

MIDLANDS RENT ASSESSMENT PANEL
File Reference No: BIR/41UG/MNR/2004/0085

RENT ASSESSMENT COMMITTEE
Housing Act 1988 S.13

DECISION NOTICE REGARDING JURISDICTION

5 EASTLANDS GROVE, STAFFORD, STAFFORDSHIRE, ST17 9BE

1. On 21st September 2004 the Landlord of the above property, Northumberland and Durham Property Trust Limited, acting by their agents, Boot and Son, served on Mr. and Mrs. B.S. Booth as Tenants, a notice proposing a new rent of £450.00 per month to be payable from Monday 25th October 2004.
2. Section 13(2) of the Housing Act 1988 ('the Act') states that

 'for the purpose of securing an increase in the rent under a tenancy to which this section applies 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...'.

3. Section 45 of the Act states that 'prescribed' means prescribed by regulations made by the Secretary of State by statutory instrument.
4. The form currently prescribed is Form 4B contained in The Assured Tenancies and Agricultural Occupancies (Forms) (Amendment) (England) Regulations 2003. These regulations amend The Assured Tenancies and Agricultural Occupancies (Forms) Regulations 1997.

5. On 26th September 2004 the Mr. and Mrs. Booth applied to the Midlands Rent Assessment Panel referring the Landlord's notice to a Rent Assessment Committee under Section 13(4) of the Act.
6. Because there were doubts as to whether the Landlord's notice complied with the provisions of the Act a Committee was appointed to hold a preliminary hearing on Tuesday 9th November 2004 in Stafford to determine whether they have jurisdiction as they are unable to make a determination under the Act if the Landlord's notice proposing an increase is invalid.
7. Written representations were received from both parties establishing that the Landlord's Notice included the Guidance Notes printed on the reverse of the form used by the Landlord, as it was not clear from the referral by the Tenant that this was the case.
8. At the Hearing Mr. T.W. Boot of Boot and Son appeared for the Landlord. Mr. and Mrs Booth appeared in person. Following questions raised by the Committee they identified the matters arising in the case and made findings on them as follows:
 - (a) It is apparent that the present tenancy arises following the death of Mr. Booth's mother who was a statutory tenant holding a tenancy governed by the Rent Act 1977. Accordingly Mr. Booth alone now holds under an assured tenancy that he became entitled to by succession under Part 1 of Schedule 1 to the Rent Act 1977. He had resided in the property all of his life and when he got married his wife came to reside with him, and with his mother. The Landlord's Notice is addressed to Mr. and Mrs Booth, which is clearly wrong as there is no provision in Part 1 of Schedule 1 to the Rent Act 1977 allowing for transmission to joint tenants
 - (b) By virtue of Section 39(6) of the Act, where a successor becomes entitled to an assured tenancy by succession, that tenancy is one 'taking effect in possession immediately after the death of the tenant on whose death the successor became so entitled'. It was established that Mrs. Booth senior died on Tuesday 16th May 2000. Accordingly the date of commencement of the new rent must be on a Tuesday. The date inserted in the Landlord's notice is 25th October 2004 which is a Monday.

(c) Mr. Boot stated that the Tenant was paying rent calendar monthly. Mr Booth stated that he paid his rent four weekly directly to the Landlord by Giro, but that added to the four weeks rent of £192 was an additional amount of £16.56 in respect of water rates making a total of £208.56. This arrangement had subsisted for many years, including the period during his mother's tenancy. It appeared to the committee that Mr. Boot had reached the conclusion that the rent was paid calendar monthly because, by coincidence, a calendar monthly payment of a rent of £48 per week is almost exactly the same, i.e. £208.00. This mistake was perhaps understandable because the Landlord only purchased the property this year, and the rent is not paid through Mr. Boot's agency. The Committee accepted the evidence of Mr. Booth on this point which means that the Landlord's Notice is deficient in that the existing rent shown in Paragraph 2 of the Notice should include the amount of the water rates and these should then be separately shown in paragraph 5 of the Notice, both in respect of the old and the proposed rent.

DETERMINATION

For the reasons specified above the Committee determine that the Landlord's Notice is invalid. In consequence they do not have jurisdiction in respect of the application to them.



W. J. Martin - Chairman

Date of Decision: **25 NOV 2004**

Committee Members: W.J. Martin
K.G. Bloor FRICS
K. Bentley

Clerk: Claire Jones