



Neutral Citation Number: [2024] UKUT 415 (LC)

Case Nos: LC-2024-594, LC-2024-624, LC-2024-625

IN THE UPPER TRIBUNAL (LANDS CHAMBER)

APPEALS AGAINST DECISIONS OF THE FIRST-TIER TRIBUNAL PROPERTY
CHAMBER

FTT REFS: CAM/22UK/MNR/2024/69; CAM/00JA/MNR/2024/52; CAM/00JA/MNR/2024/55

11 December 2024

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

*LANDLORD AND TENANT – RENT DETERMINATION – assured periodic tenancies –
whether contractual rent review clauses precluded reference of proposed new rents to tribunal
– ss 13-14, Housing Act 1988 – appeals allowed*

BETWEEN:

MOAT HOMES LIMITED

Appellant

-and-

MISS MICHELLE CARLO

Respondent

AND BETWEEN:

LONGHURST GROUP

Appellant

-and-

MRS JOAN GRISTWOOD (1)

MR JOHN FOVARGUE (2)

Respondents

39 Dunkirk Road, Burnham on Crouch
12 The Spinney, 1 Neath Court, Eye, Peterborough
28 The Spinney, 1 Neath Court, Eye, Peterborough

Martin Rodger KC, Deputy Chamber President

Determination on written representations

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The following cases are referred to in this decision:

Chouan v The Earls High School [2016] UKUT 405 (LC)

Contour Homes Ltd v Rowen [2007] 1 WLR 2982

Helena Partnerships Ltd v Brown [2015] UKUT 324 (LC)

Salvation Army Housing Association v Kelleway [2024] UKUT 53 (LC)

Introduction

1. I am determining these three appeals together because, they each raise the same issue, that is, whether the First-tier Tribunal, Property Chamber (FTT) had jurisdiction to determine a rent under sections 13 and 14, Housing Act 1988 where the parties' tenancy agreement included a contractual rent review clause which entitled the landlord to increase the rent.
2. The appeals have each been determined on written representations provided by the parties.

The jurisdiction of the FTT under section 13 and 14, Housing Act 1988

3. Sections 13 and 14 of the Housing Act 1988 provide a statutory scheme for landlords to obtain increases in the rent payable under assured periodic tenancies. Section 13 provides for the landlord to serve a notice proposing a change in rent and for the tenant to refer the proposal to the FTT for determination if she does not agree to the proposal. If an increase is referred to the FTT, it must then determine the new rent in accordance with valuation principles provided in section 14.
4. The right to refer a rent increase to the FTT does not apply to all such assured tenancies. Section 13(1), 1988 Act identifies the tenancies to which sections 13 and 14 apply, as follows:

“13. 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 1 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.”
5. The right to refer a notice of increase to the FTT is available only where the assured tenancy is a periodic tenancy. The statutory periodic tenancy referred to in section 13(1)(a) is one which arises under section 5, 1988 Act on the termination of an assured tenancy which is a fixed term tenancy (section 5(7)). Section 13(1)(b) covers other periodic tenancies which are assured tenancies except a tenancy “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”.
6. In *Contour Homes Ltd v Rowen* [2007] 1 WLR 2982], Arden LJ explained the effect of section 13(1)(b), as follows:

“ ... that section excludes a tenancy where provision is made for an increase in rent, and this exclusion applies not simply as the judge thought to cases where the amount of the increase in the rent is set by the tenancy agreement, but also in cases where the tenancy agreement merely provides machinery for increasing the rent.”

7. This Tribunal has followed *Contour* in at least two previous appeals, finding in each that a clause in a weekly or monthly assured periodic tenancy which gave the landlord the right to increase the rent to a figure of its own choice was within the exception in section 13(1)(b), so that the FTT did not have jurisdiction to determine a new rent (*Chouan v The Earls High School* [2016] UKUT 405 (LC) and *Salvation Army Housing Association v Kelleway* [2024] UKUT 53 (LC)).
8. In *Helena Partnerships Ltd v Brown* [2015] UKUT 324 (LC) the Tribunal reached a different conclusion and construed the relevant provision in the tenancy agreement as merely providing information to the tenant about the landlord's right to implement a statutory review, rather than having any contractual force in its own right. But despite the different result in *Helena*, the Tribunal did not cast any doubt on the principle that the inclusion of a contractual rent review clause in an assured periodic tenancy excludes the jurisdiction of the FTT to make a determination under section 14.
9. In *Contour* the first instance judge had held that because the landlord had invoked the statutory procedure and provided the tenant with information about referring the increase to the appropriate tribunal, it could not later deny that the tribunal had jurisdiction to determine the new rent. The Court of Appeal rejected that approach. Since Parliament had legislated that sections 13 and 14 did not apply to assured periodic tenancies which contained contractual rent review clauses, and since *Contour's* tenancy included such a clause, "it was not possible for the parties to agree to confer jurisdiction on the Northern Rent Assessment Panel and likewise *Contour* could not, in my judgment, by analogy be estopped from denying that it did not have jurisdiction" (per Arden LJ, at [26]).

The Moat Homes appeal

10. 39 Dunkirk Road is a small two bedroom house in Burnham on Crouch. It was originally let by the appellant, Moat Homes Ltd, to Mr George Banks under a weekly assured tenancy, in writing. That tenancy was assigned to the respondent, Miss Michelle Carlo, in 2014.
11. The tenancy commenced on 4 June 2012 and included a clause, clause 3, headed "Changes in net rent", which said this:

"Changes in net rent

 - (a) The net rent payable under this agreement will be reviewed in April every year, regardless of when the tenancy started.
 - (b) We may increase or decrease the rent by giving you four weeks' notice in writing. The notice will set out the proposed net rent and service charge."
12. On 26 February 2024, Moat gave Miss Caro notice that it proposed a new rent of £191.74 to take effect from 1 April 2024 in place of the previous rent of £178.03. The notice was in the form prescribed for use as a landlords' notice proposing a new rent under an assured periodic tenancy of premises situated in England in accordance with section 13, Housing Act 1988. It included guidance notes advising that if the recipient of the notice did not agree to the rent increase which had been proposed, they could refer the notice to the FTT.

13. Following that advice, Ms Caro applied to the FTT on 18 March requesting a determination of the rent payable under the tenancy with effect from 1 April. Thereafter, the FTT gave directions for the parties to make representations about the appropriate rent, but Moat ignored those directions and did not participate in the proceedings. On 20 May 2024, after considering the representations which Ms Caro provided in writing, the FTT determined that the new rent under section 14, 1988 Act should be £180 a week.
14. It was not until the FTT had determined a new rent that Moat became interested in the process. It sought permission to appeal on the grounds that the tenancy was not one to which section 13 applied because clause 3 was a provision which allowed the landlord to increase or reduce the rent and so brought the tenancy within the exception in section 13(1)(b). The FTT granted permission.
15. Miss Caro's assured tenancy is not for a fixed term but is from week to week. It is therefore not a statutory periodic tenancy and section 13(1)(a) does not apply to it.
16. Because it is from week to week, Miss Caro's tenancy is an assured periodic tenancy. Section 13(1)(b) will therefore apply unless the tenancy contains a provision bringing it within the exception i.e. 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. The FTT did not consider whether clause 3 of the tenancy agreement is such a provision, because Moat took no part in the proceedings and Miss Caro no doubt assumed that the guidance contained in the notice of increase applied to her tenancy.
17. I have considered all of the points made by Miss Caro in her letter to the Tribunal of 18 November. She is entitled to be critical of Moat for failing to cooperate with the FTT. The points she makes about the value of different properties and the work she and her predecessor did to her home were all addressed by the FTT when it determined the very small increase it considered appropriate. But the FTT was not alerted to the issue raised in the appeal and, now that it has been raised, that issue cannot be ignored because it is about the limits which Parliament has placed around the FTT's power to set rents.
18. It is clear that Miss Caro's tenancy is not one to which section 13 applies. It is excluded by clause 3 of the agreement which is exactly the sort of contractual provision for increasing rent which is described in the exception in section 13(1)(b). It follows, as it did in *Contour, Chouan and Salvation Army Housing Association*, that the FTT did not have jurisdiction to determine a new rent.
19. Because it did not have the necessary jurisdiction, the FTT's decision of 20 May 2024 must be set aside. Miss Caro's rent with effect from 1 April 2024 has been the sum of £191.74 specified in the notice given by Moat on 26 February 2024.

The Longhurst Group appeals

20. Flat 12, The Spinney is a one-bedroom, ground floor flat in a purpose built block of flats providing supported accommodation at 1 Neath Road in Eye in Cambridgeshire. It was let by the appellant, Longhurst Group, a registered provider of social housing, to Mrs Joan Gristwood on 22 September 2022. The only written evidence of the terms of the tenancy which I have seen are contained in a document which states that it is an assured tenancy

agreement but in which neither the property let nor the name of the tenant are mentioned (although it has been signed by someone who I take to have been Mrs Gristwood).

21. The terms of the tenancy state that it is an assured tenancy running from week to week. It is therefore a periodic assured tenancy. In an unnumbered clause, beneath the heading "Review of Rents", the terms say this:

"Review of Rents

During the first year after the grant of this Tenancy Longhurst Group may vary the rent once only by giving the tenant one calendar months' notice in writing. The notice shall specify the rent proposed.

Thereafter Longhurst Group may vary the rent by giving the tenant not less than one calendar months' notice in writing. The notice shall specify the rent proposed. The rent shall not be increased within 52 weeks of the previous increase."

22. On 13 February 2024, Longhurst sent Mrs Gristwood a letter informing her that a new rent of £320.79 would become payable from 1 April. This sum included charges for electricity, heating, food and a service charge. The letter was accompanied by a formal notice providing the same information in the form prescribed for use as a landlords' notice proposing a new rent under an assured periodic tenancy of premises situated in England to which section 13, 1988 Act applied. The notice was accompanied by the guidance notes intended to inform tenants whose tenancies are within the scope of section 13 what they must do to challenge the increase if they do not agree it.
23. Mrs Gristwood, acting with the assistance of her agent, Mr Davis, followed the advice given in the notice and applied to the FTT for it to determine a new rent under section 14, 1988 Act. The FTT gave directions which Longhurst complied with by providing photographs of the interior of the property. It did not challenge the FTT's power to make a determination in relation to the proposed rent. In its decision of 17 May 2024, the FTT determined that the new rent for Flat 12 should be £307.66 a week. It subsequently reviewed that decision at the request of Longhurst and substituted a figure of £317.92 per week.
24. Flat 28, The Spinney is a flat in the same block which is let to Mr John Fovargue by Longhurst Group on a weekly assured periodic tenancy granted in April 2017. The terms of the tenancy are contained in a document in the same terms as the document provided to Mrs Gristwood. It contains substantially the same provision for the review of rents which differs from the later only by being numbered, as clause 6, and by referring to Longhurst by its former name, Axiom Housing Association Ltd.
25. On 13 February 2024 Mr Fovargue received a notification of annual rent review in the same terms and accompanied by the same prescribed information and guidance as had been served on Mrs Gristwood. He referred the notice to the FTT which gave the same directions and received the same response from Longhurst. By a second decision dated 17 May 2024 the FTT determined that the rent, including service charges, should be £307.66 a week. Longhurst then awoke from its slumber and sought permission to appeal.

26. The FTT granted permission to appeal its decisions relating to both flats on the single issue of whether section 13 applied to the tenancies; it refused permission to appeal on other grounds. In granting permission it was critical of Longhurst's misrepresentation of the process by service of the prescribed notice of increase.
27. Both tenancies are periodic assured tenancies. Both include a contractual rent review clause (clause 6 in Mr Fovargue's tenancy, unnumbered in Mrs Gristwood's) which allows the landlord to increase the rent payable each week. That clause is of the sort described in clause 13(1)(b) and the effect of its inclusion is to oust the jurisdiction of the FTT to determine a new rent under section 14.
28. It follows that the FTT did not have jurisdiction to determine the rent for either Flat 12 or Flat 28 and Longhurst's appeal must be allowed. The rent payable under both tenancies has been £320.79 a week since 1 April.

Disposal

29. For the reasons which I have given, all three appeals are allowed.
30. At the risk of repetition, but in the hope that the waste of resources which Moat and Longhurst have inflicted on themselves and on the justice system in these cases may be avoided in future, it should be noted that the significant expense and inconvenience of these proceedings to all parties, and the distress which the respondents may have experienced, have been caused in each case by the inappropriate and misleading use of the statutory prescribed form for increasing rent under section 13 of the 1988 Act. Section 13 does not apply and the prescribed form serves no purpose where the tenancy agreement includes a contractual rent review clause. The form is worse than useless, because it creates the false impression, and false hope, that the FTT may be able to determine a different rent, when it cannot. It is in the hands of social housing providers to avoid the waste and confusion which the inappropriate use of the prescribed form provokes.

Martin Rodger KC
Deputy Chamber President
11 December 2024

Right of appeal

Any party has a right of appeal to the Court of Appeal on any point of law arising from this decision. The right of appeal may be exercised only with permission. An application for permission to appeal to the Court of Appeal must be sent or delivered to the Tribunal so that it is received within 1 month after the date on which this decision is sent to the parties (unless an application for costs is made within 14 days of the decision being sent to the parties, in which case an application for permission to appeal must be made within 1 month of the date on which the Tribunal's decision on costs is sent to the parties). An application for permission to appeal must identify the decision of the Tribunal to which it relates, identify the alleged error or errors of law in the decision, and state the result the party making the application is seeking. If the Tribunal refuses permission to appeal a further application may then be made to the Court of Appeal for permission.