

LONDON RENT ASSESSMENT PANEL



Ref: LON/00BK/MNR/2006/0269

DECISION AND REASONS OF RENT ASSESSMENT COMMITTEE

HOUSING ACT 1988 Section 13

ADDRESS: 17 WHITLEY HOUSE CHURCHILL GARDENS ESTATE CLAVERTON STREET LONDON SW1V 3BH

Landlord: Mr Anthony Moussaioff

Tenant: Mr Vernon Hale

Date of the decision: 13 December 2006

Decision

The Committee does not have jurisdiction to determine this application for the reasons stated below.

Preliminary

An application referring a Notice proposing a new rent was sent to the Committee on the 1 September 2006.

A hearing was offered but neither party sought one. The parties sent in written representations.

The Law

A landlord under an assured tenancy has the right to serve notice each year proposing an increased rent if the tenancy is a statutory periodic tenancy or another periodic tenancy (other than one containing a rent review). This is provided for in section 13 of the Housing Act 1988. The landlord may serve a notice under section 13 no earlier than 52 weeks after the date on which the first period of the tenancy began (section 13(2)).

Where a tenant is served with a notice under section 13, the tenant has the right to refer the notice to the rent assessment committee (1988 Act, s 13(4)). Under section 14 of the Act, the committee must determine the rent that would reasonably be expected on a

letting in the open market. The committee is not required to continue with their determination if the landlord and the tenant give notice in writing that they do not require such a determination (or if the tenancy has come to an end) (1988 Act, s 14(8)). A tenancy is an assured tenancy if it falls within Part I of the Housing Act 1988.

A tenancy cannot be a protected or a statutory tenancy under the Rent Act 1977 if it was entered into on or after the 15th January 1989 (the date of commencement of Part I of the Housing Act 1988) unless it falls within one of the exceptions in section 34 of the Housing Act 1988.

Where a tenant under the Rent Act 1977 dies and is survived by another member of their family who had been residing with them for at least two years at the time of death, that family member succeeds to an assured tenancy (Rent Act 1977, sections 2,3 and Schedule 1. Where an assured tenant is granted a new tenancy by the landlord, the new tenancy is also an assured tenancy (Housing Act 1988, Schedule 2A, paragraph 7).

Facts found

The position is not entirely clear, but on the basis of the documents received by the Committee, including a copy of a tenancy agreement dated 16 May 2006, the Committee found the following facts. The tenant, Mr Vernon Hale succeeded to the tenancy of flat 1, 4A Lupus Street, London SW1 in 1991. For some years, however, the landlord and Mr Hale assumed that he was a tenant protected by the Rent Act 1977. It appears that at some time in 2006, following negotiations between those advising him, Mr Hale agreed to give up this tenancy in return for a new tenancy of flat 17, Whitley House, Churchill Gardens, London SW1. He signed an agreement with the landlord Hobart Land Limited in May 2006 for a period of one year from the 10th May 2006. The rent payable was £48.50 per week which according to the agreement is subject to revision by the rent service. The tenancy also referred to the tenant not having an assured shorthold tenancy and having a protected tenancy. The landlord applied to the rent service on the 18 July 2006 to register a fair rent under the Rent Act 1977. But the rent officer declined jurisdiction as she considered that Mr Hale is an assured tenant, not a protected tenant. A new landlord Mr A Moussaioff purchased the premises on the 29th August. On the 1st September 2006 the landlord through his solicitors, Kosky Seal, served notice under s 13 of the Housing Act 1988 proposing an increased rent. Acting on advice, the tenant referred the notice to the Committee for a determination under s 14 of the 1988 Act. Written representations made on behalf of the landlord and the tenant were received. The landlord's solicitors argue that the original rent was agreed on a false premise. The tenant's advisors (Westminster Citizen's Advice) stated that the tenant now agreed to the rent proposed in the landlord's notice given under s 13 of the 1988 Act and asked to withdraw the application for a determination under s 14 of that Act.

Reasons for Decision

The tenant is an assured tenant. On the 10 May 2006 he became an assured tenant of new premises. The agreement is for a fixed term of one year at a rent of £48.50 per week. The rent provisions in the fixed term written agreement do not bind the parties as the fair rent provisions in the Rent Act 1977 do not apply to an assured tenancy. The current landlord purchased the premises subject to this tenancy. The landlord has no right to seek an increase rent until the end of the fixed term. The landlord was not entitled to serve the notice under section 13 of the Housing Act 1988 and this notice has no legal effect. Accordingly, the Committee has no jurisdiction to determine the market

rent for the dwelling. The tenant had no right to withdraw the reference of the section 13 notice to the Committee without the written agreement of the other party.

Chairman James Driscoll

Date 18 December 2006

Committee

Professor J M Driscoll
Mr L Jarero BSc FRICS
Dr A M Fox BSc PhD MCI Arb

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