

**MIDLAND RENT ASSESSMENT PANEL
BIR/00CW/MNR/2006/0133**

HOUSING ACT 1988 – SECTIONS 13 and 14

FLAT 43 BROMLEY HOUSE, WOLVERHAMPTON, WEST MIDLANDS WV14 5TP


DETERMINATION AS TO JURISDICTION

1. This decision concerns a preliminary issue as to the jurisdiction of a Rent Assessment Committee to make a determination under Section 14 of the Housing Act 1988 ("the 1988 Act").
2. The tenant Margaret Bradley holds the Premises under an Assured Period Tenancy which began on the 17th March 2003. The landlord of the property is Heantun Housing Association.
3. By Notice dated 16th June 2006 ("the Landlord's Notice") the Landlord proposed a new rent of £79.50 per week and a starting date for the new rent of 17th July 2006. The Notice was expressed to be pursuant to Section 13 (2) of the 1988 Act as amended by the Regulatory Reform (Assured Periodic Tenancies) (Rent Increases) Order 2003. The Landlord's Notice was defective in that it indicated a reduction of rent based upon the stated existing rent of £82.05. The Landlord sought to amend the Landlord's Notice by letter dated 19th June 2006 enclosing a revised copy of "schedule form No. 4B" and indicated that the original Notice "had your current rent and proposed rent in the wrong order."
4. By an Application dated 4th July 2006 (the "Tenant's Application") the Tenant referred the Notice proposing a new rent under an Assured Periodic Tenancy to a Rent Assessment Committee pursuant to Section 13 (4) of the 1988 Act.
5. In order to determine a rent under Section 14 of the 1988 act a Rent Assessment Committee must have a valid application from the Tenant under Section 13 (4) in the prescribed form. That application must refer to a valid Section 13 (2) Notice from the Landlord. Under section13 (2) of the 1988 Act the Landlord is required to 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."
6. The Assured Tenancies and Agricultural Occupancies (Forms) (Amendment) (England) Regulations 2003 (the "2003 Regulations") which came into force on 11th February 2003 amended the Assured Tenancies and Agricultural Occupancies (Forms) Regulations 1997 ("the 1997 Regulations"). The 2003 Regulations provide that a Notice under Section 13 (2) of the 1988 Act proposing a new rent for an assured tenancy of premises situated in England shall be in Form 4B. Form 4B and guidance notes are reproduced in their entirety in the schedule to the 2003 Regulations.

7. The 1997 Regulations provide that any reference to a numbered prescribed form is a reference to a form bearing that number or to a form "substantially to the same effect." The issue for determination is whether the Landlord's Notice is substantially to the same effect as Form 4B as prescribed by the 2003 Regulations.
8. A Rent Assessment Committee was constituted for the determination of the preliminary issue and a hearing was held on 10th October 2006. The Committee was satisfied that both the Landlord and the Tenant had notice of the hearing. Neither party asked for an oral hearing to be arranged. Neither party attended. Written representations were received from the Landlord enclosed with a letter dated 25th September 2006 submitting that what had taken place was no more than "clarification of a technical matter which we do not believe to amount to a material change to the proposed rent increase, other charges or the timing of their implementation." The Landlord's representations also indicated "our actions were carried out in good faith and with the intention of providing the Tenant with proper and reasonable notice of those charges."
9. The Committee considered the Landlord's Notice and found as fact that although the Notice was described as being "Form No 4B" the Notice differed from the form prescribed by the 2003 Regulations as follows :-
 - (a) The Landlord's Notice of 16th June did not propose an "increase of rent" as required by Section 13 of the 1988 Act. The Committee therefore determined that it was defective and of no effect.
 - (b) Although the Landlord's Notice refers to the "notes over the page" the Committee determined that no guidance notes accompanied the Landlord's Notice.
 - (c) The letter of 19th June 2006 purporting to amend the Landlord's Notice failed to allow "a period beginning not earlier than the minimum period after the date of the service of the Notice" (Section 13(2)(a)). The minimum period in the case of a tenancy where the period is less than one month is one month (Section 13(3)(a)).
10. The Committee considered the dicta of Mummery L J in *Ravenseft Properties Limited v Hall* [2002] 1 EGLR 9

"The question whether a notice [under section 20] was in the prescribed form or in a form "substantially to the same effect" was a question of fact and degree in each case turning on comparisons between the prescribed form and the particular form of notice given."
11. In determining the validity of the Landlord's Notice the Committee had regard to the purpose of the information contained in the prescribed form and guidance notes and its relevance to the individual circumstances of this particular reference by the Tenant.
12. The Committee found that the form used by the Landlord entirely omitted the guidance notes, initially purported to decrease the rent and when amended did not allow the minimum period after the date of service, and accordingly that the Landlord's Notice was not substantially to the same effect as the prescribed form.

13. The Committee therefore determines that the Landlord's Notice was not in the prescribed form or in a form substantially to the same effect. It follows from that determination that the Landlord's Notice was an invalid Notice for the purposes of Section 13 (2) of the 1988 Act and that accordingly the Committee has no jurisdiction to make a determination under Section 14 of the 1988 Act on the Tenant's Application.

Signed 
DAVID JACKSON (Chairman)

Date **12 OCT 2006**