

MIDLANDS RENT ASSESSMENT PANEL
File Reference No: BIR/17UJ/MNR/2004/0046

RENT ASSESSMENT COMMITTEE
Housing Act 1988 S.13

DECISION NOTICE REGARDING JURISDICTION

4 MANSFIELD ROAD, KILLAMARSH, SHEFFIELD, S21 2BX

1. On 12th July 2004 the Landlord of the above property, Mr. J. Windle, acting by Wynne and Co. served on the Tenant, Miss Janet Wells, a notice proposing a new rent of £150.00 per week to be payable from Monday 26th July 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...'.

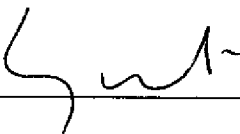
3. Section 45 of the Act states that 'prescribed' means prescribed by regulations made by the Secretary of State by statutory instrument.
4. The form currently prescribed is Form 4B contained in The Assured Tenancies and Agricultural Occupancies (Forms) (Amendment) (England) Regulations 2003. These regulations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

5. On 12th July 2004 the Tenant 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 was doubt as to whether the commencement date for the new rent inserted in the Landlord's notice was the beginning of a new period of the tenancy a Committee was appointed to hold a preliminary hearing on Tuesday 7th September 2004 in Killamarsh, South Yorkshire to determine whether they have jurisdiction as the validity of the application to them depends upon the validity of the Landlord's notice.
7. No written representations were received from the Tenant but the Landlord by letter dated 19th August 2004 stated that even though the date of the original tenancy granted by the Landlord's father to the Tenant's father on 7th July 1962 was a Saturday the rent had always been collected on a Monday and this was the correct day to be used as the starting date for the proposed new rent.
8. Mr. Wynne of Wynne and Co appeared for the Landlord. Mr. Wrigley of Norrie Waite and Slater, solicitors, appeared for the Tenant. The Chairman pointed out that as the present tenant holds under an assured tenancy that she became entitled to by succession under Part 1 of Schedule 1 to the Rent Act 1977 and that by virtue of Section 39(6) of the Housing Act 1988 where a successor becomes so entitled, 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 not appropriate to engage in lengthy discussions as to what would have been the relevant day under the original tenancy.
9. It was established that the Tenant became entitled by succession upon the death of her mother on 19th December 1999 which was a Sunday. Mr. Wynne was sure that Mrs. Wells died late on that day. He made the point that as some tenancies run from noon on one day to noon on another day, perhaps Monday could be the correct day for insertion in the notice of increase after all. Mr. Wrigley said he had nothing further to add

DETERMINATION

The Committee considered the representations made to them but determined that the tenant holds under a weekly assured tenancy which she became entitled to by succession under the statutory provisions referred to above and that such tenancy commenced on Sunday 19th December 1999.

The Committee therefore determine that because the Landlord's notice of 26th July 2004 proposes the commencement of the new rent on a date which is not the beginning of a period of the tenancy such notice is invalid and that as a consequence they have no jurisdiction in respect of the application to them.



W. J. Martin
Chairman

Date of Decision: 24 OCT 2004

Committee Members: W.J. Martin
R.A. Kington RICS
K. Bentley

Clerk: Claire Jones