

Address of Premises

Southwood Cottage
Strete
Blackpool
Dartmouth
Devon
TQ6 0PN

The Committee members were

Mr J B Tarling MCMl
Mr M C Woodrow MRICS
Dr M L James MA BA FRSA

Parties:

Landlord: Mr D.E. Harris

Tenant: Mr H. J. Cardell

DECISION OF THE RENT ASSESSMENT COMMITTEE

1. Background to the Application

(a) The tenant had been employed for some years by the landlord as a cowman on the landlord's farm. Although there was no written contract of employment it seemed likely that it was either an implied or express term of that contract of employment that the tenant was required to occupy the subject premises, Southwood Cottage. It is also likely that such occupation was an agricultural occupancy. In February 2005 the landlord wrote to the tenant informing him that the landlord had decided to sell the cows and cease milking and the tenant was being made redundant. In that letter the landlord offered the tenant a tenancy of Southwood Cottage. No precise terms of any such tenancy were suggested at that time other than the fact that there would have to be a tenancy agreement drawn up and rent would be charged. The amount of rent was not mentioned

(b) In March 2005 a meeting took place between the landlord and tenant and various discussions resulted in a letter dated 19th March 2005 being written by the landlord to the tenant in which terms of an Assured Agricultural occupancy Tenancy were offered. That letter included the words "At present you have an Assured Agricultural tenancy and after redundancy on 30th April this will be subject to an open market rent of £595 per calendar month from 1st May 2005. This is line with what you suggested." The letter went on to set out various conditions that were to be included in the tenancy agreement.

(c) On 27th April 2005, just a few days before 30th April 2005 when the redundancy took effect, the landlords Solicitors wrote to the tenant enclosing a tenancy agreement for signature. The letter suggested the tenant should take independent legal advice if he had any questions. The tenant went to the local Citizens Advice Bureau and took advice. He was advised not to sign the tenancy agreement and was told "it was not worth the paper it was written on". The tenant told the landlord that he had been advised not to sign it.

(d) On 9th May 2005 the landlords Solicitors served on the tenant a Notice of Increase under Section 13 (2) of the Housing Act 1988. This purported to increase the rent to £695 per month in place of the existing rent of £NIL. The increase was expressed to take effect on 1st July 2005.

(e) The tenant was anxious to receive the redundancy money that was due to him from the landlord. The landlord had asked the tenant for the first month's rent of £695. The landlord wrote to the tenant on 24th May 2005 enclosing a Cheque for the Redundancy payment of £2,105, having deducted the sum of £695 for the first month's rent. Enclosed with that letter was a form of Receipt. The Receipt included the words "I agree to the first month's rent being deducted from the redundancy payment owed to me" Underneath the tenant had written the words "Subject to Rent Assessment" and had signed it and dated it 28th May 2005.

2. Preliminary matter of jurisdiction

The Law – Section 13(4) of the Housing Act 1988 provides that where a notice is served under subsection (2) of *Section 13*, a new rent specified in the notice shall take effect as mentioned in the notice unless, **before the beginning of the new period specified in the notice,-**

- (a) the tenant by an application in the prescribed form refers the notice to a rent assessment committee; or
- (b) the landlord and the tenant agree on a variation of the rent which is different from that proposed in the notice or agree that the rent should not be varied.

3. Inspection

The Committee inspected the property on 1st September 2005. The property, Southwood Cottage, is a farm cottage with a living room, dining room, kitchen and utility room (with shower tray) on the ground floor and 3 bedrooms and bathroom/wc

on the first floor. It was semi-detached and adjacent to another derelict and unoccupied cottage. Included with Southwood Cottage were areas of land surrounding the property on which the tenant kept chickens and poultry. The cottage was in a poor state of repair and decoration.

4. Hearing

A Hearing took place at Kingsbridge, Devon on 1st September 2005. The tenant was present as was the landlord, Mr Harris accompanied by Mrs Harris. The Landlord was represented by Mr Lloyd M.W. Smale, FRICS of Rendells, Chartered Surveyors from Exeter.

The first matter that had to be decided was whether the Committee had jurisdiction to consider the tenant's reference of the Notice of Increase to it. The landlord maintained through his Solicitors that the Notice of Increase had not been referred to the Committee before the date when the increase took effect, namely 1st July 2005. The effect of this would be that the rent would automatically be increased to £695 per month. There was a second Application Form, which the tenant had submitted dated 10th July 2005, which was after the date on which the increase was to take effect. Both parties gave evidence to the Committee about the facts surrounding the service of the Notice and the reference of the Notice to the Committee. The Committee also had before it correspondence from the landlords Solicitors in which they challenged the date on which the tenant had referred the Notice to the Committee.

The tenant gave evidence to the Committee and confirmed that as soon as he had received the Notice of Increase from the landlords Solicitors he had telephoned the Committee's office in Chichester and had asked for an Application Form to be sent to him. He received that Application Form and completed it and signed it. He sent it to the Office in Chichester and was certain that he enclosed with the Application Form the Notice of Increase and a copy of the tenancy agreement. He had had the tenancy agreement copied when he had gone to the Citizens Advice Bureau. He had sent the letter by Recorded Delivery post.

There was evidence before the Committee that a letter was received at the Office in Chichester but the original letter and its enclosures had been lost in the Committee's office. A letter from the Royal Mail dated 21st July 2005, copies of which had been disclosed to the parties prior to the hearing, confirm that a Recorded Delivery letter was delivered to the Office on 25th May 2005 and a photocopy of the signature of one of the Committee's Clerks was produced.

The landlord was given an opportunity of cross-examining the tenant regarding his evidence, but said he relied upon the correspondence submitted by his solicitors on his behalf.

5. Consideration of preliminary point of jurisdiction

The Committee then retired to consider the evidence and make a decision on whether or not the Notice of Increase had been referred to the Committee before the 1st July 2005. The Committee considered carefully the evidence that it has read and heard from the parties. The tenant's oral evidence given in answer to the Committee's questions was clear and spontaneous. He remembered speaking to a man in the Committee's Office in Chichester on a number of occasions and it was always the same person. He was certain that he had posted the Application Form and the Notice of Increase and copy tenancy agreement to the Committee's office by Recorded Delivery. The evidence from the Royal Mail confirming the receipt of that Recorded Delivery letter on 25th May 2005, which was well before the deadline of 1st July. The landlord had been unable to challenge any of this evidence and on a balance of probabilities the Committee decided to accept the evidence of the tenant. **The Committee found that the Notice was referred to the Committee prior to 1st July 2005 and accordingly the Committee has jurisdiction to hear the tenant's Application.**

6. Matters concerning the validity of the Notice of Increase

The Committee then turned its attention to the matter of the validity of the Notice of Increase. It was concerned that the Notice might be defective as it was attempting to increase a rent of an Assured Agricultural Occupancy Tenancy before the first anniversary of the commencement of the tenancy.

The Law relating to these provisions is contained in Section 13 (2) of the Housing Act 1988. This provides that "...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, **the first anniversary of the date on which the first period of the tenancy began;**

Section 24 (3) of the Housing Act 1988 provides that the provisions of Chapter 1 of that Act apply to every assured agricultural occupancy as if it was an assured tenancy.

7. At the Hearing the tenant had given evidence to the Committee that so far as he was concerned his contract of employment ended on 30th April 2005 when he was made redundant. He did not believe he had any tenancy before 30th April 2005 and certainly did not pay any rent. He did not have any written contract of employment, which required him to be liable as a tenant. He was under the impression that his tenancy commenced on 1st May 2005. That was the commencement date in the tenancy agreement, which the landlords Solicitors had sent him. He had not signed it, as he was advised not to by the Citizens Advice Bureau. He did not know why they had given him that advice. All they had told him was “that it was not worth the paper it was written on.”
8. So far as the rent was concerned the tenant took the view that he had received a letter from the landlord dated 19th March 2005 offering him a tenancy commencing on 1st May 2005 at the rent of £595. He was happy to accept that amount of rent and had been to see the Housing Benefit Office to claim Housing Benefit. They had told him that they needed a Section 13 Notice to enable them to consider his claim. He did not agree to the rent of £695 per month. When he signed the Receipt, which the landlord had prepared, he was desperate to receive his Redundancy money as his Bank were pressing him for some money and would not send him a Chequebook. He did not agree the rent of £695 and made his signature on the receipt conditional on the matter being reviewed by the Rent Assessment Committee. That is why he added the words “Subject to Rent Assessment” on the Receipt before he signed it.
9. The landlord took the view that the tenant had agreed the rent of £695 and wished the Committee to determine the rent in accordance with the powers under Section 14 of the Housing Act 1988. In respect of the rent increase from £NIL to £695 per month, the landlord took the view that there had been an assured tenancy at a rent of £NIL up to 30th April 2005. The rent of £NIL had commenced at the time the tenant had commenced work some years earlier. Accordingly the landlord argued that the Notice of Increase was valid as this was an increase, which took effect after the first anniversary of the commencement of the tenancy. The landlord was unable to produce any documentary evidence in support of his contention that there had been an assured tenancy and confirmed that there had been no written contract of employment. In respect of the tenancy, which might have commenced on 1st May 2005 at the rent of £595 per month, he took the view that the tenant

had not signed the tenancy agreement and hence no new tenancy had come into operation.


10. Consideration

Following the conclusion of the hearing the Committee retired to consider its Decision. It reminded itself of the provisions of Section 13 (2) of the Housing Act 1988 and reviewed the evidence of the parties. The tenant's evidence was quite clear. He believed his assured tenancy did not commence until 1st May 2005. The rent under that tenancy was £595. That is the amount that is in the tenancy agreement and the letter from the landlord dated 19th March 2005. On looking at the tenancy agreement in detail the Committee noticed that it contained a rent review clause. The effect of this is that the jurisdiction of the Committee to determine any future rent increase was prohibited by Section 13 (1)(b) which contains the words "other than one in relation to which there is a provision, for the time being binding on the tenant, under which the rent for a particular period of the tenancy will or may be greater than the rent for an earlier period". It became clear to the Committee that it is possible that the reason why the tenant was advised by the Citizens Advice Bureau not to sign the tenancy agreement was because it contained a rent review clause. The tenant had amended the Receipt prepared by the landlord to provide for the Rent Assessment Committee to have jurisdiction over any rent increases in future. If he had signed the tenancy agreement, which contained a rent review clause, this would have prevented any future application to the Rent Assessment Committee from taking place.

11. The Committee decided that the Notice of Increase was invalid. The reasons for this were that there was sufficient evidence to suggest that an assured tenancy had commenced on 1st May 2005 at the rent of £595 and the weight of evidence produced to the Committee as set out above supported this view. It accepted the evidence of the tenant that such an assured tenancy had commenced on 1st May 2005. Having made that decision the Committee then applied the law in Section 13 (2) of the Housing Act 1988. As there had been a rent of £595 per month which had commenced on 1st May 2005 it was not possible for the landlord to serve a Notice of Increase until after the first anniversary, namely after 1st May 2006. Accordingly for the reasons given above the Committee declines to determine the rent set out in the Notice of Increase.

12. If the Committee are wrong about the formation of the tenancy it is open for either party to make an application to the County Court for a declaration as to the terms or existence of such tenancy. The Committee expresses a view that it is hoped both parties attempt to resolve their differences without the need for litigation.

Dated this 6th day of September 2005



John B. Tarling, MCMI
(Chairman)