

**Notice of the Rent Assessment Committee Decision and
Register of Rents under Assured Periodic Tenancies
(Section 14 Determination)**

Housing Act 1988 Section 14

Address of Premises

53 Wyndham Street
Riverside, Cardiff, CF11 6DR

The Committee members were

David Evans LLB LLM
Ceri Trotman Jones MRICS

Landlord

Taff Housing Association

Address

Alexandra House, 307-315 Cowbridge Road East, Canton, Cardiff, CF5
1JD

Tenant

Ian Carr

1. The rent is: £106:00 Per week (excluding water rates & council tax but including any amounts in para 3)

2. The date the decision takes effect is: 1st April 2013

*3. The amount included for services is nil Per

*4. Services charges are variable and are not included

5. Date assured tenancy commenced 17th October 2005

6. Length of the term or rental period Weekly

7. Allocation of liability for repairs Landlord: Structure and Exterior, Heating Services and Sanitation

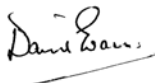
8. Furniture provided by landlord or superior landlord

None

9. Description of premises

Two bedroom, semi detached house

Signed by the Chairman of the
Rent Assessment Committee.



Date of Decision

22nd May 2013

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL

DECISION OF THE RENT ASSESSMENT COMMITTEE
(HOUSING ACT 1988)

Reference: RAC/0034/03/13
Property: 53 Wyndham Street Riverside, Cardiff, CF11 6DR
Landlord: Taff Housing Association Ltd
Tenant: Ian Carr
Committee: D J Evans LLB LLM
C Trotman Jones MRICS

INTRODUCTION

1 We convened as a Rent Assessment Committee under the provisions of the Housing Act 1988 (the Act) on the 22nd May 2013 at the Tribunal Offices, Southgate House, Wood Street, Cardiff. We had before us an application in respect of 53 Wyndham Street, Cardiff CF11 6DR (the Property). On the 14th October 2005, the Landlord, Taff Housing Association Ltd, had granted the Tenant, Mr Ian Carr, an Assured Shorthold Tenancy of the Property with effect from the 17th October 2005 at an initial rent of £57.61 per week.

2 On the 27th February 2013, the Landlord, served on the Tenant notice increasing the rent from £78.22 per week to £81.04 per week. The new rent was to be effective from the 1st April 2013. On the 21st March 2013, the Tenant referred the notice to us. Before considering the matter, we visited the Property. The Tenant was present and we were able to inspect both internally and externally. Mr Philip Hissey, a Housing Officer employed by the Landlord, also attended together with the Landlord's Solicitor, Ms Siân Jones.

INSPECTION

3 The Property is a two bedroom semi-detached house with a composite slate roof. There is a small front garden but no off-street car parking. There is, however, a good sized south facing rear garden which has been designed and well tended by the Tenant in which he has located two small garden sheds. There is no rear lane access. Wyndham Street is a quiet residential road in the Riverside area of Cardiff. It is accessed from Wellington Street and now forms a cul-de-sac as the road has been blocked off just before its junction with Heath Street. It is close to the busy shopping area of Canton and there is easy access to the centre of Cardiff.

4 Downstairs, there is a small living room, a dining area adjacent to the kitchen where the Tenant has provided the white goods and the Landlord had supplied the kitchen units. Upstairs there are two double bedrooms and a bathroom which is part tiled and which contains bath with an electric shower, fitted by the Tenant, as well as the toilet and wash hand basin.

5 The Property has upvc double glazed windows and is fully centrally heated. Some of the window seals are not effective. The flooring, both carpets and the floor tiling downstairs, has been provided by the Tenant who has decorated the Property to a very high standard.

HEARING

6 The Tenant had informed us that he wished to have a hearing. He attended in person. The Landlord was represented by Ms Siân Jones, Solicitor, of Morgan Cole, Cardiff, assisted by Mr Hissey. The Landlord had also instructed Mr Martin Griffiths of Graham Griffiths & Co, Chartered Surveyors, to prepare a rental valuation report dated the 17th May 2013 and which had been forwarded to the Tribunal the day before the hearing.

7 Prior to the hearing we had informed the Landlord's Solicitor that there appeared to be an error in the notice of increase. Paragraph 3 of the notice reads: "The first rent increase date after 1st April 2013 is 1st April 2013..." We invited the Landlord's Solicitor to consider whether, and if so in what way, this affected the validity of the notice. The Landlord's Solicitor provided us with written submissions on the morning of the hearing. The Landlord accepted that the incorrect dates had been inserted and paragraph 3 should have read: "The first rent increase after 18th April 2003 is 2nd April 2007". Ms Jones summarised her submissions:

(a) The notice is substantially in the same form as that prescribed by The Assured Tenancies and Agricultural Occupancies (Forms) (Amendment) (Wales) Regulations 2003 - as required by The Assured Tenancies and Agricultural Occupancies (Forms) Regulations 1997.

(b) The error is minor and immaterial (see *Tadema Holdings Ltd -v- Ferguson* (2000) 32 HLR 866 (*Tadema*) and *Andrews -v- Brewer* (1997) EGCS 19 (*Andrews*)).

(c) A reasonable recipient would not have been misled by the notice (see *Mannai -v- Eagle Star* (1997) 1 EGLR 57 (*Mannai*) and *York -v- Casey* (1998) 2 EGLR 25)

(d) The notice was substantially to the like effect of the prescribed form and it accomplished the purpose of informing the Tenant of the proposed increase in rent and how the proposal could be challenged (see *Ravenseft Properties Ltd -v- Hall* [2001] EWCA Civ 2034 (*Ravenseft*)).

(e) The fact that the Tenant had made this application proved that the Tenant had understood the contents of the notice, its effect and his rights.

8 It was clear from our questioning of the Tenant that he had not spotted the error and further that even if the correct dates had been inserted it would not have made any difference as to how he viewed the notice or how he reacted to it. He had, after all, correctly made his application to the Tribunal. He had not been prejudiced in any way.

9 Whilst the principal error in *Tadema* was that an old form of notice was used, in *Andrews*, Auld LJ stated that "it is my firm view that the obvious clerical error here does not detract in any way from the effect of the notice. It certainly does not mean that it is not substantially to the same effect as that in the prescribed form". Further, in *Ravenseft*, Mummery LJ (at paragraph 27) states, after considering *Mannai*, that "this court is, in my judgment, bound to take the broader approach to the issue of validity....The question is simply whether, notwithstanding any errors and omissions, the notice is 'substantially to the same effect' in accomplishing the statutory purpose of telling the proposed tenant" what he needed to know.

10 We conclude that notwithstanding the obvious clerical error in the notice, the Tenant was informed of the proposed increase and the steps he was required to take if he wished to challenge it. The notice achieved its statutory purpose and we therefore accept that it is "substantially to the same effect" as that prescribed.

THE TENANT'S CASE

11 The Tenant referred us to a number of comparable properties:

- (a) His parents' property - a 4 bedroom house in Riverside @ £85 - £90 pw;
 - (b) Ninian Park Road - a 4 bedroom house @ £85 pw;
 - (c) 41 Wells Street - a 3 bedroom house with an extra room @ £550 pcm;
 - (d) Wyndham street -a 3 bedroom semi-detached house with a downstairs bathroom, a few doors away from the Property, @ £500 pcm;
 - (e) Wyndham Street - another 3 bedroom semi-detached house @ £600 pcm;
 - (f) Ethel Street, Canton - his uncle pays £50 pw. The rent is increased annually.
- Properties (a) and (b) could be protected tenancies under the Rent Act 1977. The two properties in Wyndham Street are in private ownership. For one of these, the landlord provided all the white goods.

12 Although Wyndham Street is quiet, in summer, there can be a problem with children who live in nearby flats. There is the occasional incident.

13 When Mr Carr first rented the Property, it was in a basic repair condition. He had raised certain matters with the representative of the Landlord, but had been told that the Property was being let as it stood. There was a waiting list and as the person immediately ahead of him had declined and there were people behind him on the list, he had had little choice but to accept it. There were no carpets or curtains. There were thermoplastic tiles on the floor which he replaced with the attractive ceramic tiles - something we noted on our inspection. The previous tenants had pulled shelves off the walls and he had skimmed and re-plastered the walls where necessary. He had fitted a shower above the bath, although the Landlord had subsequently fitted a temperature regulator. The garden had been a patch of mud which he had transformed into a pleasant garden. He had replaced the toilet lock for which he had received no credit and changed the battery in the smoke alarm. He had also rectified some building work. The white goods had been supplied by him. A number of the double glazed units needed replacing as the seals had gone.

14 His rent has gone up from £50 pw in 2005 by £30 pw to £80 pw in 2013. The rent goes up but his income does not go up every year.

THE LANDLORD'S CASE

15 Ms Jones doubted whether the Property had required much in the way of attention when originally let, as the Tenant seemed to suggest. It would not have been let if it had not been in a reasonable condition. The Landlord was looking for a reasonable rent. Mr Griffiths, an independent valuer, suggested a rental valuation of £495 pcm. He had referred to two comparables:

- (a) 26 Green Street, Riverside - a 2 bedroom semi-detached house @ £500 pcm;
- (b) 10 Clare Gardens, Riverside - a 2 bedroom first floor flat @ £495 pcm.

These rentals are in line with the two privately rented properties to which the Tenant had referred in Wyndham Street at £500 and £600 pcm. These are market rents. The Landlord was proposing £351.17 pcm, ie 70.94% of the market rent. It was possible that Mr Carr's references to the rents of 3 bedroom properties was correct as the Welsh Assembly's benchmark rent for certain 3 bedroom properties is only £3 pw more than for a two bedroom property.

16 The tenancy agreement mirrors section 11 of the Landlord and Tenant Act 1985 setting out the Landlord's responsibilities for maintenance and repair. Further, in clause 4(b) of the agreement, the Tenant is entitled to carry out improvements, but he must obtain permission first. The Tenant had not sought permission.

17 The Tenant explained that he had spoken on the telephone about the shower and had asked about the ceramic tiles. Ms Jones stated that she accepted that the tiling was an improvement to the extent that it increased the rental value of the Property. She was not arguing that the Landlord should have the benefit of any improvement. Mr Hissey was concerned that the tiles may cover pipes which at some future date may need to be exposed. Ms Jones suggested that many landlords do not always include white goods. She considered that in proposing the rent of £81.04 pw, the Landlord has taken into account matters which should be disregarded when assessing the market rent for the Property.

DECISION

18 We are required under the Act to determine the rent at which we consider that the Property "might be reasonably be expected to be let in the open market by a willing landlord under an assured tenancy" (section 14(1) of the Act). Whilst we are required to ignore tenant's improvements, we are not able to consider the personal circumstances of the parties. We sympathise with the Tenant for the fact that his rent is increasing whilst his income remains static. However, that is not something we are able to take into account.

19 We have noted the Tenant's comments concerning the condition of the Property when he first occupied it. We have no doubt that it was not up to the Tenant's own standards. He is clearly someone who takes a pride in his home as the standard of the décor and the quality of the floor tiling bears testimony. However, we do not think it likely that the Landlord would have let the Property if there were significant repairs which needed to be carried out to make it habitable. The improvements and the other work carried out by the Tenant including the work in the garden certainly add to the comfort and amenity of the house but we do not consider that they would increase its rental value when compared with the rent payable for a similar property without them. They may make the Property more attractive, but they do not really increase its value.

20 We accept the Tenant's evidence in respect of rents of the four bedroom houses nearby, but it is probable that the tenancies are either protected by virtue of the Rent Act 1977 or are subject to the Welsh Assembly benchmark rents. The two properties in Wyndham Street, let by private landlords, are a better indication of the rental values achievable for the Property in the open market. The property in Green Street mentioned by Mr Griffiths in his report is consistent with these figures.

21 Having considered the evidence and applying our knowledge and experience, we are inclined to agree with Mr Griffiths that a reasonable market rent for the Property in its location with carpets and curtains and white goods which, in our view, would generally be expected in the market to be £495 per calendar month. The market would adjust for the lack of carpets and curtains (£25 pcm) and the white goods (£10 pcm) as these were provided by the Tenant. This would produce a market rent of £460 per calendar month (£106.15 per week, say £106 per week).

22 WE DETERMINE that the rent at which the Property might reasonably be expected to be let in the open market by a willing landlord is £106 per week. The effective date for the rent increase is the 1st April 2013, the date specified in the notice of increase.

DATED this 12th day of June 2013

CHAIRMAN