

CASE NO BIR/OOW/MNK/2003/0029

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

MIDLAND RENT TRIBUNAL SERVICE PANEL

**FLAT 1 JENNER HOUSE JENNER ROAD BEACHDALE ESTATE
WALSALL W53 7LP**

1 BACKGROUND

This case contains a referral by Mr. Wootton, the tenant, for the determination of rent following the service upon him of a notice dated 28th February 2003 increasing the rent from £97.86 per week to £148.11 per week from 7th April 2003 by the landlord, Accord Housing Association

The proposed new weekly rent included a fixed service charge of £29.72, a Supporting People Charge of £57.20, a utility charge of £2.87, a water charge of £1.29 and rent of £57.30. Jenner House provides sheltered accommodation for elderly people.

On 15th May 2003, the Committee inspected the property with Mr. Wootton present. A hearing had been arranged to take place on the same day at 12.15am at Broadway United Reformed Church Hall, Walsall. However Mr. Wootton had informed the Committee at the inspection that he wanted to attend the hearing but was unable to do so due to his disability. With the agreement of the Landlord, the hearing took place at 3.00pm on the same date at Jenner House. Mr. Wootton attended, as did Ms Sarah Woodall and Ms Tracey Gabett, who are employees of the landlord.

Mr. Wootton, Ms Woodall and Ms Gabett all gave oral evidence. In addition, the parties both submitted written evidence. Amongst other things, Mr. Wootton submitted that the Committee had jurisdiction to determine the rent and all charges set out in the notice dated 28th February 2003.

Ms Woodall submitted that the Committee did have jurisdiction to determine the rent and the following services i.e. fixed service charge, utility charge and the water charge but did not have jurisdiction to determine the Supporting People Charge.

As the Committee decided to decline the jurisdiction to determine the rent pursuant to Section 14 of the Housing Act 1988 for reasons set out below, the Committee made no decision as to whether it had jurisdiction to determine the Supporting People Charge.

2 THE DECISION

The Committee decided that in this case it had no jurisdiction to determine the rent under Section 14 of the Housing Act 1988.

3 THE LAW

Section 14(1) Housing Act 1988 provides that the Committee has jurisdiction to determine the rent at which the Committee consider that the dwelling house concerned might reasonably be expected to be let in the open market by a willing landlord under an assured tenancy. The Committee's jurisdiction under section 14(1) Housing Act 1988 is however subject to, amongst other things, to section 13 (5) Housing Act 1988 which provides:

"Nothing in this section (or in section 14 below) affects the right of the landlord and the tenant under an assured tenancy to vary by agreement any term of the tenancy (including a term relating to rent)."

The effect of section 13(5) Housing Act 1988 is that where a landlord and a tenant have agreed to vary a term relating to rent the Committee have no jurisdiction under section 14(1) to determine the rent.

4 EVIDENCE AND SUBMISSIONS

The hearing was held on 15th May 2003 to which both written and oral evidence was submitted by the tenant and the employees of the landlord, Ms Woodall and Ms Gabett.

The Committee considered all written evidence submitted and decided the written evidence relevant to the issue of whether the Committee had jurisdiction to determine the rent was:

- 1) Mr. Wootton's Application referring notice of the proposed new rent to the Committee
- 2) An undated letter of Mr. Wootton to the Committee
- 3) The tenancy agreement dated 26th March 2003

These documents were all disclosed to the parties.

The Committee considered the oral evidence given by the parties. Mr. Wootton said that he only signed the tenancy agreement to support a housing benefit application and that he had no choice but to agree the terms. He also said that he did not wish to challenge the new rent or any charges made other than the amount of the Supporting People Charge. Ms Woodall made a detailed submission that the Committee had no jurisdiction to determine the Supporting People Charge. She also submitted in the alternative that if the Committee decided it had jurisdiction to determine the Supporting People Charge the Committee should accept the landlord's figure of £57.20 per week. Ms Woodall agreed there was a written tenancy agreement. She said that if Mr Wootton's allegations concerning the circumstances of his signature of the agreement were true these circumstances should not have happened.

In Mr. Wootton's undated letter he wrote that he moved into Flat No 24 Jenner House in July 1999 and that he had a written assured tenancy agreement. In April 2001 he moved to Flat 1 but was not given a written tenancy agreement for Flat 1 until 16 March 2003.

The tenancy agreement dated 26th March 2003 is for Flat No 1 Jenner House. The tenancy is expressed to start on 23 April 2001. Clause 1(1) sets out the weekly rent and other charges payable by the tenant which amount to a total of £148.11. Clause 1 (1) also provides that the term "rent" refers to "all the charges set out above". The total figure set out above is £148.11. Clause 3(2) of the tenancy agreement provides that it is the tenant's duty "to pay the rent every week in advance on a Monday" Clause 5(2) and 5(3) both addressed to the tenant by the landlord provide:

"(2) This Agreement is a legal contract binding on you and on us"

"(3) In signing this Agreement you are saying that you have read it (or had it explained to you) that you understand its terms, that you agree to be bound by them and that you have been given a copy of it"

The tenancy agreement is signed by Mr. Wootton and by the Scheme Manager Michelle Barker on behalf of the landlord.

An additional agreement dated 26th March 2003 was also made between the landlord and the tenant. This agreement added an additional clause to the tenancy agreement which amongst other things, provided that the charges for the support services would be £57.20 and that this charge will be included in the total charge that the tenant would have to pay under the tenancy agreement.

THE REASONS FOR THE DECISION OF THE COMMITTEE

The Committee found that Mr. Wootton had been an assured tenant of Flat No 24 Jenner House from July 1999 until 23 April 2001. On 23 April 2001 he moved to Flat No 1. There was no written tenancy agreement at that time. The agreement by the landlord to let Flat 1 to the tenant was an oral agreement. The tenancy is an assured tenancy entered into after section 96 Housing Act 1996 came into force (28 February 1997) and is pursuant to section 19A Housing Act 1988 an assured shorthold tenancy unless it falls within any paragraph in Schedule 2A of the Housing Act 1988. The tenancy falls within Paragraph 7(1) of Schedule 2A because it was granted to a person who immediately before the tenancy was granted was a tenant of an assured tenancy granted by the landlord. That is Flat 24. Accordingly Mr. Wootton's tenancy is an assured tenancy, not a shorthold.

On 23 February 2003 the landlord served a notice of proposed new rent on the tenant, which proposed a new rent of £148.11. On 20 March 2003 Mr. Wootton signed an application referring the notice to the Committee, but referral took place on 31 March 2003, the date it was received by the Clerk of the Committee.

On 26 March 2003, before the referral took place, the parties had signed what purported to be a tenancy agreement starting on 23 April 2001. The rent agreed in Clause 1(1) is £148.11 per week, the same as the rent proposed in the notice dated 23 February 2003

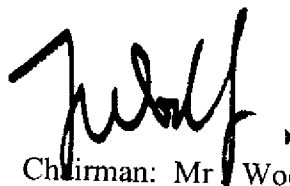
The Committee found that the rent stated in the tenancy agreement was an increase of rent and it was not agreed that the rent of £148.11 could be backdated to the start of the tenancy. That is 23 April 2003.

The Committee decided that the tenancy agreement dated 26 March 2003 must be, and was a variation of the oral agreement made on 23 April 2001 because the agreement of 26 March 2003 did not reflect the rent payable before 26 March 2003.

The Committee found that Mr Wootton signed the agreement of 26 March 2003 and by doing so agreed with the landlord to a weekly rent of £148.11 per week. On 26 March 2003 the parties had varied by agreement, amongst other things, a term relating to rent. Therefore the landlord and tenant had exercised their right pursuant to section 13(5) of the Housing Act 1988 to vary by agreement a term relating to the rent. The consequence of this is that the Committee has no jurisdiction to determine the rent under section 14(1) Housing Act 1988.

Before reaching its decision that it had no jurisdiction under section 14(1) Housing Act 1988 the Committee considered Mr. Wootton's oral evidence concerning the circumstances of his agreeing to the variation of the tenancy and his allegation that he only agreed the variation of the tenancy of 26 March 2003 because he needed the tenancy agreement to support his housing benefit application. The Committee decided it is entitled to treat the agreement for the new rent as valid and has no jurisdiction to consider Mr. Wootton's submission.

The Committee is grateful to both parties for their assistance in explaining the Supporting People Charge scheme, however because the Committee decided it had no jurisdiction in this matter it did not consider and did not make a decision as to whether the Committee had jurisdiction to determine the Supporting People Charge. The Committee did inspect Flat 1 and the common parts of Jenner House but as the Committee decided it had no jurisdiction to determine the rent it has made no finding of fact in respect of the inspection.



Chairman: Mr Woolf