

**THE SOUTHERN AREA RENT ASSESSMENT COMMITTEE
AND LEASEHOLD VALUATION TRIBUNAL**

Case Number: CHI/46UD/MNR/2004/0154

Committee: Mr Michael R Horton FRICS (Chairman)
Mr Peter D Turner-Powell FRICS

Premises: Vyne Lodge
Easton Common Hill
Winterslow
Salisbury
Wilts SP5 1QD

Applicant/Tenants: Mr R A Stokes and Mrs N J Stokes

Landlord: Mr A Nicolle

Inspection Date: 2nd December 2004

REASONS FOR THE DECISION OF THE COMMITTEE

1.0 Background

- 1.1 By an agreement dated 17th January 2004 the Landlord let the premises to the applicant, and Mrs N J Stokes, on an assured shorthold tenancy for a term of six months commencing 17 January 2004 at a rent of £1,300.00 per calendar month. At the end of the six month term the tenancy continued as an assured periodic tenancy at the same rent.
- 1.2 By an application dated 9 October 2004 the tenants, through their agent Mr A R Waight FRICS of the Property Services Department, Gloucestershire County Council, referred a Notice dated 19 August 2004, under the provisions of section 13(2) of the Housing Act 1988, to a Rent Assessment Committee.

The Notice, addressed to Mr R A Stokes, proposed a new rent of £1,500.00 per month from 10 October 2004.

2.0 Inspection

- 2.1 The committee inspected the property on 2nd December in the presence of Mr Stokes. The landlord did not attend the inspection and was not represented.
- 2.2 For the reasons outlined below the Committee do not propose outlining their findings at the inspection.

3.0 Consideration by the Committee

- 3.1 Following the inspection the Committee first considered the case papers and in particular the Notice's served by the respective parties.
- 3.2 The Notice served by the Landlord was addressed only to Mr Stokes. It is understood from the Landlord's representation that they had been advised by Gloucestershire County Council that Mrs Stokes had "*abandoned both the property and family*" at the time the Notice was served.
- 3.3 The Notice prescribed that the new rent should become payable from 10th October 2004 and not the first anniversary date of the tenancy which at the earliest effective date at the time the Notice was served would have been 17th October 2004.
- 3.4 In their representation dated 24th November the Landlord's agent, Castle Estates, effectively conceded the commencement date in the notice was incorrect and accepted the later date of 17th October as being correct.

4.0 Conclusions

- 4.1 The Committee concluded the Notice given by the landlord was defective and invalid and, as a result, they were unable to make a formal determination as to the rent payable.
- 4.2 Section 13(2) of the Housing Act 1988 (The Act) effectively states the Notice given must be in *the prescribed form* and specify a date which is the *anniversary* date of the commencement of the tenancy. Clearly this was not the case in this Notice.
- 4.3 The Committee gave consideration as to whether the defect could be rectified but concluded, applying the test adopted in *Carradine Properties Ltd v Aslam* (1977), "Is the notice quite clear to the reasonable tenant reading it?". They concluded it was not.

The Committee also considered the case of *McDonald and another v Fernandez and another* (Court of Appeal 2003). Although this case related to a Notice seeking possession of a property let under an assured periodic tenancy it does emphasise the importance of the correct date in a Notice where there is a prescribed form

In this case the notice to quit specified the first day of a new period of the tenancy and not the last day of the present tenancy. The appeal was dismissed and the Court determined the Notice was invalid.

It also noted the Landlord was not seriously prejudiced as a new Notice in the correct form could be served.

- 4.4 On this basis alone the Committee find the Notice to be invalid. They make no finding with regard to the fact that the Notice did not name the joint tenant Mrs N J Stokes.
- 4.5 While emphasising that this observation will not inhibit any consideration there may be by a Committee in the future, under another application, this Committee would not, in any event, have determined a rent higher than that already passing.
- 5.0 **Decision**
- 5.1 The Committee find the Notice given by the Landlord, dated 19 August 2004, to be invalid and, accordingly, make no determination as to the rent payable under the tenancy.

Dated 3rd December 2004

Signed:


Michael R Horton FRICS
Chairman