

Rent Assessment Committee: Summary reasons for decision.**Housing Act 1988****Address of Premises**

Ground Floor Flat
10 Bernard Road
Worthing
West Sussex BN11 5EL

The Committee members were

Ms J A Talbot MA (Cantab)
Mr A O Mackay FRICS
Mr T W Sennett MA FC

1. Background

On 29/09/2003 the tenant 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.

The landlord's purported notice, which proposed a rent of £400.00 per calendar month with effect from 12/12/2003 is dated 12/09/2003.

The tenancy is an assured monthly periodic tenancy by succession, which commenced on 10/07/1998, immediately after the death of the original protected tenant, Mr G T Robertson, father of the present tenant, Ms Carol Robertson. The current rent is £386.00 per calendar month.

2. Inspection

The Committee inspected the property on 06/11/2003 and found it to be in good condition.

The property comprises a ground floor self-contained flat forming part of a two storey detached house completed on 06/11/1937, of brick construction under a tiled roof, situated on level ground in a pleasant and convenient location in west Worthing near

the seafront. The accommodation consists of 2 rooms, kitchen and bathroom/W.C., together with part of the front garden, an integral garage, and a designated part of the rear garden. It has replacement UPVC windows to the front and original metal windows to the rear. The quality of the pointing to the brickwork was generally poor, especially to the rear and south facing side walls. The kitchen and bathroom fittings are original and basic. The property does not have central heating. The heating provision consists of gas fires provided by the tenant. Hot water is supplied by a gas water heater provided by the landlord.

3. Evidence

The committee received written representations from the landlord and tenant, and these were copied to the parties.

Neither party requested a hearing at which oral representations could be made.

4. The law

In accordance with the terms of Section 13 of the Housing Act 1988, the Committee first had to decide whether it had jurisdiction to make a determination on the market rent. To make this decision, the Committee considered the validity of the purported Notice served by the landlord, and concluded that it was defective, for the legal reasons set out below.

Section 13(2) permits the landlord to secure an increase of rent under an assured tenancy within Section 13(1) by serving a Notice on the tenant in a prescribed form, proposing a new rent to take effect at the beginning of a new period of the tenancy specified in the Notice. Where there is a monthly periodic tenancy, which is the case here, the effective date of the proposed increase must also be not earlier than one month after the service of the Notice.

The Notice 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. In this case, of an assured tenancy by succession, the deemed grant is of a tenancy that takes effect in

possession immediately after the death of the protected tenant [as provided by Section 39(6)(a) Housing Act 1988]. This means that, where the original protected tenant dies and a member of his family succeeds to the tenancy, that tenancy will be a new assured tenancy, starting after the death of the original tenant. As indicated in paragraph 1 above, in this case the relevant date is 10/07/1998. This is the date given by the landlord in its written representations and agreed by the tenant. Thus, a new period of the assured tenancy begins on the 10th of each month.

The Committee noted that the purported Notice in this case is dated 12/09/2003, specifying the new rent to take effect from 12/12/2003. Although this gives more than the required minimum notice period of one month, the proposed effective date of increase of rent is incorrect, as 12/12/2003 is not the beginning of a new period of the tenancy in this case. The purported Notice is therefore defective.

5. The decision

The Committee therefore concluded that, because of the defective Notice, it did not have jurisdiction in this case, and was therefore unable to proceed further to determine the market rent for the property under section 14 Housing Act 1988.

As a result, unless or until the landlord serves a valid Notice complying with the requirements of Section 13, as explained above, the purported Notice is of no effect and the proposed new rent sought by the landlord is not recoverable. The rent therefore remains at the current level of £386.00 per calendar month.

Chairman J Talu

Dated 27/11/03

This document contains a full statement of reasons for the Rent Assessment Committee's decision.