

**RENT ASSESSMENT COMMITTEE**

**Housing Act 1988 S.13**

**DECISION NOTICE REGARDING JURISDICTION**

**Flat 16, House 12, Arboretum Square, Derby, DE23 8FN**

1. On 30<sup>th</sup> August 2005 the Tenant of the above property, **Michael Brown** referred to a Rent Assessment Committee a notice served on him by the Landlord, **Mr. B. Byard**, proposing a new rent to be payable from 1<sup>st</sup> September 2005. The notice is dated 21<sup>st</sup> July 2005.

2. Section 13(2) of the Housing Act 1988 ('the Act') as amended by the Regulatory Reform (Assured Periodic Tenancies) (Rent Increases) Order 2003 ('the regulatory reform order 2003') provides:

*'(2) 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, being a period beginning not earlier than-*

*(a) the minimum period after the date of service of the notice; and*

*(b) except in the case of a statutory periodic tenancy-*

*(i) in the case of an assured agricultural occupancy, the first anniversary of the date on which the first period of the tenancy began;*

*(ii) in any other case, on the date that falls 52 weeks after the date on which the first period of the tenancy began; and*

*(c) if the rent under the tenancy has previously been increased by virtue of a notice under this sub-section or a determination under Section 14 below*

*(i) in the case of an assured agricultural occupancy, the first anniversary of the date on which the increased rent took effect;*

*(ii) in any other case, the appropriate date*

*(3) The minimum period referred to in subsection (2) above is-*

*(a) in the case of a yearly tenancy, six months;*

*(b) in the case of a tenancy where the period is less than one month, one month; and*

*(c) in any other case a period equal to the period of the tenancy.*

The 'appropriate date' is defined in a new section 3A and 3B:

*3A The appropriate date referred to in subsection (2) (c) (ii) above is –*

*(a) in the case to which subsection (3B) below applies, the date that falls 53 weeks after the date on which the increased rent took effect;*

*(b) in any other case, the date that falls 52 weeks after the date on which the increased rent took effect.*

*3B This subsection applies where-*

*(a) the rent under the tenancy has been increased by virtue of a notice under this subsection or a determination under section 14 below on at least one occasion after the coming into force of the Regulatory Reform (Assured Periodic Tenancies) (Rent Increases) Order 2003; and*

*(b) the fifty third week after the date on which the last such increase took effect begins more than six days before the anniversary of the date on which the first such increase took effect'*

3. Section 13 (4) of the Act provides that:

*'Where a notice is served under subsection (2) above, a new rent specified in the notice shall take effect as mentioned in the notice unless, before the beginning of the new period specified in the notice,-*

*(a) the tenant by an application.....refers the notice to a rent assessment committee: or*

*(b).....'*

4. Section 45 of the Act states that 'prescribed' means prescribed by regulations made by the Secretary of State by statutory instrument. The Assured Tenancies and Agricultural Occupancies (Forms) Regulations 1997 ('the 1997 Regulations') provide by paragraph 2 that any reference to the form in the Regulations is a reference to the form bearing that number in the Schedule 'or to a form substantially to the same effect'.

5. The form currently prescribed is Form 4B contained in The Assured Tenancies and Agricultural Occupancies (Forms) (Amendment) (England) Regulations 2003.

6. The Landlord's notice is not in Form 4B but is in a form 4A which was prescribed by The Assured Tenancies and Agricultural Occupancies (Forms) (Amendment) (England) Regulations 2002. As the tenancy is a monthly tenancy and the main changes in Form 4B relate to weekly tenancies the Committee determine that the Landlord's notice is a form substantially to the same effect as the prescribed form 4B.

7. However, section 13 (2) of the Act requires that the commencement date for the new rent is the beginning of a new period of the tenancy. The notice proposes the new rent to commence on 1<sup>st</sup> September 2005. The tenancy was created by an Agreement dated 27<sup>th</sup> March 2003 and is a calendar monthly tenancy with periods beginning on 27<sup>th</sup> of each month.

Therefore, in order to comply with section 13 (2) of the Act the notice must specify a commencement date which is the 27<sup>th</sup> day of a month.

### **DETERMINATION**

8. The Committee determine that they do not have jurisdiction in respect of the Tenant's application to them because the Landlord's notice does not specify a date for the commencement of the new rent which is the beginning of a new period of the tenancy. The Landlord's notice is therefore invalid and the Committees' jurisdiction depends upon the validity of the notice referred to them.

9. The Landlord's agent, Stuart Smith (Derby) Limited, have served a new notice in the prescribed form 4B proposing a new rent to commence on 1<sup>st</sup> November 2005. Although this notice has not been referred to them the Committee note that it, too, is invalid for the reasons set out above.

  
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W. J. Martin: Chairman

Date of Decision: 16<sup>th</sup> November 2005

Committee Members:

Mr. W. J. Martin  
Mr. R. Kington F.R.I.C.S  
Mrs. A. Bartram

Dated                      23 NOV 2005                      2005