

Date of Decision 19th February 2007

(4) Where a notice is served under subsection (2) above 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 “

Facts Found

- 5 The tenant Micahel Byrne originally entered into a lease for five years on 25th December 1969 at an annual rent of £850 payable by “equal quarterly payments on the usual quarter day
- 6 From 25th December 1974 the tenant held over under the Rent Act as a regulated tenant until his death on 3rd August 2006. the rent had been registered by the rent officer on a number of occasions the last of which was on 2nd September 2005 in the sum of £4095 per quarter
- 7 The tenant’s daughter Ms B Prior-Byrne had lived with the tenant prior to his death and succeeded to the tenancy in August 2006. There may be an issue as to whether the new tenant acquired her interest on 3rd August , the date of her father’s death or 4th August , the following day but for the purposes of this decision the tribunal does not have to decide that issue
- 8 The landlord served a notice dated 26th November 2006 to take effect on 2nd March 2007 proposing a new rent of £72,000 per annum. On 9th December 2006 the landlord served a rent demand for the period 25th December 2006 to 24th March 2007 calculated on the basis of the old rent up to 2nd March and thereafter at the increased rate.

Reasons for Decision

- 9 The original fixed term tenancy expired on 25th December 1974 and the presumption is that the tenant held over on an annual tenancy terminable on six months notice. This presumption is rebuttable **(see Adler –v- Blackman (1953) 1QB 146** but the court will have regard to the terms of the original letting

- 10 Ms Muir in her opinion concluded that the tenancy was a quarterly tenancy and that the periodic quarters had been adjusted to 2nd September, 2nd December 2nd March and 2nd September while Mr Dencer concluded that it was a periodic annual tenancy terminable on 6 months notice .
- 11 She concluded that it could not be terminated until after 3rd August 2007 because of the 52 week rule but that the dates for termination were valid
- 12 The Tribunal does not consider that the 52 week rule applies here as it is a statutory periodic tenancy If she had not reached this conclusion she would have held that the notice was valid
- 13 However the Tribunal considers that this is an annual tenancy which requires to be determined on a six month notice notwithstanding the registration in September 2005 by virtue of the provisions of Section 39(6) of the Housing Act 1988 which by subsection (e) provides
- “under which subject to Sections 13 to 15 the other terms are the same as those on which under his tenancy ,the predecessor occupied the dwelling-house immediately before his death “*
- 14 The Tribunal concludes that those terms were not varied by the rent registration which merely prescribed the dates when the increased rent took effect rather than when it became due under the tenancy
- 15 Accordingly the Tribunal concludes that the tenancy is not terminable on 2nd March 2007 or on the quarter days ending on 2nd June, September or December so that the notice which was served by the landlord is not valid and cannot take effect before August 2007 not for the reasons given by Ms Muir but for the reasons advanced by Mr Dencer namely that the tenancy in question is an annual tenancy

Peter Leighton

19th February 2007

