Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL

RENT ASSESSMENT COMMITTEE

Reference: RAC/0029/03/17

In the matter of the Ground Floor Flat, 84 Cyfartha Street, Cardiff CF24 3HG

In the matter of an application under Section 13(4) of the Housing Act 1988

COMMITTEE: **Timothy Walsh (Chairman)**
Roger Baynham (Surveyor)

APPLICANTS: **(1) Mrs Chloe Vivien Marong**
(2) Mr Muhammed Ali Marong

RESPONDENT: **Ms Rachael Rhiannon Holliday**

REASONS FOR THE DECISION OF THE RENT ASSESSMENT COMMITTEE

The Decision in Summary

1. For the reasons given below, the Rent Assessment Committee hereby determine that:

   (I) The landlord's notice served under section 13 of the Housing Act 1988 on or about 27th February 2017 was invalid. As a result, the Applicants were only liable to pay the rent fixed by the material tenancy agreement of £550 per month and not the new rent proposed in that notice.

   (II) In any event, the Committee determines that the rent at which the material premises might reasonably be expected to be let in the open market by a willing landlord under an assured shorthold tenancy in April 2017 is £550 per month. In the circumstances, no increase is appropriate.

The Application

2. The Applicants are the above named Mr and Mrs Marong. They are, or were, the tenants of the Ground Floor Flat, 84 Cyfartha Street in Cardiff ("the Premises") which they occupy under an Assured Shorthold Tenancy agreement dated 11th July 2015 which was expressed to commence on

12th July 2015 ("the Tenancy"). The Tenancy was for a fixed term of 6 months and the rent was £550 per month payable in advance by standing order on the 12th of each month. Under that agreement, the tenants are responsible for the payment of all of the utilities bills.

3. The Respondent, Ms Holliday, is the freehold owner and landlord of the Premises.

4. By notice dated 27th February 2017 ("the Notice") the Respondent served notice under section 13(2) of the Housing Act 1988 (as amended) – hereafter "the Act" - proposing an increase in the rent from £550 to a new rent of £625 which was to commence on 1st April 2017. Self-evidently, this was the first time that a rent increase had been proposed under the Tenancy.

5. By Application dated 20th March 2017, the Applicants applied to this Committee under section 13(4) of the Act with the result that the Notice has been referred to the Committee to address the question of the proposed rent increase. Namely, the additional £75 per month.

6. Both the Applicants and the Respondent requested a hearing. As explained below, only the First Applicant in fact attended although she confirmed that she did so with the authority of the Second Applicant.

The Premises

7. This Committee was convened on 30th June 2017 to undertake an inspection of the Premises at 9.30 a.m. prior to the hearing. That inspection did not take place because (for reasons explained later) the Applicant no longer has keys to the Premises and the Respondent landlord did not attend.

8. Based on the information in the papers provided and as elaborated upon by Mrs Marong, the First Applicant, we understand that the Premises comprise a ground floor flat located within a two storey mid-terrace house situated in the Roath area of Cardiff. The Premises are within easy reach of local amenities and the city centre is approximately 1½ miles distant. In addition, the Premises are in an area with a substantial student population.

9. The property was constructed in the late 19th century and has solid stone and brick walls with a slate roof; it benefits from UPVC double glazed windows with the exception of the kitchen window.

10. As noted above, the Committee were not able to gain access to the flat but the Applicant informed us that it comprised a communal entrance hall with a door to the subject property; it consisted of a living room incorporating a kitchen, a small double bedroom and a bathroom in a ground floor extension having a bath with shower over, wash hand basin and a w/c. The Premises also have the benefit of full gas central heating. The tenant of the ground floor flat has the sole use of the rear garden which is paved and has a small area of decking.

11. The Applicant, in her submission, confirms that the Premises are in good condition but she stated that they did suffer from ongoing damp problems.

The Statutory Provisions

12. The material provisions that govern this application are to be found in sections 13 and 14 of the Housing Act 1988 as amended. For ease of reference, we recite those provisions in full. Section 13 is in the following terms:

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 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 (or in section 14 below) 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).

13. By reason of the above provisions, where the tenancy includes no term allowing rent increases then to secure a rent increase in respect of a periodic assured tenancy (including a periodic assured shorthold) the landlord must service a notice under section 13(2) of the Act in prescribed form.

14. Under section 13 there are three requirements for the starting date specified for the new rent in any notice:

    (I) The proposed new rent must be to take effect at the beginning of a new period of the tenancy (per s. 13(2)). In the case of a monthly tenancy commencing on 12th July 2015, a new rent must accordingly commence on the 12th.

    (II) For a monthly tenancy, the minimum period of notice given before the proposed new rent can take effect is a month (per s. 13(3)(b)).

    (III) In most cases, the starting date for the proposed new rent must not be earlier than 52 weeks after the date on which the tenancy commenced or the date on which the rent was last increased under section 13.

15. Section 14 of the Act adds the following:

14 Determination of rent by tribunal

(1) Where, under subsection (4)(a) of section 13 above, a tenant refers to the appropriate tribunal a notice under subsection (2) of that section, the appropriate tribunal shall determine the rent at which, subject to subsections (2) and (4) below, the appropriate tribunal consider that the dwelling-house concerned might reasonably be expected to be let in the open market by a willing landlord under an assured tenancy—
(a) which is a periodic tenancy having the same periods as those of the tenancy to which the notice relates;
(b) which begins at the beginning of the new period specified in the notice;
(c) the terms of which (other than relating to the amount of the rent) are the same as those of the tenancy to which the notice relates; and

(d) in respect of which the same notices, if any, have been given under any of Grounds 1 to 5 of Schedule 2 to this Act, as have been given (or have effect as if given) in relation to the tenancy to which the notice relates.
(2) In making a determination under this section, there shall be disregarded—
(a) any effect on the rent attributable to the granting of a tenancy to a sitting tenant;
(b) any increase in the value of the dwelling-house attributable to a relevant improvement carried out by a person who at the time it was carried out was the tenant, if the improvement—
(i) was carried out otherwise than in pursuance of an obligation to his immediate landlord, or
(ii) was carried out pursuant to an obligation to his immediate landlord being an obligation which did not relate to the specific improvement concerned but arose by reference to consent given to the carrying out of that improvement; and
(c) any reduction in the value of the dwelling-house attributable to a failure by the tenant to comply with any terms of the tenancy.
(3) For the purposes of subsection (2)(b) above, in relation to a notice which is referred by a tenant as mentioned in subsection (1) above, an improvement is a relevant improvement if either it was carried out during the tenancy to which the notice relates or the following conditions are satisfied, namely—
(a) that it was carried out not more than twenty-one years before the date of service of the notice; and
(b) that, at all times during the period beginning when the improvement was carried out and ending on the date of service of the notice, the dwelling-house has been let under an assured tenancy; and
(c) that, on the coming to an end of an assured tenancy at any time during that period, the tenant (or, in the case of joint tenants, at least one of them) did not quit.
(3A) In making a determination under this section in any case where under Part I of the Local Government Finance Act 1992 the landlord or a superior landlord is liable to pay council tax in respect of a hereditament ("the relevant hereditament") of which the dwelling-house forms part, the appropriate tribunal shall have regard to the amount of council tax which, as at the date on which the notice under section 13(2) above was served, was set by the billing authority—
(a) for the financial year in which that notice was served, and
(b) for the category of dwellings within which the relevant hereditament fell on that date,
but any discount or other reduction affecting the amount of council tax payable shall be disregarded.
(3B) In subsection (3A) above—
(a) "hereditament" means a dwelling within the meaning of Part I of the Local Government Finance Act 1992,
(b) "billing authority" has the same meaning as in that Part of that Act, and
(c) "category of dwellings" has the same meaning as in section 30(1) and (2) of that Act.]
(4) In this section "rent" does not include any service charge, within the meaning of section 18 of the Landlord and Tenant Act 1985, but, subject to that, includes any sums payable by the tenant to the landlord on account of

the use of furniture, in respect of council tax or for any of the matters referred to in subsection (1)(a) of that section, whether or not those sums are separate from the sums payable for the occupation of the dwelling-house concerned or are payable under separate agreements.
(5) Where any rates in respect of the dwelling-house concerned are borne by the landlord or a superior landlord, the appropriate tribunal shall make their determination under this section as if the rates were not so borne.
(6) In any case where—
(a) the appropriate tribunal have before them at the same time the reference of a notice under section 6(2) above relating to a tenancy (in this subsection referred to as "the section 6 reference") and the reference of a notice under section 13(2) above relating to the same tenancy (in this subsection referred to as "the section 13 reference"), and
(b) the date specified in the notice under section 6(2) above is not later than the first day of the new period specified in the notice under section 13(2) above, and
(c) the [appropriate tribunal] propose to hear the two references together,
the [appropriate tribunal] shall make a determination in relation to the section 6 reference before making their determination in relation to the section 13 reference and, accordingly, in such a case the reference in subsection (1)(c) above to the terms of the tenancy to which the notice relates shall be construed as a reference to those terms as varied by virtue of the determination made in relation to the section 6 reference.
(7) Where a notice under section 13(2) above has been referred to the appropriate tribunal, then, unless the landlord and the tenant otherwise agree, the rent determined by the appropriate tribunal (subject, in a case where subsection (5) above applies, to the addition of the appropriate amount in respect of rates) shall be the rent under the tenancy with effect from the beginning of the new period specified in the notice or, if it appears to the appropriate tribunal that that would cause undue hardship to the tenant, with effect from such later date (not being later than the date the rent is determined) as the committee may direct.
(8) Nothing in this section requires the appropriate tribunal to continue with their determination of a rent for a dwelling-house if the landlord and tenant give notice in writing that they no longer require such a determination or if the tenancy has come to an end.
(9) This section shall apply in relation to an assured shorthold tenancy as if in subsection (1) the reference to an assured tenancy were a reference to an assured shorthold tenancy.

16. The terms of section 14 are self-explanatory and require no gloss. In most applications (including the present) the key provisions for consideration are broadly confined to sections 14(1) to (3) and 14(7).

Developments since the Notice was served

17. On the morning of the inspection, the Committee attended the Premises for the scheduled inspection at 9.30a.m. We were met by the First Applicant, Mrs Marong, but the Respondent was not in attendance. The First Applicant explained that she could not facilitate access as the Applicants had been

served with a notice under section 21 of the Housing Act 1988 which had expired on 11th June 2017. As a result, the Applicants had vacated the Premises and returned their keys to the Respondent on that date.

18. The Committee attempted to contact the Respondent by telephone and left messages on her answer-phone indicating that we would wait at the Premises until 10:00a.m. in order for her to attend and provide access to the property. Eventually, shortly after 10:00a.m., we received a telephone call from the Respondent and the Chairman spoke directly with her. The Respondent indicated that, insofar as she was concerned, the hearing was no longer necessary because she has been paid the increased rent for the final two months of the tenancy and the Applicants had indicated that they simply wanted to now "draw a line" under matters. She also suggested that his was borne out by email correspondence with the Applicants. Both the First Applicant and the Respondent (over the telephone) confirmed that they had not written to the Tribunal offices, whether for the purposes of vacating the hearing or otherwise. The Chairman informed the Respondent that the hearing was still effective and scheduled to take place at 11:00a.m.

19. The Respondent was asked whether she would attend the inspection or the hearing at 11:00a.m. She stated that she could not attend the inspection because she was attending Cardiff Crown Court to support a friend at a hearing listed for 10.30a.m. She also stated that she might attend the Tribunal offices later, but only if her friend's Crown Court matter had concluded. She was asked whether she was seeking an adjournment and she confirmed that she was. The Respondent was told that the hearing would commence at 11:00a.m. as scheduled and that it was highly unlikely that the matter would be adjourned at that time. She stated that she would forward email correspondence with the Applicants to the Tribunal offices before 11:00a.m. if she could. She did later send emails to the Tribunal but these had not filtered through to, or reached, this Committee prior to the conclusion of the hearing.

20. The Committee reconvened for the hearing at the Tribunal Offices at 11:00a.m. The First Applicant attended and confirmed that she acted for both Applicants. The Second Applicant is, we should add, her husband. The hearing lasted until 1:00p.m. The Respondent did not attend.

21. Under Regulation 9 of the Rent Assessment Committees (England and Wales) Regulations 1971 (as amended) ("the Procedural Regulations), this Committee may proceed to determine an application at a hearing if one of the parties fails to attend provided the Committee is satisfied that the requirements regarding the giving of notice of hearings have been satisfied. Those requirements are contained in Regulation 3 of the Procedural Regulations and required that the landlord and the tenant be given not less than 10 days' notice of the date, time and venue for the hearing. Here the parties were each sent such a notice by letter dated 1st June 2017 stating that the hearing was listed on 30th June 2017. It was evident from the Chairman's telephone conversation with the Respondent that she had received notice of the hearing and the First Applicant confirmed that the Applicants had received

notice of the hearing several weeks ago. This Committee was, accordingly, satisfied that the parties had been given the required notice and that we had a discretion to proceed in the absence of the Respondent under Regulation 9.

22. In light of the Applicant's telephone request for an adjournment, we have also considered regulation 8 of the Procedural Regulations. That provides as follows:

"8. The committee at their discretion may of their own motion, or at the request of the parties, or one of them, at any time and from time to time postpone or adjourn a hearing; but they shall not do so at the request of one party only unless, having regard to the grounds on which and the time at which such request is made and to the convenience of the parties, they deem it reasonable to do so. Such notice of any postponed or adjourned hearing as is reasonable in the circumstances shall be given to the parties by the committee."

23. The First Applicant was asked whether she opposed the request for an adjournment and she stated that she did. She explained that she had taken a day of annual leave to attend the hearing. She also expressed concern about the difficulties that might result for her if the case was adjourned because she is due to give birth in August; she added that this hearing, and the circumstances surrounding it, had been a source of some stress to her.

24. The final point of significance is that section 14(8) of the Act provides that nothing in section 14 requires this Committee to continue with a determination of the rent if the landlord and tenant give notice in writing that they no longer require such a determination or if the tenancy has come to an end. Neither party gave such written notice but, of course, the lease evidently came to an end on 11th June 2017. Section 14(8) is permissive, it allows the Committee to decline to make a determination if the tenancy is at an end but it does not require us to stop the process.

25. Addressing those 3 issues we made, and record, the following decisions.

26. Our determinations under Regulations 8 and 9 must be considered together. With regard to the adjournment request by the Respondent, we refused that request because we did not consider that it was reasonable to adjourn the case for the following reasons.

    (I) The application to adjourn was made only informally by the Respondent at the latest possible time.

    (II) The Respondent's application for not attending the hearing was wholly unsatisfactory. If she thought that the parties had reached agreement, it was incumbent on the Respondent to ensure that the Tribunal received written notice of that agreement or, at the very least, she should have sent some form of written request for the vacation of the hearing.

(III) Whatever the Respondent may have believed prior to the day of the hearing, she was informed that the hearing was effective at around 10:00a.m. on the day of the hearing. However laudable her reason for attending Cardiff Crown Court, she did not suggest that she was directly or personally involved in any hearing and we are not satisfied that she could not have attended the Tribunal hearing.

(IV) The First Applicant informed us that she had paid the Respondent the proposed increased rent of £625 for the final two months of the tenancy. She also told us that she had only done so because the Respondent had indicated that she would otherwise withhold the tenants' deposit until after this Committee had made its determination. Additionally, the First Applicant denied that she or her husband had agreed to "draw a line" under the matter and she denied that any agreement had been reached resolving the dispute over the Applicants' liability for that increased rent. We found the First Applicant to be credible. She gave her account of events in a balanced and dispassionate way. We consider that she was honest and we accept her account on this issue and generally. We asked her if there was email correspondence to corroborate the Respondent's assertion that agreement had been reached but she indicated that there was not.

The emails from the Respondent that were received by this Committee after the hearing do not corroborate her assertion that agreement had been reached in respect of the rent increase. The First Applicant's emails were very carefully worded. An email from the First Applicant dated 15th June 2017 asks for the Respondent's bank details *"so that I can send you the £150 in respect of the rent that you consider to be owing"* whilst a later email of 22nd June 2017 from the First Applicant adds: "*I can confirm that I have made a transfer of £150 in relation to the increase in rent which you have informed me at the moving out inspection that you consider to be rent arrears*". Neither email accepts or concedes the rental increase to which they relate. The email of 22nd June 2017 does go on to state that the Applicants want to move on but that plainly only relates to her decision not to dispute the deductions that the Respondent proposed in relation to the deposit.

(V) Even if the parties had exchanged emails that might have implied that this matter did not need to come before the Rent Assessment Committee that would not have been sufficient to deprive this Committee of jurisdiction to proceed to determine the rent. Section 14(8) permits the Committee to decline jurisdiction if both parties give notice in writing that a determination is no longer required. The terms of the section no doubt deliberately require both the landlord and the tenant to give that notice in writing to avoid disputes of this type. Even if the correspondence between the parties had implied that a determination was no longer necessary (and we do not accept that it did) we would still have jurisdiction to determine the rent and would have proceeded to do so.

(VI) More generally, because the Applicants have been compelled to vacate the Premises, the amount in issue between them is small. In total, it is only £150. It would be an unforgivably disproportionate and inappropriate use of the tribunal's resources to adjourn this matter and relist it in the absence of an extraordinarily compelling reason to do so. No such reason has been advanced.

(VII) Further, Regulation 9 requires us to have regard to the convenience of the parties. The First Applicant has lost income/leave by taking time off work to attend this hearing and she will be unable to recover that lost leave or income. It would not be appropriate, or fair, to require her to attend again. This is particularly true given that her personal circumstances might result in a prolonged delay before the matter could come on for a further hearing.

27. For these reasons we determined both that the matter should not be adjourned and that the hearing should proceed in the Respondent's absence and we would have done so even had we received the emails sent by the Respondent on 30th June 2017 earlier than we in fact did.

28. We also consider that there is no good reason for the Committee to decline to determine this matter notwithstanding that the tenancy has been determined. If the tenants have paid £150 which they maintain was not due to the Respondent landlord it is appropriate that this Committee should resolve that issue.

Evidence and Representations

29. The parties each provided written representations which were received by the Committee on 24th May 2017.

30. We have had regard to the entirety of the Applicants' written submission which may be summarised in the following terms:

(I) The Premises are said to be small with little storage space.
(II) There are said to have been no improvements to the Premises since the commencement of the Tenancy and no other circumstances that would justify a rental increase.
(III) The proposed rent is said to be out of line with market rents in the area.
(IV) It is conceded that the Premises are generally in good condition but they are said to suffer with damp.

31. Accompanying the submission were letting particulars for six rental properties from broadly the same region of Cardiff which were taken from the "Zoopla" website in May 2017. Those properties were:

(i) A recently refurbished one bed flat in Claude Road. From the details, it has a forecourt and would appear to be larger than the Premises. The rental is £475 per month

(ii) A recently renovated ground floor flat in Millennium Court, Broadway. The particulars indicate that that property is of a high quality. The rental is £575 per month.

(iii) A ground floor one bedroom purpose built flat which has been refurbished in St. Peters Street. The rent is £495 per month.

(iv) A one bedroom flat in Stacey Road. It has wooden flooring throughout and a separate kitchen. It also has the benefit of a private garden. The advertised rent is £550 per month.

(v) A one bedroom flat located in a larger property with a forecourt in Connaught Road. The advertised rent is £525 per month.

(vi) Another one bedroom flat in Broadway with an advertised rent of £575.

32. This Committee obviously did not have the benefit of inspecting the Premises but we did hear from the Applicant who expressed her opinion that the above were a reasonable range of comparables. She also expressed the view that the rent of £550 agreed in 2015 was not a good guide because she felt that it had been too high or, at least, at the high end of the achievable market rents.

33. We have also considered the Respondent's written submission in full. In that submission she describes the Premises and explains that she converted 84 Cyfartha Street into two flats after buying that property in 2007. It is her case that the conversion was carried out to a high standard. She explains that the Premises are let with white goods but is otherwise unfurnished and the First Applicant confirmed this. She also points to the fact that there have been no rental increases in relation to the subject flat since the commencement of the Tenancy.

34. Amongst the appendices to the Respondent's submission were two marketing appraisals. In the first, dated 17 May, a Mr Henry Mitchell of Martin & Co. writes (in an email headed "84 Cyfartha"): *"We should expect to achieve £625-£650 for the flat to working professionals"*. A second email from a Mr Tristram Hall of Darlows is dated 18th May. It indicates that he would market the premises for a monthly rental of £650.

35. The First Applicant accepts that those appraisals probably relate to her former flat but she makes three observations. First, she states that to the best of her knowledge the agents did not actually attend to inspect the property and suggests that, had they done so, the condition and character of the Premises would have impacted upon their assessment. Secondly, she states that such appraisals are, by their nature, often over optimistic about the possible rental covenant that might be secured because the letting agents want to secure the business from the landlord. Thirdly, she gave evidence that neither of those agents were actually engaged by the landlord. Her evidence was that the Premises are presently still not let and are being marketed for rental on the "Zest Living" website with a proposed rent of £595.

36. Accompanying the Respondent's submission were letting particulars for a number of rental properties in Cardiff. These included:

    (i) A newly refurbished ground floor garden flat in Kimberley Road. It has a modern kitchen, a modern shower room and is very well furnished. The rent is £680 per month.

    (ii) A part furnished flat with large kitchen/lounge and double bedroom in Newport Road. The particulars actually give two conflicting rental figures of £625 and £650 per month.

    (iii) A one bed apartment in Albany Road with a rent of £665. There was a single accompanying photograph but no particulars and so this was of little assistance.

37. There was also an assortment of small "thumbnail" adverts but as they included no detailed particulars of the flats concerned they were of little assistance to us.

38. The First Applicant addressed us on each of the Respondent's comparables but, stated broadly, her case is that they are not a useful guide to the market rent for the Premises because each of them look to be premises which are of a higher calibre or standard than the Applicants' flat had been.

Determination

39. There are three issues that require determination.

    (I) First, was the section 13 Notice valid and, if it was invalid, what is the result?
    (II) Secondly, what should the rent have been for the final two months of the tenancy having regard to the matters in section 14 of the Act?
    (III) Thirdly, are there any grounds for determining that the Applicants would suffer undue hardship if the new rent were to "bite" in April 2017 and should the Committee fix a later date for the commencement of a new rent under section 14(7) of the Act?

The Validity of the Notice

40. Section 13(2) expressly states that the section 13(2) notice must propose a new rent to take effect at the beginning of a new period of the tenancy specified in the notice. Here, the Tenancy commenced on 12th July 2015 and rent was payable every month thereafter from 12th August 2015. The First Applicant confirmed that the rent was always paid on the 12th of each month. It follows, in our view that the Notice failed to specify the correct date for the commencement of the new rent. This was a simple error but it is clearly identified as a requirement for validity in paragraph 17 of the prescribed notes that accompany the Notice.

41. What is the effect of specifying the wrong date?

42. In *Tadema Holdings Limited v. Ferguson* (1999) 32 HLR 866 the Court of Appeal considered an argument that a section 13 notice was invalid because it had failed to specify the correct date upon which a new period of the tenancy started. There, Peter Gibson L.J. made it plain that the notice would have been invalid (and the intended rent increase ineffective) if the wrong date had been specified. It was, he said, a question of fact in each case as to what the date should be. There, the notice was valid because the parties were taken to have agreed a variation to the date that the rent fell due each month. Here, we find that there was no such variation. The rent was due on the 12th of each month and that is the date of a new period of the tenancy. For that reason, the notice is bad and the proposed rent increase is ineffective.

The Appropriate Rent

43. The foregoing finding is sufficient to dispose of this matter but we will also make findings as to the appropriate rent had the notice been valid.

44. Under section 14 of the Act this Tribunal must determine the rent at which we consider that the Premises might reasonably be expected to be let in the open market by a willing landlord under an assured tenancy and (a) which is a periodic tenancy having the same periods as those of the tenancy to which the notice relates, (b) which begins at the beginning of the new period specified in the notice, (c) the terms of which (other than relating to the amount of the rent) are the same as those of the tenancy to which the notice relates, and (d) in respect of which the same notices, if any, have been given under any of Grounds 1 to 5 of Schedule 2 to the Act, as have been given in relation to the tenancy to which the notice relates. That determination is subject to the additional provisions of sections 14(2) and (4). For those purposes, there are no relevant improvements nor relevant disrepair.

45. We determine that the rent at which the Premises might reasonably have been expected to be let in the open market in April 2017, having regard to the factors in section 14 of the Act, was £550.00. We have reached that determination for the following reasons:

    (I) We accept the parties' evidence that the Premises were fundamentally sound and to a decent standard in April 2017 but we do also accept the Applicants' evidence that the property suffered with damp.

    (II) Having regard to the character and location of the Premises we consider that the letting particulars produced by the Respondent were not a reliable guide to the appropriate rent for these Premises. They appear to be premises that offer higher quality accommodation. In reaching this conclusion we have had regard to photographs of the Premises supplied by the Respondent but also to the Applicants' evidence and submissions about the relative quality of the accommodation, which evidence we found to be credible and which evidence we accept.

(III) Whilst not all of the letting particulars produced by the Applicants were helpful, they did indicate a range of rentals for similar properties in a band of around £500 to £575.

(IV) We agree with the Applicants that the two marketing appraisals need to be treated with a degree of circumspection for the reasons advanced by the First Applicant. We have had regard to the views expressed in those appraisals but we reject that evidence as a reliable guide to the market rent having regard to the other evidence to which we have had regard. The fact that an agent suggests he can secure a particular rent does not mean that that is necessarily the market rent.

(V) We are endorsed in these views by the evidence of the First Applicant, which we accept was honest and accurate, that the Premises are still being advertised as available for rent with a proposed monthly rental of £595. The ongoing availability of the Premises may well indicate that a rent in that order may be too high for the present market.

(VI) Whilst we recognise that this means that the rent has not increased since July 2015, we accept the Applicants' evidence that their rent was high when the tenancy commenced and so not a good guide to the present open market rent.

Section 14(7) and "Undue Hardship"

46. In view of the foregoing, it is unnecessary for us to consider the third issue. Namely, whether the commencement date for any new rent should be varied under section 14(7) of the Act.

Determination

The Rent Assessment Committee hereby determines that:

1. The landlord's notice served under section 13 of the Housing Act 1988 on or about 27th February 2017 was invalid. As a result, the Applicants were only liable to pay the rent fixed by the material tenancy agreement of £550 per month and not the new rent proposed in that notice.

2. In any event, the Committee determines that the rent at which the material premises might reasonably be expected to be let in the open market by a willing landlord under an assured or assured shorthold tenancy in April 2017 is £550 per month. In the circumstances, no increase is appropriate.

DATED this 13th day of July 2017

CHAIRMAN