



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

Case Reference : **LON/00BB/MNR/2019/0040**

Property : **36 Vesta House, 4 Liberty Bridge Road, London E20 1AN**

Applicant : **Ms G Daniel (Tenant)**

Representation : **In person**

Respondent : **Triathlon Homes LLP (Landlord)**

Representation : **Mr N Grundy QC**

Type of Application : **Determination of a Rent under section 13 of the Housing Act 1988**

Tribunal Members : **Mr S Brilliant
Mrs A Flynn MRICS**

Date and Venue of Hearing : **07 June 2019
10 Alfred Place, London WC1E 7LR**

Date of Written Reasons : **05 July 2019**

DECISION

The issue

1. The first issue in these proceedings is whether or not a notice of increase of rent given to the tenant regarding his assured periodic tenancy can be referred by the tenant to the Tribunal? If it can, the second issue is what is the current market rent? The first issue only arose on the date of the hearing. Accordingly, both parties were allowed to and did make further submissions in writing. If the Tribunal has no jurisdiction under the first issue, the second issue does not arise.

The facts

2. The tenant is the tenant of 36 Vesta House, 4 Liberty Bridge Road, London E20 1AN flat (“the flat”) under a monthly lease commencing on 01 April 2016 (“the lease”).

3. Paragraph 1.6 of the lease reads as follows:

Changes in your rent

We may increase or decrease your rent after giving you at least one month’s notice in writing. The notice will tell you your new rent. Any increase or decrease will normally date from the start of April. For so long as we are your landlord, we will set your new rent using our most recent rent setting policy. The effect of this clause is to create a contractual rent increase provision which means that you do not have the right to refer any increase under this clause to the Rent Assessment Committee.¹ However, we agree not increase the rent to a figure higher than set by the Rent Assessment Committee if it had jurisdiction.

The law

4. The tenant cannot refer a notice of increase to the Tribunal unless section 13 of the Housing Act 1988 applies to the tenancy.

5. Section 13(1) provides as follows (our emphasis):

This section applies to-

- (a) a statutory periodic tenancy² ... ; 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 binding on the tenant, under which the rent for a particular**

¹ This should be a reference to the Tribunal, not to the Rent Assessment Committee which no longer exists. However, nothing turns on this.

² No statutory periodic tenancy has arisen in these proceedings because the lease is a monthly one. The tenant is not holding over after the expiration of a fixed term.

period of the tenancy will or may be greater than the rent for an earlier period.

The landlord's case

6. The landlord argues that paragraph 1.6 of the lease contains a provision, for the time 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.

7. We were referred to Contour Homes Ltd v Rowen [2007] EWCA Civ 842.

8. The facts of that case are as follows. The tenant held an assured tenancy of a property owned by the landlord. The lease included the following clause:

1.4 *Changes in rent and service charges*

1.4.1 The rent will be reviewed by the association in April of each year. The association shall give to the tenant no less than four week's notice of the revised amount payable. The revised net rent shall be the amount specified in the notice of increase.

The association agrees not to set a rent in excess of the prevailing market rent for the premises.

9. The landlord gave the tenant written notice of the revised rent for the year 2006–2007. The tenant referred the landlord's notice to a rent assessment committee which held that it was invalid since it was not in the prescribed form, as required by section 13(2) of the Housing Act 1988. The judge dismissed the landlord's appeal, holding that the rent review clause was not a provision under which the rent for a particular period of the tenancy will or may be greater than the rent for an earlier period, within the meaning of section 13(1)(b) of the 1988 Act, since it did not provide for a rent increase of a specified amount, and that, therefore, the tenancy was one to which the requirements of section 13(2) applied.

10. The Court of Appeal allowed an appeal from the judge. It held that the exception in section 13(1)(b) of the 1988 Act was not limited to rent review clauses which provided for an increase of a fixed amount but was also apt to include a provision which provided that rent might be increased by an unspecified amount if certain events occurred, such as the service by the landlord of a notice; that, therefore, the rent review clause in the tenancy agreement was a provision under which the rent for a particular period of the tenancy would or might be greater than the rent for an earlier period, within the meaning of section 13(1)(b) of the 1988 Act; and that, accordingly, the judge had erred in holding that the tenancy was one to which the requirements of section 13(2) applied.

Discussion

11. We accept the submissions of Mr Grundy QC that the case of Contour is on all fours with the facts of the case which is before us. The rent review clause was properly triggered by the giving of a notice as provided for in the lease.

12. On 24 May 2018, the tribunal made a determination of the market rent under section 14 of the Housing Act 1988 in respect of flat 90 Vesta House (LON/00AB/MNR/2018/0042). No point was taken in those proceedings that the Tribunal lacked jurisdiction.

13. The landlord is not estopped from denying that section 13 applies. First, the tenant was not a party to that decision. Secondly, as Arden LJ reasoned in Contour, Parliament has determined that the Tribunal is only to have jurisdiction to determine the rent if the tenancy complies with section 13(1), which in these proceedings it does not. It is not possible for parties to agree to confer jurisdiction on the Tribunal or for the Tribunal to have jurisdiction by estoppel.

14. The landlord candidly accepted in its letter dated 13 June 2019 that the point about jurisdiction had not been raised either with the Tribunal or the tenant prior to the hearing.

15. Although the point about jurisdiction was only raised for the first time at the hearing, we consider it proper for the landlord to be able to rely on it. The Tribunal is a statutory body and should not assume jurisdiction when Parliament said that it does not have it. Both parties were given an opportunity to make representations on the point and no substantial injustice has been incurred by our allowing the point to be taken.

17. We wish to record that although Mr Grundy QC mistakenly told the Tribunal that it had been notified of the jurisdiction point, this was done in good faith and there is no criticism of him.

Conclusion

17. We have no jurisdiction in this case.

Simon Brilliant

Dated: 05 July 2019

ANNEX - RIGHTS OF APPEAL

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.

- i. 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.

- ii. 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.
- iii. 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.