

Rent Assessment Panel for Wales

Notice of the Rent Assessment Committee Decision		File Reference Number: RAC/0009/05/16
Address of Premises 4 Ty Bryn Bedwelty Road Aberbargoed Bargoed CF81 9AZ	The Committee members were Timothy Walsh (Chair) Roger Baynham	
(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.	£90.00 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.	23 September 2016	
(3) The rent is to be registered as variable.		
(4) The amount for services is:	£24.54 p/w	
(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 not 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:		
Date of decision: 23 September 2016	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: £90.00. MFR does not apply.		

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
RENT ASSESSMENT COMMITTEE
(RENT ACT 1977)

Reference: RAC/0009/05/16

Property: 4 Ty Bryn, Bedwelty Road, Aberbargoed, Bargoed CF81 9AZ

Applicant: United Welsh Housing Association

Respondent: Mrs. F. M. Davies

Tribunal: Timothy Walsh (Chairman)
Roger Baynham (Surveyor)

REASONS FOR THE DECISION OF THE RENT ASSESSMENT COMMITTEE

Determination

1. The registered rent for 4 Ty Bryn, Bedwelty Road, Aberbargoed, Bargoed, CF81 9AZ ("the Property") is hereby determined at £90.00 per week.
2. The decision of the committee was reached on 23 September 2016 and the registration of the rent accordingly takes effect from that date.

The Application

3. The Applicant is the landlord of the Property and the Respondent is the tenant.
4. On 19 February 2016 the Applicant made an application to the Rent Officer for the registration of a fair rent for the Property under section 67 of the Rent Act 1977 ("the 1977 Act"). In that application the Respondent sought a new weekly rent of £95.89.
5. At the time of the 2016 application there was an existing registered rent of £82.50 per week effective from 20 January 2014. The Rent Officer determined a new registered rent of £88.00 per week to take effect from 8 April 2016.
6. The Applicant objected to the Rent Officer's determination on 4 May 2016 and the Rent Officer then referred the matter to the Rent Assessment Committee pursuant to paragraph 6 of Part 1 of Schedule 11 to the Act. Subsequently both parties confirmed to the

Committee that they did not require a hearing and were content for the matter to be dealt with on paper only; this Committee proceeds on that basis. Further, in a written note dated 6 June 2016 the Applicant added the following submission: *"The Rent Officer has adjusted our service charge and our admin fee to 10% when we can charge between 10% and 15% so we charge 12.5% and the rent officer has removed the overspend from our calculation and so give [sic] us a lower registered rent than if he didn't adjust our service charge"*.

The Property

7. On 8 September 2016 this Committee was convened to inspect the Property which we did. The Respondent was not present but her family facilitated access. The Applicant did not attend the inspection.
8. The Property is situated in the town of Aberbargoed and is located in a detached building which was constructed approximately 100 years ago. Around 30 years ago the building was converted into 6 self contained flats and is now part of a larger complex which also includes a larger similar detached building which was evidently converted at the same time. In total there are 40 flats.
9. The Property is within easy reach of local shops and all other amenities are available in Bargoed which is approximately 2 miles away.
10. This building has solid brick and stone walls which have been part cement rendered and a slate roof with plastic rain water goods. There is a concrete path leading to the communal front door and a small lawned area to the rear.
11. Access to the flat is via a communal entrance hall which serves this and three other flats. A staircase leads to the Property where the accommodation comprises an entrance hall, living room, kitchen, a double bedroom and a bathroom with a bath (having a shower attachment), wash hand basin and w/c. The Property also has the benefit of central heating and double glazed windows.

Jurisdiction

12. Section 67(1) of the 1977 Act permits an application for the registration of a rent for a dwelling house to be made to the Rent Officer by the landlord or the tenant *"under a regulated tenancy of the dwelling-house"*. A regulated tenancy is, usually, a letting of a dwelling created before 15 January 1989 which is the date on which the Housing Act 1988 came into force. New tenancies of dwellings entered into after that date are usually governed by the provisions of the 1988 Act and are therefore assured or assured shorthold tenancies.
13. The Committee notes that in its present Application the Applicant stated that the tenancy began on 20 March 1995. That notwithstanding, neither party has asserted that the Respondent does not have a regulated tenancy and, of course, the application is necessarily

predicated on the basis that she does. In the circumstances we proceed to determine what would be a fair rent for this property on the assumption that there is a regulated tenancy. This approach is also appropriate given that the Rent Register apparently records that the tenancy commenced on 13 July 1987 which is also broadly consistent with what the Committee were told at the inspection by the Respondent's family.

14. We would have adopted this approach to determining a fair rent in any event because section 70 of the 1977 Act requires that we determine "*what rent is or would be a fair rent under a regulated tenancy*". Moreover, the Rent Officer accepted jurisdiction to register a fair rent and having done so, the Rent Assessment Committee's statutory function under paragraph 9 of Part 1 to Schedule 11 of the Act is simply to make appropriate enquiries to determine a fair rent for the dwelling house. It is not, in our view, any part of our statutory function to make a determination as to the status of the tenancy once the Rent Officer has accepted jurisdiction to register the rent nor would it be appropriate to decline to determine a fair rent. This approach is also consistent with, and supported by, the decisions in *R v Brent London Borough Rent Officer, ex p Ganatra* [1976] QB 576 and *London Housing and Commercial Properties v. Cowan* [1977] QB 148. Indeed, in the former case Park J. gave detailed guidance and observed that a Rent Assessment Committee is not compelled to determine whether the parties were competent to make their application in the first place, although the parties may make an application to the County Court to determine that issue.

The Law

15. The aforementioned section 70 of the 1977 Act enumerates the factors to be considered when determining a fair rent under the Act. It provides as follows:

"70 (1) In determining, for the purposes of this Part of this Act, what rent is or would be a fair rent under a regulated tenancy of a dwelling-house, regard shall be had to all the circumstances (other than personal circumstances) and in particular to—

(a) the age, character, locality and state of repair of the dwelling-house, . . .

(b) if any furniture is provided for use under the tenancy, the quantity, quality and condition of the furniture, and

(c) any premium, or sum in the nature of a premium, which has been or may be lawfully required or received on the grant, renewal, continuance or assignment of the tenancy.

(2) For the purposes of the determination it shall be assumed that the number of persons seeking to become tenants of similar dwelling-houses in the locality on the terms (other than those relating to rent) of the regulated tenancy is not substantially greater than the number of such dwelling-houses in the locality which are available for letting on such terms.

(3) There shall be disregarded—

(a) any disrepair or other defect attributable to a failure by the tenant under the regulated tenancy or any predecessor in title of his to comply with any terms thereof;

(b) any improvement carried out, otherwise than in pursuance of the terms of the tenancy, by the tenant under the regulated tenancy or any predecessor in title of his;

(c), (d) ...

(e) if any furniture is provided for use under the regulated tenancy, any improvement to the furniture by the tenant under the regulated tenancy or any predecessor in title of his or, as the case may be, any

deterioration in the condition of the furniture due to any ill-treatment by the tenant, any person residing or lodging with him, or any sub-tenant of his.

(3A) 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, regard shall also be had to the amount of council tax which, as at the date on which the application to the rent officer was made, was set by the billing authority—

(a) for the financial year in which that application was made, 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 "improvement" includes the replacement of any fixture or fitting.

(4A) In this section "premium" has the same meaning as in Part IX of this Act, and "sum in the nature of a premium" means—

(a) any such loan as is mentioned in section 119 or 120 of this Act,

(b) any such excess over the reasonable price of furniture as is mentioned in section 123 of this Act, and

(c) any such advance payment of rent as is mentioned in section 126 of this Act.]

(5) ...".

16. Section 71 adds the following:

"71(1) The amount to be registered as the rent of any dwelling-house shall include any sums payable by the tenant to the landlord [in respect of council tax or] for the use of furniture or for services, whether or not those sums are separate from the sums payable for the occupation of the dwelling-house or are payable under separate agreements.

(2) Where any rates in respect of a dwelling-house are borne by the landlord or a superior landlord, the amount to be registered under this Part of this Act as the rent of the dwelling-house shall be the same as if the rates were not so borne; but the fact that they are so borne shall be noted on the register.

(3) Where subsection (2) above applies, the amount of the rates for any rental period, ascertained in accordance with Schedule 5 to this Act—

(a) shall, ... , be added to the limit imposed by section 44(1) of this Act ... ; and

(b) if the rental period is a statutory period, as defined in section 61 of this Act, shall be recoverable, without service of any notice of increase, in addition to the sums recoverable from the tenant apart from this subsection.

(4) Where, under a regulated tenancy, the sums payable by the tenant to the landlord include any sums varying according to the cost from time to time of—

(a) any services provided by the landlord or a superior landlord, or

(b) any works of maintenance or repair carried out by the landlord or a superior landlord,

the amount to be registered under this Part of this Act as rent may, if the rent officer is satisfied or, as the case may be, the [appropriate tribunal] are satisfied, that the terms as to the variation are reasonable, be entered as an amount variable in accordance with those terms."

17. In addition, further regulation of rents under the 1977 Act is provided by the Rent Acts (Maximum Fair Rent Order) 1999 ("the Order") which places a cap on the permissible amount of the increase of a fair rent between one registration and the next. The cap is

based upon the amount of the increase in the Retail Prices Index ("RPI") between the dates of the two registrations.

Assessment of the Rent

18. The starting point in assessing a rent under section 70 of the 1977 Act is to establish the market rent for the Property. To that rent, a number of adjustments are made to reflect the requirements of section 70.
19. The Rent Officer determined that a market rent for the Property was £83.00 per week. In so determining he had regard to market evidence for 11 one bedroom flats in the CF81, CF82 and CF84 postal areas with rents ranging from £79.62 to £98.08. Of those properties, two were in Bargoed with weekly rents of £80.77 and 87.69 respectively. The Rent Officer's determination of the market rent sits between those rental figures.
20. The market evidence provided by the Rent Officer necessarily has limited detail and neither party provided further evidence of comparable properties or rentals for this Committee to review. Considering the available evidence and using our own skill and expertise and having particular regard to all of the relevant factors including the size, character and locality of the Property we consider that a market rent of £83.00 per week is an appropriate market rent for this property. In so determining, we were particularly assisted by the comparable rental figures in Bargoed noted in the preceding paragraph.
21. Carpets and curtains would usually be provided by the landlord in a rented property but that was not the case here. We have deducted £5.00 to reflect that fact. We have also deducted a further £3.00 to reflect the relatively low standard of condition of the Property compared with what would normally be expected.
22. On the issue of scarcity the Rent Officer had made a deduction of 10% from an adjusted market rent of £97.50. We agree that there is a level of scarcity for properties of this nature in the locality but consider that a deduction of 12.5% is more appropriate.
23. In relation to the variable service charge, the unadjusted weekly total on the figures available to us is £24.54. We have not been furnished with a copy of the tenancy agreement but the Respondent has taken no issue with the assertion by the Applicant that it is entitled to fix a charge of between 10% and 15% as an administration charge and we proceed on the basis that that is accordingly common ground. In the circumstances, we have considered whether an administration charge of 12.5% is reasonable for a residential development of this type comprising some 40 units. Again neither party provided us with evidence addressing this issue but drawing on our own skill and expertise and having due regard to the likely costs for a landlord on the facts of this case we do consider that a more appropriate administration charge is 12.5%.
24. The resulting calculation by reason of the foregoing is as follows:

Market Rent:		£ 83.00
Less deductions: -		
Carpets/Curtains:	£5.00	
Condition:	£3.00	
		- £8.00
Sub-total:		£75.00
Scarcity at 12.5%		-£9.38
Fair rent net of service charge:		£65.62
Add variable services charge:		£24.54
Fair rent:		£90.16
Fair rent adjusted to nearest £0.50:		£90.00

25. We calculated the Maximum Fair Rent under the Order using the RPI current at the date of the inspection of 263.40 and determined that the maximum fair rent under the Order was £71.00 net of service charges and 95.54 inclusive of variable services. The fair rent must be the lowest of either the maximum rent under the Order or our fair rent calculation and, as such, the Order does not apply to this case.

Conclusion

26. The fair rent for the Property is £90.00 per week.

27. Pursuant to section 72 of the 1977 Act the fair rent takes effect from 23 September 2016 which was the date upon which this committee made its decision.

DATED this 23rd day of September 2016



CHAIRMAN