

**UPPER TRIBUNAL (LANDS CHAMBER)**



**UT Neutral citation number: [2022] UKUT 80 (LC)  
UTLC Case Number: LC-2021-435**

**TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007**

***LANDLORD AND TENANT – RENT DETERMINATION – procedure - jurisdiction –  
whether substantial compliance with the requirements of the tenant’s notice referring the  
increase of rent to the First-tier Tribunal is sufficient to give the First-tier Tribunal  
jurisdiction***

**AN APPEAL AGAINST A DECISION OF THE FIRST-TIER TRIBUNAL  
(PROPERTY CHAMBER)**

**BETWEEN:**

**IAN GEORGE JOHNSON**

**Appellant**

**-and-**

**RICHMOND HOUSING PARTNERSHIP LTD**

**Respondent**

**Re: Flat 28,  
James Darby House,  
11 Mereway Road,  
Twickenham,  
TW2 6SA**

**Judge Elizabeth Cooke**

**Determination on written representations**

The following cases are referred to in this decision:

*Natt v Osman* [2013] EWCA Civ 584

## Introduction

1. The appellant, Mr Johnson, has an assured shorthold tenancy of Flat 28, James Derby House, Twickenham. He wishes to challenge a notice of increased rent served on him by his landlord, the respondent. He applied to the First-tier Tribunal (“the FTT”) using the correct form, but he enclosed with it the notice of increased rent for 2020-21 instead of the one served on him on in February 2021 about the rent for 2021-2022. The FTT therefore decided that he had not met the requirements of section 13(4) of the Housing Act 1988 and that as a result it had no jurisdiction to determine a market rent for the property. Mr Johnson appeals that decision, with permission from the Tribunal.
2. The appeal has been determined under the Tribunal’s written representations procedure. The respondent has chosen not to participate in the appeal.

## Background

3. Mr Johnson has been the tenant of his flat since 2017. On 19 February 2021 his landlord, the respondent, sent him a notice of increased rent complying with section 13(2) of the Housing Act 1988, stating that from 5 April 2021 the rent would be £114.18 per week in place of the then rent of £112.49 per week.
4. Section 13(4) of the Housing Act 1988 provides that that increased rent would take effect on 5 April 2021 unless before that date either the landlord and tenant agree otherwise or:

“the tenant by an application in the prescribed form refers the notice to the appropriate tribunal”.
5. Accordingly Mr Johnson made an application to the FTT using Form 6 prescribed by the Assured Tenancies and Agricultural Occupancies (Forms) (England) Regulations 2015. His application was received by the FTT on 1 April 2021, so it was in time.
6. Paragraph 2 of the 2015 Regulations states:

“In these Regulations ... any reference to a numbered form is a reference to the form bearing that number in the Schedule to these Regulations, or to a form substantially to the same effect.”
7. Paragraph 3 requires the use of Form 6 for a reference to the FTT of a notice under section 13(2) of the 1988 Act. Paragraph 12 of Form 6 reads:

“I/We attach a copy of the notice proposing a new rent under the assured periodic tenancy and I/we apply for it to be considered by the Tribunal.”

8. With the form Mr Johnson sent to the FTT the notice of increased rent that he had received in February 2020, relating to the increased rent for the year 2020-21, instead of the notice received in February 2021 which was the one he wished to challenge.
9. The FTT wrote to Mr Johnson on 17 May 2021 stating that it was the FTT's preliminary view that it had no jurisdiction to consider the application because the application was received after the date on which the new rent was to begin (because the FTT was looking at the notice from 2020). Mr Johnson sent the right notice on 18 May 2021. On 7 July 2021 the FTT delivered its decision that it had no jurisdiction to consider the application. It said that the FTT's jurisdiction depends upon the applicant complying with section 13(4), and that Mr Johnson had not done so because the form requires the inclusion of the Notice of Increase for which the Application is being made, and it did not. "In the absence of a valid Application the tribunal does not have jurisdiction over the issue of rent increase".

### **The appeal**

10. Mr Johnson's grounds of appeal focus on the FTT's form "Rents1", which he used, and which is the FTT's version of the prescribed form. It follows the text of the Regulations but adds some guidance and annexing the addresses of the FTT's offices. He points to the front page where the guidance notes say, in bold type, "You must also send by email the documents listed in section 9 of this form" and adds, again in bold, "Please do not send any other documents." Mr Johnson points out, correctly, that section 9 does not require any documents to be sent; section 8 of the form requires the tenancy agreement to be enclosed. Section 11 of the form matches section 12 of the form in the Schedule to the Regulations (quoted above; the discrepancy in paragraph numbers arises because the FTT's version of the form organises the required information slightly differently) but, he says, there is nothing to say that the notice *must* be enclosed. Therefore he argues that there is actually no requirement to send in the notice of increase and he has complied with section 13(4) of the Housing Act 1988.
11. The reference in the guidance notes on the front page of the FTT's form to section 8 rather than section 9, is unfortunate and ought to be corrected although it is unlikely to cause any real confusion; and since the guidance notes refer to the enclosing of documents they ought to refer to the notice of increased rent. But the fact that they do not has no effect upon the statutory requirement to make an application "in the prescribed form". Paragraph 12 in Form 6 in the Schedule to the Regulations clearly requires the inclusion of the notice of increased rent, as does paragraph 11 of the FTT's form. The paragraph is a statement that the notice is enclosed and there is no provision for deletion of that statement. Moreover, there is no provision in the form itself for the tenant to set out the date of the notice or of the increase, so the enclosure of the notice is the only way that the FTT knows what the application is about (although the landlord of course knows, having sent the notice).
12. So there is no substance in the argument that the tenant is not required to attach a copy of the notice to the form. Mr Johnson intended to do so but attached the wrong notice. Does that deprive the FTT of jurisdiction?

13. The Tribunal in giving permission to appeal identified two reasons why the FTT might have jurisdiction where the tenant had used the correct form but attached the wrong notice. First, it is arguable that the tenant had complied with the statutory requirement by making his application in a form “substantially to the same effect” as the prescribed form, as permitted by Regulation 2 of the 2015 Regulations (see paragraph 6 above). Second, the FTT might have jurisdiction because Mr Johnson had achieved substantial compliance with the statutory requirement, so that his application was valid but defective; reference was made to *Natt v Osman* [2013] EWCA Civ 584.
14. In my judgment the FTT had jurisdiction for both those reasons. Mr Johnson’s error was a minor one and did not mislead the landlord (which knew when the notice of increased rent had been served and knew that the latest notice was the one the tenant must be challenging). It is straightforward to regard Mr Johnson’s use of the FTT’s version of Form 6, despite his error in attaching the wrong notice of increase, as an application in a form substantially to the same effect as the prescribed form.
15. As to “substantial compliance” with the statutory requirement, at paragraphs 28 and 29 of the Court of Appeal’s decision in *Natt v Osman* the Chancellor of the High Court said:

“a distinction may be made between two broad categories: (1) those cases in which the decision of a public body is challenged, often involving administrative or public law and judicial review, or which concern procedural requirements for challenging a decision whether by litigation or some other process, and (2) those cases in which the statute confers a property or similar right on a private person and the issue is whether non-compliance with the statutory requirement precludes that person from acquiring the right in question.

... In [the first category of] cases, in accordance with the more recent interpretative approach, the courts have asked whether the statutory requirement can be fulfilled by substantial compliance and, if so, whether on the facts there has been substantial compliance even if not strict compliance.
16. This case falls within the first category, since it is about the procedure for challenging the landlord’s notice by litigation. Can the statutory requirements be met by substantial compliance and, if so, has Mr Johnson done so?
17. I have no difficulty in finding that this is a procedure where the statutory requirement can be fulfilled by substantial compliance. The form asks for a number of items of detail, for example about the number of rooms, shared facilities, improvements to the property and the provision of services, and it would be ridiculous to suppose that a mistake in such material would deprive the FTT of jurisdiction. In the present case the error is not in the form itself but in the attachment. The error certainly caused confusion to the FTT but it cannot have confused the respondent, which was aware that a notice of increased rent had been served and was aware of the timetable for challenge. The application was made in substantial compliance with the statutory requirements and so the FTT had jurisdiction to give directions for the tenant to correct the error. The error was in fact corrected before any such directions were given and the application should have proceeded.

## **Conclusion**

18. The appeal succeeds; the FTT has jurisdiction to consider the notice of increased rent sent to Mr Johnson in February 2021, and his application to the FTT can proceed.

**Upper Tribunal Judge Elizabeth Cooke**

**14 March 2022**

## **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.