BIR/17UH/MNR/2004/0015

FLAT 2, 300 NORMANTON ROAD, DERBY DE23 6WE

THE COMMITTEE'S DETERMINATION AS TO JURISDICTIOM

Background

1. Mr Verrill holds a tenancy of Flat 2, 300 Normanton Road from the Walbrook Housing Association. It appears that he first became an assured shorthold tenant of the landlord for a period of one year from 14 August 1995, and that thereafter he had a series of consecutive assured shorthold tenancies of the same flat from the same landlord, each for a period of one year, until August 1999. On 14 August 1999 he was granted a new tenancy. The terms of the tenancy agreement are unusual and contradictory. The agreement is headed "TENANCY AGREEMENT (ASSURED SHORTHOLD TENANCY", but a little further down the first page it states: "The tenancy begins on 14th August 1999 and is an assured non-shorthold weekly tenancy, the terms of which are set out in this Agreement." At clause 6, however, the agreement provides: "This assured shorthold tenancy agreement is granted for 2 years, and will end on 13th August 2001". Mr Verrill has remained in occupation in reliance on this agreement.

2. By a letter dated 27 February 2004, the landlord informed the tenant: "As you know the rent for your dwelling is re-assessed each year. As a result your weekly charge will increase with effect from 5th March 2004". The existing rent was said to be £62 per week and the new rent £65 per week.

3. Mr Verrill purported to refer the letter to a rent assessment committee under the provisions

of section 13(4) of the Housing Act 1988 ("the Act").

4. Letters were written by the Case Officer to the landlord and to the tenant dated 23 March 2004, expressing the preliminary view that the rent assessment committee might not have jurisdiction to consider the case because the landlord had given insufficient notice of the rent increase. A preliminary hearing was arranged to consider the question of jurisdiction.

5. The hearing took place at the Council Offices of Derby City Council on 11 May 2004. It was attended by the tenant but not by the landlord.

6. The landlord sent no written representations, but wrote to the Case Officer on 7 April to say that it wished to withdraw the application [presumably to increase the rent], and that a new application would be made in due course using the prescribed form. Mr Verrill sent written representations relating principally to his own circumstances and to the landlord's policies. His particular concern was that the landlord and not given him "a properly and justifiably itemised account for the rent level and latest increase". At the hearing, he explained that he accepted that the landlord was entitled to raise the rent annually, but that he wished for an explanation of the way in which rent increases were calculated and considered that the new rent level had become unfair to him and that he would like an opportunity to discuss the issue with the landlord.

Decision

7. We are satisfied that we do not have jurisdiction to determine the rent on this reference.

8. In the first place, clause 7 of the tenancy agreement provides: "The Association will review the rent annually. Net rent will increase or decrease by a maximum of the annual percentage

increase in the Retail Price Index + 2%, or the Average Earnings Index + 2%, whichever is the greater. In the event of neither index being available at the due date, a best estimate will be used and corrected to the annual figure at the first opportunity". This clause appears to us to bring this tenancy within the definition of a class of assured tenancies the tenants of which do not have the statutory right to refer notices of increase to a rent assessment committee. This is because, by section 13(1)(b) of the Act, section 13 (under which landlords must give statutory notices of increase which tenants may refer to a committee), does not apply to assured tenancies "under which the rent for a particular period of the tenancy will or may be greater than the rent for the earlier period". Clause 7 appears to come within that excluding provision. However, the matter is not entirely free from doubt, because the side-note in the agreement, intended presumably to explain the purpose of clause 7, further confuses the issue. It says: "Rent increases during the fixed term of the tenancy". If that side-note is to be taken as limiting the operation of clause 7, it could be argued that the rent review clause is now inoperative, in that, according to clause 6 of the agreement, although not according to other parts of the agreement, the fixed term is now concluded and the tenancy has become a weekly tenancy. On balance, our view is that the rent review clause remains operative and ousts the jurisdiction of the committee. In our view this conclusion is likely to be of benefit to the tenant because market rents have tended significantly to outstrip the Retail Prices Index plus 2%.. Since this agreement was drawn by the landlord we consider it appropriate in law to construe it, where it is ambiguous, in the tenant's favour.

9. However, even if the conclusion expressed in the previous paragraph were to be incorrect, and this agreement does not contain an effective and binding rent review clause within the meaning of section 13(1)(b), we are satisfied that we should not have jurisdiction to deal with this reference, because (i) by section 13(2), the landlord's notice of increase must be in the form prescribed by the relevant regulations, and this notice was not, and (ii) the landlord's notice should, by section 13(3)(b) of the Act, have given a minimum period of a month before the proposed new rent took effect, and the period of notice given in this instance was less than a

month.

10. One further point should perhaps be mentioned, because it appears, understandably, to have caused some confusion to Mr Verrill. The present tenancy agreement replaces a series of assured shorthold tenancies. By section 19A of the Act, an assured tenancy entered into on or after 28 February 1997 is an assured shorthold tenancy unless it falls within any paragraph in Schedule 2A to the Act. Paragraph 3 of Schedule 2A provides that an assured tenancy which contains a provision to the effect that the tenancy is not an assured shorthold tenancy is excluded from being an assured shorthold tenancy. Despite its ambiguities, this agreement contains such a provision. Therefore the present tenancy appears to us not to be an assured shorthold tenancy.

11. Although we have concluded that we have no jurisdiction in this case, we consider appropriate to say that it would be helpful to Mr Verrill if the landlord could provide him with a calculation explaining precisely how any rent increase has been calculated.

CHAIRMAN.....

DATE.....17 May 2004.....

Committee: **Lady Wilson**

Mr R E Bailey FRICS

Mr J W Bunn JP