

## MIDLAND RENT ASSESSMENT PANEL

BIR/44UB/MNR/2003/0038

### DETERMINATION AS TO JURISDICTION OF A RENT ASSESSMENT COMMITTEE

#### Introduction

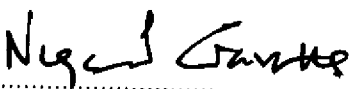
- 1 This case concerns a preliminary issue as to the jurisdiction of a Rent Assessment Committee to make determination under section 14 of the Housing Act 1988 ("the 1988 Act").
- 2 The tenants, Mr K and Mrs L Robinson, hold the subject property under an assured periodic tenancy under the Housing Act 1988 ("the 1988 Act"). The landlord of the property is Hurley Housing Ltd.
- 3 On 4 April 2003 ("the relevant date") the landlord (through its agent Howkins and Harrison) served on the tenants a Landlord's Notice under section 13(2) of the 1988 Act, proposing a new rent as from 1 June 2003. In response, by an application dated 20 April 2003, the tenants referred the Landlord's Notice to a Rent Assessment Committee of the Midland Rent Assessment Panel under section 13(4)(a) of the 1988 Act.
- 4 The preliminary issue as to jurisdiction arises because section 13(2) provides that the Landlord's Notice must be in the prescribed form. At the relevant date, the prescribed form for the purposes of section 13(2) was provided for by the Assured Tenancies and Agricultural Occupancies (Forms) (Amendment) (England) Regulations 2003 ("the 2003 Regulations"), which came into force on 11 February 2003 and which further amended the Assured Tenancies and Agricultural Occupancies (Forms) Regulations 1997 ("the 1997 Regulations"). However, Regulation 3(2) of the 2003 Regulations provides that a Landlord's Notice in the form prescribed by the predecessor of the 2003 Regulations shall, for the period beginning with 11 February 2003 and ending with 11 April 2003 (which period includes the relevant date), be treated as in the prescribed form. Moreover, although successive versions of the 1997 Regulations have provided for numbered prescribed forms, the 1997 Regulations also provide that any reference to a numbered prescribed form is a reference to a form "substantially to the same effect".
- 5 In the present case the form used by the landlord was neither the numbered form prescribed by the 2003 Regulations nor that prescribed by the predecessor of the 2003 Regulations. Indeed, it appears that there have been at least three new numbered prescribed forms of the Landlord's Notice since the version used by the landlord in the present case.
- 6 It follows therefore that the issue for determination is whether the form used by the landlord in the present case was *substantially to the same effect* as either numbered prescribed form that could have been used at the relevant date.

- 7 A Rent Assessment Committee was constituted for the determination of the preliminary issue and a hearing was held on 3 June 2003. However, neither party attended or was represented.

### **Determination of the Committee**

- 8 The issue of whether a form of notice used by a landlord is substantially to the same effect as a numbered prescribed form is a question of fact and degree in each case and turns on a comparison between the numbered prescribed form and the particular form of notice given: *Ravenseft Properties Ltd v Hall* [2002] 1 EGLR 9. However, in that case Mummery LJ indicated that the court or tribunal should have regard to the essential purpose of the notice and should adopt an objective approach, asking whether in the circumstances the notice was clear to a reasonable person reading it and exercising his common sense, so that he would not be misled by it or left in any reasonable doubt as to its effect.
- 9 In the opinion of the Committee a Landlord's Notice under section 13(2) of the 1988 Act has three purposes: first, to inform the tenant of the proposed new rent; secondly, to inform the tenant of the date when the proposed new rent is to take effect; and, thirdly, to inform the tenant as to what he must do if he wishes to object to the proposed new rent. The third purpose may be amplified to include informing the tenant that he must apply to a rent assessment committee and that he must do so before a certain date and identifying the form that he must use.
- 10 The Landlord's Notice in the present case clearly indicated the proposed new rent and the date when that proposed rent was to take effect.
- 11 The information as to what the tenant must do if he wishes to object to the proposed rent is contained in guidance notes on the form. At first sight, the guidance notes on the form prescribed by the 2003 Regulations (and by the previous version of the prescribed form) are significantly more substantial than the guidance notes on the form used by the landlord in the present case. However, the former notes include guidance for landlords on completing the form, which, in the opinion of the Committee are not relevant to the identified purposes of the Landlord's Notice. The former notes also include a summary of the amended section 13(2) of the 1988 Act that specifies when a proposed new rent can take effect. Again, the Committee is of the opinion that that summary is not relevant to the identified purposes of the Landlord's Notice. In the opinion of the Committee, therefore, the appropriate comparison is between the section on the numbered prescribed form headed "Guidance notes for tenants" and the corresponding notes on the form used by the landlord.
- 12 Both forms contain the following information for tenants:
- that the landlord is proposing a new rent;
  - that help and advice can be obtained from a citizens' advice bureau, a housing advice centre, a law centre or a solicitor;
  - that the notice proposing the new rent can be referred to a rent assessment committee;

- that any such reference must be made before the date when the proposed new rent is to take effect;
  - that any such reference must be made by using a specified form;
  - that the form can be obtained from a rent assessment panel or legal stationer;
  - that the rent assessment committee will determine the new rent, which may be higher, lower or the same as that proposed by the landlord.
- 13 The only guidance included in the prescribed form but not included in the form used by the landlord is advice to the tenant *who accepts the proposed new rent* to notify his Housing Benefit office if he is claiming benefit.
- 14 The Committee concludes that the notice used by the landlord in the present case fulfilled the purpose of a Landlord's Notice under section 13(2) of the 1988 Act and was, to adopt the formulation of Mummery LJ in *Ravenseft Properties Ltd v Hall*, clear to a reasonable person reading it and exercising his common sense and that such a person would not be misled by it or left in any reasonable doubt as to its effect. Moreover, the Committee is not persuaded that that conclusion is negated by the omission of the single item of advice addressed to the tenant who accepts the new rent proposed by his landlord.
- 15 The Committee therefore determines that the notice used by the landlord in the present case was substantially to the same effect as the form prescribed by the 2003 Regulations; that the Landlord's Notice was therefore a valid notice for the purposes of section 13(2) of the 1988 Act; and that the Rent Assessment Committee therefore has jurisdiction to make a determination under section 14 of the 1988 Act.
- 16 A Rent Assessment Committee will proceed to make that determination on a date to be confirmed.
- 17 Notwithstanding its determination in the present case, the Committee would underline the desirability of landlords using the current versions of prescribed forms. There is no good reason for landlords and their professional agents to use old versions of the forms; and the use of old versions simply results in unnecessary delay and cost while the issue of their validity is resolved.

Signed .....  .....  
 (Professor Nigel P Gravells (Chairman))

Dated ..... **22 JUL 2003** .....

**Rent Assessment Committee: Summary reasons for decision.****Housing Act 1988****Address of Premises**

3 Coronation Road  
Hurley  
Warwickshire  
CV9 2NW

**The Committee members were**

Mr A J Engel  
Mr D J Satchwell  
Mrs E Everett

**1. Background**

On 20/04/03 the tenant of the above property referred to the Committee a notice of increase of rent served by the landlord under section 13 of the Housing Act 1988.

The landlord's notice, which proposed a rent of £ 325 per MONTH with effect from 1/6/03 is dated 4/04/03.

The tenancy commenced on 4/2/99 for a term of ..... months/years. The tenant remains in occupation as a statutory periodic tenant. The current rent is £ ..... per .....

The tenancy is a periodic tenancy which commenced on 4/2/99. The current rent is £ 303.50 per MONTH.

The tenancy is a statutory periodic tenancy by succession which arose on the death of the former tenant. The rent payable is £ ..... per .....

**2. Inspection**

The Committee inspected the property on 8/9/03 and found it to be in good/fair/poor\* condition.\* THE PROCESS OF BEING RE-CLAD WITH BRICKS.

[Brief description of condition]

EXTENSIVE  
The following qualifying tenant's improvements had been made to the property. INCLUDING:-  
GAS SUPPLY AND GAS-FIRED CENTRAL HEATING. EXTENSIVE INTERNAL REPAIRS TO WALLS. FITTED KITCHEN AND BATHROOM. PATIO DOOR. NEW INTERNAL DOORS AND JOINERY. THE TENANTS WERE IN THE PROCESS OF RE-RENOVATING THE GARDENS.

The Committee was unable to gain access at the appointed time in order to inspect the property internally and therefore made an external inspection only.\*

The following services are provided for the tenant.

### 3. Evidence

The committee received written representations from the landlord and tenant and these were copied to the parties/ No written representations were received from the landlord/tenant/ either party.\* EITHER PARTY

Neither party requested a hearing at which oral representations could be made.\*

A hearing was held at .....on .....in..... at which oral representations were made by/on behalf of\* the landlord and/tenant.\* The landlord/tenant\* was not present or represented.\*

A hearing was arranged for.....on .....in.....but neither party attended.\*

#### 4. The law

A PRELIMINARY HEARING BY A RENT ADJUDICATION COMMITTEE, WHICH WAS IN PART DISSENTINGLY CONSTITUTED WAS HELD ON 3/7/03 WHEN IT WAS DETERMINED THAT THE RENT ADJUDICATION COMMITTEE HAS JURISDICTION TO DETERMINE THE RENT PURSUANT TO SECTION 14 OF THE HOUSING ACT 1988. In accordance with the terms of section 14 Housing Act 1988 the Committee proceeded to determine the rent at which it considered that the subject property might reasonably be expected to be let on the open market by a willing landlord under an assured tenancy.

In so doing the Committee, as required by section 14(1), ignored the effect on the rental value of the property of any relevant tenant's improvements as defined in section 14(2) of that Act.

In coming to its decision the Committee had regard to ~~the evidence supplied by the parties and~~ the members' own general knowledge\* of market rent levels in the area of NORTH WAALWICKHUS and concluded that an appropriate market rent for the property would be £300.....per ~~week~~fortnight/month/quarter.\*

**Note: the Committee may want to indicate here any particularly compelling market rental evidence on which it relied.**

#### 5. The decision

The Committee therefore concluded that the rent at which the property might reasonably be expected to be let on the open market would be £300..... per ~~week/fortnight/month/quarter~~ /inclusive of .....in respect of services.\*

This rent will take effect from 1/6/03..... being the date specified by the landlord in the notice of increase.\*

*This rent will take effect from ..... the committee being satisfied that undue hardship would otherwise be caused to the tenant.\**

*It should be noted that the tenancy contains a variable service charge within the meaning of section 18 of the Landlord and Tenant Act 1985. It follows that in accordance with Housing Act 1988, section 14(4) the rent determined by the Committee for the purposes of this application is exclusive of that service charge which will therefore be recoverable in addition to the rent determined.*

Chairman

*A. J. Kim*

Dated

*8<sup>th</sup> SEPTEMBER 2003*

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This document contains a summary of the reasons for the Rent Assessment Committee's decision. If either party requires extended reasons to be given, they will be provided following a request to the committee clerk which must be made within 21 days from the date of issue of this document.