

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

**HOUSING ACT 1988 SECTION 13**

**DECISION OF THE RENT ASSESSMENT COMMITTEE**

**Case No:** CHI/29UB/MNR/2006/0054

**Property:** 42 Lakeside Place  
Chapel Road  
Hothfield  
Ashford  
Kent  
TN25 4LN

**Applicant:** Mr. E.G. Tutt

**Respondent:** Bevanpark Limited

**Date of Consideration:** 8th May 2006

**Members of the Committee:** Mr. R. Norman, Lawyer (Chairman)  
Mr. M.G. Marshall FRICS

**Date decision Issued:**

**RE: 42 LAKESIDE PLACE, CHAPEL ROAD, HOTHFIELD, ASHFORD,  
KENT, TN25 4LN**

**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 8th May 2006 the Rent Assessment Committee inspected the subject property. The Applicant and Mr. Kelly on behalf of the landlord consented to this application being heard together with the two other applications in a room at Lakeside Village.

3. The committee received written representations from the landlord and these were copied to the landlord. No written representations were received from the Applicant.
4. A hearing was held at Lakeside Village on 8th May 2006 at which the Applicant and the tenant of another property and Mr. Kelly and Mrs. Pudaruth on behalf of the landlord were present. Oral representations were made by the Applicant and by the tenant of the other property and on behalf of the landlord.
5. We first had to consider whether or not we had jurisdiction to deal with this application.
6. 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").
7. 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.
8. 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.
9. The "prescribed form" is now prescribed by the Assured Tenancies and Agricultural Occupancies (Forms) (Amendment) (England) Regulations 2003.
10. The date specified in the form served as the starting date for the new rent was the 1st May 2006 which was not, from the evidence before us, the beginning of a new period of the tenancy.

## **Determination**

11. We considered all the evidence produced to us and were not satisfied that the date for the commencement of the new rent was the beginning of a new period of the tenancy.
12. Having reached that conclusion, 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.
13. The notice before us being invalid did not operate to increase the rent but as the landlord is probably going to serve a new notice to increase the rent we informed the parties that in order to assist them we would indicate the rent which we would have determined on the evidence before us at the hearing had the notice been valid.
14. Mr. Kelly on behalf of the landlord was unable to explain why there should be a charge for ground rent as part of the additional elements of the rent.
15. While it is understandable that the landlord will wish to recover expenses and to make a profit, the landlord's liability to pay mortgage charges would have no effect on the rent at which the subject property might reasonably be expected to be let on the open market in that a prospective tenant could not be expected to pay more than the market rent just because the landlord had mortgage charges to meet.
16. Mr. Kelly gave evidence that the landlord pays 50% of some of the expenses on the basis that 50% of some of the work done by the staff is for the landlord rather than the tenant.
17. He also gave evidence that the District Valuer had applied a separate Council Tax band to each bed sitting room in place of the previous business rate assessment. However there was no similar explanation in respect of Water Rates.
18. The original tenancy agreement contained a provision that the landlord agreed with the tenant to pay for all gas (if applicable) and electricity consumed on the property and to pay any Council Tax and Water Rates payable in respect of the property and to indemnify the tenant against all charges relating to the property except those which the tenant had expressly agreed to pay. As a result the tenant could not be required to pay for electricity, Water Rates or Council Tax but could be required to pay a proportion of the service charges and for meals.
19. The only evidence of market rent levels supplied by the parties was that supplied on behalf of the landlord in written representations by Mr. Edwards and in oral evidence at the hearing by Mr. Kelly. The evidence was in respect of The Hawthorns, an establishment in Eastbourne. In written representations, Mr. Edwards stated that the types of properties and facilities offered at The Hawthorns were similar to those at Lakeside Village and that a studio apartment at The Hawthorns for

example cost up to £1,960 per month all inclusive. However, he pointed out that it was important to note that The Hawthorns facility does not have the capacity to provide any type of personal care or support to its residents should they require it. Lakeside Village does offer this enhanced service and its operation allows for demand for this support to be met through Care Village Group's own in-house domiciliary care service. Mr. Kelly explained that should a tenant at The Hawthorns become in need of additional care then the tenant would be asked to leave whereas at Lakeside Village there was the facility to purchase additional care.

20. However, we noted from the information provided on behalf of the landlord that the studio en-suite apartments at The Hawthorns included a small galley unit with sink and refrigerator which was not provided at the subject property and that there was the opportunity for residents at The Hawthorns to have a rent free holiday stay in the guest room of any Holiday Retirement Corporation facility in the USA, Canada or England, excluding travel costs.

21. Taking all these matters into account, the subject property could properly be compared with the upper end of the studio en-suite range at The Hawthorns.

22. We would have accepted the charge for meals at £468.00 and would have added to that the proportion of the service charges at £327.65 giving a total of £795.65 which we would have rounded up to £796 as the charge for services as part of the total rent of £1,937 per calendar month.

23. We must stress that the contents of paragraphs 13 to 22 are not a determination of the rent which could be charged but are merely an indication of the way we would have approached the calculation of the rent had the notice been valid.



R. Norman  
Chairman