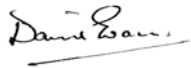


Rent Assessment Panel for Wales

Notice of the Rent Assessment Committee Decision		File Reference Number: RAC/0028/04/12
Address of Premises 2B Maughan Terrace Penarth Vale of Glamorgan CF64 1DT	The Committee members were David Evans LLB LLM D Rhys Davies FRICS Carole Calvin-Thomas	
(1) The Committee has decided that the rent for the above premises is: The new rent will be entered by the rent officer in the rent register.	£78 per week (This amount excludes council tax and water rates but includes any amounts entered in boxes 3-5 below.)	
(2) The effective date is: The new rent will apply from this date.	12 th March 2013	
(3) The rent is not to be registered as variable.		
(4) The amount for services is:	N/A	
(5) The amount for fuel charges (excluding heating and lighting of common parts) not counting for rent allowance is:	N/A	
(6) The rent is exempt from the maximum fair rent because of repairs or improvements carried out by the landlord.		
(7) Details (other than rent) where different from Rent Register entry: N/A		
Date of decision: <u>12th March 2013</u>	 Chairman _____	
If the fair rent the Committee determined was higher than the maximum fair rent, the limit on fair rent increases may apply. If this is the case, the uncapped fair rent the committee determined is shown in box 8. This is shown for information purposes only and does not affect the rent payable.		
(8) The uncapped fair rent was: N/A		

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL

DECISION OF THE RENT ASSESSMENT COMMITTEE
(RENT ACT 1977)

Reference: RAC/0028/04/12

Property: Flat 2B, Maughan Terrace, Penarth, CF64 4DT

Landlords: Mr Richard Hayward and Ms Karen Athay

Tenant: Mr Christopher Rowlands

Committee: D J Evans LLB LLM
D R Davies FRICS
C Calvin-Thomas

INTRODUCTION

1 We convened as a Rent Assessment Committee under the provisions of the Rent Act 1977 on the 12th March 2013 at the Tribunal Offices, Southgate House, Wood Street, Cardiff. We had before us a reference from the Rent Officer in respect of Flat 2B, Maughan Terrace, Penarth, CF64 4DT (the Property). The Rent Officer had registered a fair rent of £70 per week on the 3rd December 2012. The Landlords, Mr Richard Hayward and Ms Karen Athay, had objected to the Rent Officer's decision and the Rent Officer had referred the matter to us. The Landlords had applied for the rent to be increased to £595 per month (£137.31 per week).

2 Before considering the matter, we visited the Property. The Tenant, Mr Christopher Rowlands, was present with his sister, Ms Catherine Rowlands, and we were able to view the inside and outside of the Property. The Landlord did not attend.

INSPECTION

3 Maughan Terrace is one of the roads which leads from the centre of Penarth down to what would have been Penarth Dock but is now Penarth Marina. The buildings are approximately 100 years old and many of them, including the Property, have been upgraded with grant assistance and have been converted into flats. Number 2 is the second property at the town end of the terrace. It is a three storey building the exterior of which has in the recent past been refurbished and re-roofed. It has been converted into two units. 2A is a single bedroom ground floor flat whilst the Property occupies the second and third floors. The windows are upvc double glazed units.

4 Access to the Property is via a communal front door which opens on to a hallway. The entrance to the Property is a door at the foot of the stairs leading from the hallway to the first floor. There is no natural light to the stairs. On the first floor, there is a large front living room, a middle room which could serve as a second living room or a second bedroom, a toilet and a large kitchen which leads onto a small patio area. There used to be a "bridge" across to a parking area and the Tenant's shed, but that has been taken down on safety grounds. On the landing there is a cupboard which houses the gas boiler serving both the central heating and the hot water supply. On the top floor there is a large front bedroom and a bathroom with a rooflight. Carpets and curtains are not

provided by the Landlords. Further, the Landlords do not provide white goods but in 2012, they installed some basic kitchen units with a worktop.

5 The Property is in a poor state of decoration. Such floor coverings as there are, are of poor quality. We were given to understand by both parties that there had been difficulties between the Tenant and the Landlords' builder who had been contracted to carry out improvements to the Property. The builder had left the Property but there remained in the living room tools, off-cuts, blocks and general builders rubbish which rendered that room unusable. The builder had not completed the skirting. The Tenant had done some but the job was not completed. Similarly, in the kitchen, the builder had been applying hardboard to the floor but this had also been left and the Tenant had laid some more. The tiling in the kitchen and bathroom needs attention. New taps, we were told, are also needed in the bathroom (the letter of the 21st January 2013 states that the tenant has now fitted these). The Tenant has provided and fitted the bathroom door. The bottom stair requires attention. We were also informed that the smoke alarm system has been wired into the electricity supply for the downstairs flat instead of a separate supply.

6 The parties were made aware that two members of the Tribunal had sat on the Committee which had dealt with the previous determination in 2007. Since that decision, the walkway between the patio area and the parking area has been removed. There is therefore no direct access to the parking area at the rear or the Tenant's shed. We needed first to consider the extent of the tenancy. It is not our role to determine whether the Landlords were entitled to remove the walkway and not replace it or to determine if there has been a breach of an implied covenant for quiet enjoyment. However, after discussing the matter with the parties we have to take the situation as we find it. We shall therefore determine the rent on the basis that the tenancy comprises the flat and the land upon which the Tenant's shed is situated (as there is exclusive occupation of this) with access over the land at the rear of 1A and 1B Maughan Terrace in order to reach the shed.

REPRESENTATIONS

7 In their undated representations, the Landlords submitted that where, as here, there was no written tenancy agreement, their repairing obligations were limited to the statutory obligations under the Landlord and Tenant Act 1985. They had therefore no obligation to carry out works or repairs as a result of the Tenant's failure to use the Property in a tenant-like manner. They challenged:

- (a) the Rent Officer's suggestion of an open market rent for the Property of £121 per week. They referred us to Flat 2A Maughan Terrace, a recently refurbished one bedroom flat let at £600 pcm and Flat 1B (identical to the Property) which was rented at £550 pcm. This was a preferential rent due to the tenant's relationship with the Landlords. In their view if the Property were to be let in the condition which it should be if the Tenant had complied with his obligations, the rent achievable would be £650 pcm. However, they considered a reasonable starting rent to be £595 pcm (£137.31 pw).
- (b) the Rent officer's adjustment of £5 per week "age, character etc". The Landlords' basic rent of £595 pcm took account of the age, character and locality of the Property. In their view the Property was of an age and character similar to most properties in Penarth.
- (c) the Rent Officer's adjustment for "furniture" on the basis that the Property was let long term and most long term lettings are unfurnished.
- (d) the Rent Officer's adjustment of £5.00 per week for "disrepair" as it did not take into account of the fact that the Landlords were not in breach of their repairing covenants.
- (e) the Rent Officer's deduction for "any other relevant circumstances" as nothing was specified and appeared to them to be arbitrary.

(f) the Rent Officer's adjustment for "scarcity" since there was no discernible imbalance between supply of and demand for properties for rent in the area, let alone a substantial one.

8 Ms Rowlands wrote to Tribunal on the 21st January 2013 confirming:

- (a) the Tenant had fitted new bathroom taps (at the inspection he told us that the taps needed changing);
- (b) the Tenant had supplied and fitted the downstairs cistern;
- (c) the Tenant had supplied all carpets, furniture and white goods.

We were also provided with a letter from the previous landlord who confirmed that the tenancy had begun on the 28th September 1986 and that it included the use of the rear parking area, "shed and garage". We also had a letter from the Vale of Glamorgan Council Environmental Health Officer dated 15th August 2012 as well as some photographs of the Property.

9 Among the papers was an additional letter from Ms Rowlands to the Rent Officer dated the 5th November 2012 pointing out, amongst other things, that the fire alarm was not connected to its own electricity supply. There were further photographs and the Rent Officer's note both of the general condition of the Property and the works carried out by the Landlords since the last registration (25th October 2007).

HEARING

10 The Tenant and Ms Rowlands attended the hearing and the Landlords were represented by Mr Christopher Coates, who had qualified as a Solicitor but no longer practised as such and was now an executive of the Landlords' company. We informed the parties that we had knowledge of the letting market in Penarth and in particular details of asking rents for a number of properties to which reference was made during the hearing.

11 We are required to determine a fair rent in accordance with section 70 of the Rent Act 1977 and the principles laid down in the case law. We also required to ignore the personal circumstances of the parties. We understand the Tenant's concerns relating to the removal of the walkway and also the issue relating to the non-completion of the building work. However, we are required by the Rent Act 1977 to base the fair rent upon the rents applying in the market place, subject only to those adjustments set out in the statute. This will of course take into consideration the extent of the Property and its condition.

MARKET RENT

12 During Mr Coates' evidence the following were referred to:

- (a) 2A Maughan Terrace - the one bedroom recently refurbished flat referred to above. The flat had been replastered and redecorated. It had central heating, double glazing, a brand new fitted kitchen with integral cooker, a fridge and a washing machine as well as a modern fully fitted bathroom. Carpets were included but Mr Coates was not sure about the curtains. There is decking at the rear. There was no car parking. The agreed rent was £600 pcm.
- (b) 1B Maughan Terrace - the two bedroom flat also referred to above. It is located at the corner of Maughan Terrace and has a small side garden. There is space for parking and 2 sheds at the rear, but this does not form part of the tenancy - probably a licence. The tenant had been a tenant of another property and the rent had been "favourable" to reflect the fact that he had been a good tenant. He had previously occupied a one bedroom flat in Archer Road at £450 pcm and he had wanted a two bedroom flat. The tenant was a tiler who did work for the Landlords. The rent of

£550 pcm was agreed three years ago. This has a similar room arrangement to that in the Property. It has its own entrance by means of a metal staircase at the side. It is in reasonable condition. It was not refurbished- other than “a lick of paint”. The kitchen and bathroom had possibly not been refitted.

(c) 1A Maughan Terrace - a one bedroom flat on the ground floor similar to 2A above. The tenant had had a protected tenancy elsewhere and had moved to this property. The agreed rent of £450 pcm was not registered. The flat had been painted but not refurbished. The kitchen and bathroom were both in reasonable condition - in better condition than the Property.

(d) 17B Maughan Terrace - a recently let two bedroom flat on the opposite side of the road, let at £500 pcm. Mr Coates told us that it would have been refurbished internally, possibly replastered. If the kitchen had required it, that would have been refitted, as would the bathroom. The Landlords had not referred to this in their submission as it was recent and there was a good deal of other comparable evidence, the best being the next door property (1B).

(e) Another property in Maughan Terrace (number unspecified) - a two bedroom flat to let on the other side of the road from the Property. The asking rent was £550. Mr Coates confirmed that this property also belonged to the Landlords. It had been refurbished as needed and in all probability included carpets. These flats look as if they are a block whereas number 2 looks more like a house with the stone front and ground floor bay window. Numbers 1 and 2 also have a small front gardens or forecourts.

(f) Mariners Heights - a modern top floor, part furnished two bedroom flat with views of Cardiff Bay was on the market at £525 pcm. Mr Coates accepted that modern flats would have better sound insulation and would be less draughty. They could attract higher rents. On the other hand, older properties could have larger rooms, higher ceilings and better locations. Mr Coates felt that there advantages and disadvantages in respect of both modern and older properties.

(g) Properties on Penarth Marina - Mr Coates accepted that these tended to be more expensive.

13 The Tenant did not supply us with any comparable evidence.

14 Mr Coates lay great emphasis upon 2A, the downstairs flat within the same building, which was let at £600 pcm. This has been fully refurbished. He considered that if 2B had been refurbished to the same standard, it could be let at £700 pcm (£650 pcm in the Landlords’ written submission). However, he had suggested a rent of £595 pcm which in his view took into account many of the adjustments the Tribunal would be obliged to make. This does seem to us to be out of line with most of the rents which were discussed during the hearing. 1B, a similar flat, is let at £550 pcm. Mr Coates suggests that this is a favourable rent agreed 3 years ago. However, it is corner property with its own separate entrance and has undisputed parking rights as well as 2 sheds. We would consider that this would achieve a slightly higher rent than the Property. 1A is rented at £450 pcm. Again this is a corner property but has only the one bedroom. 17B opposite was let at £500 pcm. We consider that the general “block” appearance of the properties on this side of the road and the absence of a small front garden or forecourt would make them less attractive than those on the same side of the road as the Property and would therefore be unlikely to achieve the same rent. The other property in Maughan Terrace, on the market at £550 pcm, has not been let and so we cannot regard that rent as anything more than “indicative” of the sort of rents which are achievable. We have not seen the specification of the flat at Mariners Heights on the market at £525 pcm, but we accept Mr Coates’ argument that for some people, an older more spacious property closer to the centre of town might be more attractive and encourage a slightly higher rent.

15 The Rent Officer has suggested a market rent of £121 per week (approximately £525 pcm) with a deduction of £5 per week for age character and locality. Having considered the evidence, we are of the opinion that this is slightly on the low side and that the market rent for the Property,

taking into account its age and character and the locality, on the basis that it is in good repair with central heating, double glazing and with the white goods and floor furnishings and curtains provided by the Landlord, as would be expected in the open market, is £550 per month or £127.00 per week.

ADJUSTMENTS

16 The Rent Officer has deducted £12 per week from the market rent to take into account the lack of “furnishings, carpets and curtains” at the Property. Mr Coates accepted that the Landlords generally supplied carpets - but he was not sure about curtains - in their other properties. In our view the market would expect them. This is a large flat with two staircases and any adjustment must take this into account. We consider that it is appropriate to reduce the market rent by £10 per week to reflect this.

17 Mr Coates also accepted that the Landlords’ other properties included refurbished kitchens and bathrooms and also included white goods. Here, the Landlord has provided some kitchen units but no white goods. The kitchen is generally very basic as is the toilet and the bathroom. The lack of white goods and a refurbished kitchen and bathroom is bound to impact upon the rent which a prospective tenant would pay as, again, in the market, he/she would expect these items to be provided by the Landlords. We consider that the market rent should be adjusted by a further £15 per week to take account of this.

18 We have also to take into consideration the condition of the Property. As stated earlier, the Property is in poor condition internally. The Tenant must take some responsibility for this as it is not the Landlord’s responsibility to decorate the interior walls. There have clearly been issues between the parties in connection with the work the Landlords were attempting to carry out and it is not our role to judge one side or the other as being at fault. However, it is a fact that the skirting was not completed, the hardboard flooring likewise, the builder has left a mess in the living room (we appreciate that Mr Coates thought that it belonged to the Tenant) the tiling needs attention, the bottom stair needs a repair, there is no sill in the bedroom, there is cracked plastering which should be dealt with. We agree with the Rent Officer’s assessment that the market rent should be adjusted by a further £10 per week to take account of this. The Rent Officer has also adjusted the market rent by a further £8.00 per week to take account of the Tenant’s improvements. We have noted the work done by the Tenant. However, we do not consider that the work done by the Tenant will have any material effect upon the rental value over and above the adjustments already made. We therefore determine that the adjusted market rent is £92 pw.

SCARCITY

19 We are required by the Rent Act to take into account in assessing a fair rent for the Property whether there is an excess of demand over supply of accommodation such as this in Penarth and the wider area. The Rent Officer has deducted £14. Mr Coates attempted to persuade us that there was a balance between supply and demand and there should therefore be no deduction for scarcity. He said that there were 110 properties available to rent within a one mile radius. Sometimes vacant properties are re-let quickly and sometimes they will take a month or two - or even three - to re-let. Sometimes they achieve their asking rents and sometimes they do not. Only a certain proportion of residential tenants negotiate rents.

20 He accepted that Housing Associations had long waiting lists. This is because their rents are lower and there was more security, although he accepted that some Housing Associations used shorthold tenancies at first with new tenants. He considered that there were in effect two markets. The private rented sector which was in balance and the public housing sector where there were

waiting lists. In the general market, there was no substantial imbalance. It was suggested to Mr Coates that the lack of any imbalance in the private rented market was as a result of the higher rents charged in that sector. He considered that it was the greater security which attracted tenants to Housing Association tenancies. The general market was in his view fairly stable. It was pointed out to Mr Coates that agencies in Penarth were advertising for landlords. He did not regard this as indicative of the demand in the market. Agents will always advertise for more landlords - the more properties that an agency had on its books, the more income it will achieve. We also put to Mr Coates the comments by one of the agencies which the Landlords employed that there is always a strong demand for a good property, but "rough" properties will always be difficult to let. Mr Coates did not believe that rents were being inflated. He accepted that it was a difficult mortgage market at present and without parental assistance, buyers were forced into the rental market. He could not say whether rents were driven up as a result.

21 We do not accept Mr Coates suggestion that there are in effect two markets. With the difficult mortgage market, more people are seeking to rent and the fact that the Landlords have no difficulty in letting properties on their books indicates that the supply of properties available for rent in the private sector is satisfied by the demand. There may indeed be a balance between supply and demand at this level, but price is the principle regulator. We cannot ignore the fact that Housing Associations charge lower rents and have waiting lists. Security of tenure is not the principle consideration as many of the tenancies start off as shorthold tenancies before a tenant is given security. It is inevitable that the higher the rent, fewer prospective tenants will be able or willing to take on private tenancies - hence the pressure on the Housing Associations. Private landlords will inevitably wish to maximise their investments - a luxury which Housing Associations cannot enjoy.

22 Applying our own knowledge and experience and taking the evidence of Mr Coates into account, we conclude that there is a strong demand for properties of this type in Penarth and the wider area in excess of the supply of such properties. We consider that it is appropriate to reduce the adjusted market rent by 15% to take this scarcity into account.

23 Accordingly, we have deducted £13.80 from the adjusted market rent to reflect this, producing a rent for the Property of £78.20 per week, say £78.00 per week.

MAXIMUM FAIR RENT

24 We are required to consider whether the provisions of the Rent Acts (Maximum Fair Rent) Order 1999 apply. The existing rent registered on the 25th October 2007 was £44.00 per week. The regulations do not apply however, where "because of a change in the condition of the [Property] as a result of repairs or improvements (including the replacement of any fixture or fitting) carried out by the landlord..., the rent that is determined... exceeds by at least 15% the previous rent registered or confirmed" (regulation 2(7)).

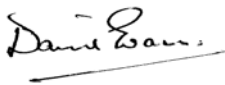
25 The exterior of the Property has been completely refurbished including a new roof. There is a new roof light in the bathroom where at the time of the last registration there had been a hole in the roof - in fact the rest of the roof had then been covered with tarpaulins. Some kitchen units have been installed. There are some new (unpainted) internal doors. The central heating boiler has been replaced. Damp is no longer in evidence. Some of the walls have been replastered and ceilings renovated. The communal entrance has also been improved. We appreciate that there is still much to be done and we have tried not to become involved in the issues between the parties concerning the responsibility for the failure to complete the works.

26 The Rent Officer adjudged that the rental value of the repairs and improvements exceeded 15% of the last registered rent (15% of £44 pw is £6.60 pw). We agree. In the circumstances, the regulations do not apply.

DECISION

27 We therefore determine the fair rent in respect of Flat 2B, Maughan Terrace, Penarth CF64 2DT to be £78.00 per week.

DATED this 11th day of April 2013

A handwritten signature in cursive script, appearing to read "David Evans", with a horizontal line underneath it.

CHAIRMAN