



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **LON/00AN/MNR/2021/0101
P:PAPERREMOTE**

Property : **36A Coverdale Road, London, W12
8JL**

Applicant : **Ms Alicja Balka**

Respondent : **Notting Hill Genesis**

Type of Application : **Decision in Relation to S.13 of the
Housing Act 1988**

Tribunal Member : **Mrs E Flint DMS FRICS**

**Date and venue of
Hearing** : **Remote hearing on the papers**

Date of Decision : **22 June 2021**

DECISION

The Tribunal does not have jurisdiction to determine this application for the reasons stated below.

Covid-19 pandemic: description of hearing

This has been a hearing on the papers which has been consented to by the parties. The form of remote hearing was P:PAPERREMOTE. A face to face hearing was not held because it was not practicable and all the issues could be determined on the

papers. The documents that I was referred to are in an electronic file, the contents of which I have recorded.

Background:

1. The landlord served a notice of increase on the tenant dated 17 February 2021, which proposed a new rent of £217.97 per month from 5 April 2021.
2. The tenant referred the landlord's notice to the Tribunal on 13 March 2021.
3. The Tribunal wrote to the parties on 25th May 2021 stating that "the Tribunal's preliminary opinion is that it may not have jurisdiction to consider the matter because Section 13 of the Act applies only to periodic and statutory periodic tenancies and not fixed term tenancies. Since it appears that your tenancy agreement is still within the fixed term period, the Tribunal may decide that your application which has been made under Section 13 is not valid and that it does not therefore have jurisdiction to consider the rent.
4. The parties did not respond to the Tribunal's letter.

The evidence

5. The tenant occupies the flat under a tenancy agreement for a fixed term of 5 years from 28 May 2018 which includes a provision allowing the landlord to increase or decrease the rent.

The Law:

6. The statutory provisions relating to when the tenant may refer the notice to the tribunal are contained in section 13 of the Act:

Facts Found

7. The tenant has a fixed term tenancy which expires 27 May 2023.

The Tribunal's decision

8. The Tribunal does not have jurisdiction to deal with the application.

Reasons for the Decision

9. Section 13 does not apply to rent increases made under the terms of a fixed term tenancy.

Appendix of relevant legislation

Section 13 Housing Act 1988

Increases of rent under assured periodic tenancies.

(1) This section applies to—

(a) a statutory periodic tenancy other than one which, by virtue of paragraph 11 or paragraph 12 in Part I of Schedule 1 to this Act, cannot for the time being be an assured tenancy; and

(b) any other periodic tenancy which is an assured tenancy, other than one in relation to which there is a provision, for the time being binding on the tenant, under which the rent for a particular period of the tenancy will or may be greater than the rent for an earlier period.

(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 the 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 subsection 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 a month, one month; and

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

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

(a) in a 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 section 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.

(4) 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 in the prescribed form refers the notice to the appropriate tribunal; or

(b) the landlord and the tenant agree on a variation of the rent which is different from that proposed in the notice or agree that the rent should not be varied.

(5) Nothing in this section 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).

ANNEX - RIGHTS OF APPEAL

- i. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
- ii. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- iii. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not

complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

- iv. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.