TN13 3QL

Case No: CHI/29UK/MNR/2004/0077

1. Following the inspection of the above property on the 10<sup>th</sup> June 2004 the Rent Assessment Committee has reached a provisional decision on the matter. At the hearing which took place on the same day as the inspection, Mr Drury appeared and made oral representations. The Freeholder did not attend and was not represented.
2. Mr Drury gave evidence which suggests that he has not succeeded to his parents' tenancy. Rather by conduct of the parties, he has acquired a new oral periodic tenancy which came into existence when his parents surrendered their tenancy and moved into sheltered accommodation in March 2004. If this is the case the Freeholders Section 13 Notice would be defective because the rent increase date stated in the Notice would be less than twelve months from the commencement of the tenancy.
3. The Freeholders have not had an opportunity to comment on these matters.
4. The Committee also found that the Section 13 form used by the Freeholder is not in the prescribed form as set out in the Regulatory Reform (Assured Periodic Tenancies) (Rent Increases) Order 2003. The Notice appears to be in the old format which was withdrawn in February 2003.
5. The Committee has given the matter due consideration and is minded to dismiss the application without assessing the rent. The reasons for this are:
  - a) The application is based on an old Section 13 Notice and is therefore not in the prescribed form.
  - b) It appears that the tenancy relating to this property only came into existence in March of this year. The rent review date referred to in the Landlords Notice is dated the 1<sup>st</sup> May 2004 and accordingly the effective date of increase is less than the fifty –two week period from the date of the start of the tenancy as required by Section 13 (3)(A) of the Housing Act 1988.
  - c) If the Committee decide to take this action the Landlord will be unable to recover any increase in rent under the said Notice. The Committee is aware that this decision is based on the Tenant's evidence alone

and it is possible that other documentation exists which establishes a tenancy from an earlier date. If this is the case then the Landlord may still be entitled to a rent increase notwithstanding having failed to use the prescribed Section 13 form.

- d) The Committee has not yet reached its final decision. In accordance with the provisions of Article 6 of the Human Rights Act 1988 (the right to a fair trial) it wishes to give both parties an opportunity to make written representations in the light of the findings set out above. It is possible that both sides may wish to take legal advice as to their position prior to making such written representations.
- e) Accordingly in accordance with the provisions of Regulation 8 of the Rent Assessment Committees (England and Wales) Regulations 1971 (SI 1971/1065) IT IS HEREBY ORDERED that these proceedings are hereby adjourned to enable both parties to consider these matters and take advice. Both parties are requested to make their written representations to the Committee within 21 days. On receipt of those written representations the Committee will reconvene to conclude the matter. It is not intended that there be a further hearing prior to the Committee reaching its' final decision unless either party within their written representations request such a hearing to enable them to make oral representations.

Dated 22<sup>nd</sup> June 2004

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Robert Wilson LL.B  
(Chairman)