Southern Rent Assessment Panel **File Ref No.** CHI/00ML/MDR/2006/0004

Rent Assessment Committee: Full reasons for decision.

Section 22 Housing Act 1988

Address of Premises

15 Stanmer Village
Brighton
BN1 9PZ

The Committee members were

Ms J A Talbot MA (Cantab) Chairman
Mr N J Cleverton FRICS
Ms J Dalal

1. The Application

On 24 February 2006 the tenant of the above property, Mr D F Thomas, made an application under Section 22(1) of the Housing Act 1988 ("The Act") to the Committee for a determination of the rent which, in the Committee's opinion, the landlord might reasonably be expected to obtain under an assured shorthold tenancy.

The original tenancy was a verbal periodic assured shorthold tenancy which commenced in February 2002. However, the rent referred to the Committee was £500 per month under a new tenancy agreement of the same property, a 6 month assured shorthold from 1 October 2005, following a change of landlord.

The implications of this are discussed further below.

2. The Law

The law is to be found in Section 22(3) of the Act, which provides that, where an application is made with respect to the rent under an assured shorthold tenancy, the Committee shall not make such a determination unless they consider:

(a) that there is a sufficient number of similar dwelling-houses in the locality let on assured tenancies (whether shorthold or not); and

(b) that the rent payable under the assured shorthold tenancy in question is significantly higher than the rent which the landlord might reasonably be

expected to obtain under the tenancy, having regard to the level of rents payable under the tenancies referred to in paragraph (a) above.

Section 22(2)(aa) further provides that the Committee cannot entertain an application if the tenancy was entered into on or after 28 February 1997 and more than 6 months have elapsed since the beginning of the tenancy, or in the case of a replacement tenancy, since the beginning of the original tenancy.

3. Inspection

The Committee inspected the property on 26 March 2006 and found it to be in good condition. The property comprises a three-storey cottage in a terrace of four constructed of brick and flint in the early 19th century with a tile hung porch and attic dormer. It is located in the small village of Stanmer, in Stanmer Park, off the main A27 road near Falmer. The village consists of one street and church with no shops or amenities except for a café serving mainly visitors to the park.

The accommodation is arranged on three floors and consists of a kitchen/breakfast room with appliances, narrow living room with open fire, and bathroom/WC on the ground floor, 2 rooms on the first floor, and an attic room on the top floor. This room, used for storage, is accessed by a steep narrow staircase. It has a small dormer window to the front and little natural light, and no electric sockets. Space heating to the ground floor and water heating is provided by a solid-fuel fired and renovated Rayburn stove on the ground floor.

Externally the cottage has good-sized front and sloping rear gardens, with a large shed and coal hole at the rear. The windows are generally in good condition and decorative order. The tiled roof has some missing slates and moss growth but is generally in fair condition.

4. Evidence

The committee received written representations from the landlord and tenant and these were copied to the parties. A hearing was held on 26 March 2006 at Hove Town

Hall at which oral representations were made by the tenant, Mr Thomas. The landlord did not appear and was not represented.

At the inspection, and later at the hearing, Mr Thomas told the Committee that he had lived at the property since February 2003, when his landlord was the former estate farmer David West. He did not have a written tenancy agreement but he did have a rent book. Their oral agreement was that the rent was £60 per week along with some work mowing lawns. When Mr Thomas moved in the cottage was in poor condition. Over the first two years he carried out some improvements to the property, including installing modern kitchen units, flooring and carpets, decorating the dining area, and renovating the Rayburn.

In 2005 Mr West ceased farming and the estate was taken over by Brighton and Hove Estates Conservation Trust, whose managing agent is Mr Stanley of Smiths Gore. Mr Thomas's evidence was that Mr Stanley visited him at home in September 2005 to explain that Mr West was leaving and that there would be a new tenancy agreement with the Trust and that the new rent would be £500 per month.

Mr Thomas arranged for a standing order to be set up for payment of the new rent from 1 October 2005 (together with £16, the proportion for the remaining days of September). He informed the Council of the increase because he was in receipt of Housing Benefit. He did not receive his new written tenancy agreement until November. It arrived by post, he signed it and sent it back to the Trust's solicitors.

Mr Thomas later found out that his neighbours at 9, 7 and 2 Stanmer Village, similar sized properties, were paying a lower rent of £390 and £350 per month, having applied to a previous differently constituted Rent Assessment Committee. He could not understand why this should be. He spoke to Mr Stanley, who told him that he would consult the Trust and advised him to apply to the Rent Assessment Committee.

5. The decision

The Committee decided that it had no power to make a determination, because Mr Thomas's original tenancy of the property had started more than 6 months ago, in

February 2003. Although he had signed a new tenancy agreement commencing on 1 October 2005, he was not entitled to apply to the Committee under Section 22 of the 1988 Act, because he was not within the first 6 months of his original tenancy agreement.

The Committee had a copy of the previous Decisions in relation to 9, 7 and 2 Stanmer Village dated 21 December 2005. These showed that, in those cases, the landlord had served Notices of increase of rent under Section 13 of the 1988 Act, which the tenants had referred to the Committee. The Committee had determined the rents payable from in accordance with Section 14 of the 1988 Act.

However, as the Chairman explained to Mr Thomas at the hearing, it was clear that no Section 13 Notice had been served on him. His neighbours had been entitled to refer their Notices to the Committee, and that is why there had been a determination; in the absence of a Notice of increase, he had no such entitlement.

It appeared to the Committee that the likely reason for this state of affairs was that the landlord had taken Mr Thomas to have agreed to the rent increase, by virtue of arranging the standing order and paying the increase without demur. The Section 13 notice procedure does not apply where the tenant accepts the new rent by agreement. Presumably, his neighbours had not agreed to pay, so that was why the landlord had served notice on them.

It was understandable that Mr Thomas should regard this situation as unfair. It is of course always open to the parties to agree a rent reduction.

All of the above was explained to Mr Thomas at the hearing, along with a recommendation that he should take independent advice about this Decision if he required further information and advice.

Chairman J Talbot

Ms J A Talbot, Solicitor

Chairman

26 April 2006

Dated

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