

Rent Assessment Panel for Wales

Notice of the Rent Assessment Committee Decision		File Reference Number: RAC/0005/05/16
Address of Premises 6 Cole Court Morning Meadows Caerphilly CF83 3QN	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.	£111.42 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:	£32.97 p/w excluding fuel charges	
(5) The amount for fuel charges (excluding heating and lighting of common parts) not counting for rent allowance is:	£.6.45 p.w.	
(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: £115.00. MFR applies.		

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

Reference: RAC/0005/05/16

Property: 6 Cole Court, Mornington Meadows, Caerphilly CF83 3QN

Applicant: United Welsh Housing Association

Respondent: Ms. D. Cooper

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

REASONS FOR THE DECISION OF THE RENT ASSESSMENT COMMITTEE

Determination

1. The rent that would be a fair rent under a regulated tenancy of 6 Cole Court, Mornington Meadows, Caerphilly CF83 3QN ("the Property"), based upon the common assumption that this was not a first registration, is £111.42.
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 £116.99.
5. In the application the applicant landlord named the Respondent as tenant and stated that the tenancy began on 22 September 1997; it also stated that the existing rent was £105.31. The application confirmed that the Rent Officer had previously registered a rent for the premises. In fact, the Rent Register for 2016 records that a tenancy began

on 20 June 1983 and that the last registered rent of 22 January 2014 was £109.78 per week. That, however, is not the only oddity of the application.

6. An earlier edition of the Rent Register for 2014 contains the same particulars for a tenancy commencing on 20 June 1983. However, the present respondent tenant, Ms. Cooper, was not the named tenant. The tenant at that time was a Mrs. D. J. Hayter.
7. The Rent Officer accepted the application to register a fair rent and duly determined that the fair rent for the Property was £109.78 effective from 11 April 2016. 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 1977 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 7 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% which has resulted in a lower registered rent"*.

The Inspection

8. On 8 September 2016 this Committee was convened to inspect the Property which we did. The Respondent facilitated access. The Applicant did not formally attend the inspection but we did briefly meet with a Mr. Hayden Stanley who is a housing officer employed by the Applicant at Cole Court.
9. During the course of the inspection the Respondent indicated that she had only moved into the Property in January 2016 and had had no prior connection with her predecessor Mrs. Hayter. When the Committee spoke with Mr. Stanley he confirmed that this was so and, upon checking the Applicant's records, added that they indicated that the Respondent occupied the Property as an Assured Shorthold Tenant under a tenancy that commenced on 4 January 2016. Moreover, and consistent with the terms of the present application, he confirmed that the Respondent's rent was £105.31 per week. This comprised rent of £66.15, a fuel charge of £6.17 and a service charge of £32.99.

Jurisdiction

10. 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.

11. It seems tolerably clear from the foregoing that the Rent Officer accepted jurisdiction to determine a fair rent under the 1977 Act because he received an application which indicated that this was a tenancy of some long standing and because there was already a registered rent for Mrs. Hayter. In short, he accepted jurisdiction on the basis that this Property was still subject to a regulated tenancy. The reality, however, is that Mrs. Hayter left the Property in January 2016 and this application post-dated that departure. The Respondent is apparently not Mrs. Hayter's successor in any material way that would bring her within the Rent Acts and, moreover, her tenancy agreement is one entered into this year according her only the limited security of tenure that accompanies a tenant's status as an assured shorthold tenant. If there was a regulated tenancy of the Property before 2016 there is almost certainly not one now.
12. The foregoing places this Committee in a curious position. The Rent Officer has accepted jurisdiction to determine a fair rent and upon the Applicant raising an objection he has referred the matter to the Rent Assessment Committee under Part 1 of Schedule 11 of the 1977 Act. Moreover, as Volume 63 of Halsbury's Laws states: "*A rent assessment committee has only a limited jurisdiction to hear and determine matters referred to it by a rent officer. The rent officer cannot refer to it any question of jurisdiction but only his determination of the fair rent...*" It then adds that: "*The circumstances in which a rent assessment committee would be justified in ignoring the existence of the Rent Act 1977 s 141 and in embarking into a question of jurisdiction or into any other matter not referred to it by the rent officer must be very rare*". Authority for those propositions is to be found 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. Section 141 of the 1977 Act confers jurisdiction upon the County Court to determine any question as to the character of a tenancy.
13. In *R v Brent London Borough Rent Officer, ex p Ganatra* Park J. stated the following:
"I turn now to consider the jurisdiction of the rent assessment committee. When a landlord or a tenant lodges an objection in writing to the rent officer's determination and registration of a fair rent "the matter" has to be referred to the rent assessment committee: paragraph 5 of Schedule 6. Thereafter, the rent assessment committee conducts an inquiry and, if requested to do so, hears representations from the landlord and tenant; at the conclusion of the inquiry, the rent assessment committee confirms the rent registered by the rent officer or, if that rent does not appear to the committee to be fair, determines a fair rent, which in due course is registered by the rent officer in the register.

Thus, in the first instance, the jurisdiction of the rent assessment committee is confined to making a decision on the matter referred to it by the rent officer. The rent officer has no power under the Act to refer to the rent assessment committee any matter other

than his determination of the rent. He certainly cannot refer to it any disputed question relating to his jurisdiction to determine the rent, because any such question would and should have been referred, as I have already said, to the county court.”

14. Park J. then went on to consider the possibility that new evidence may give rise to a dispute about jurisdiction such that the Rent Assessment Committee might refuse to proceed with the case and leave the matter to be determined on an application to the County Court under what was then section 105 of the Rent Act 1968 (now section 141 of the 1977 Act). However, at page 584H he gave the following additional guidance:

“By virtue of section 105, however, a rent assessment committee is not compelled to determine whether or not the applicant is competent, though no doubt they may do so if they wish, provided the matter casting doubt on his competence has come to light since the rent officer's reference. But the circumstances in which a rent assessment committee would be justified in ignoring the existence of section 105 and in embarking on an inquiry into such a matter or indeed into any matter not referred to them by the rent officer must be very rare.”

15. In the circumstances, this Committee could take one of two courses. First, it could decline to proceed. That is unsatisfactory since it leaves matters needlessly unresolved. The alternative is that the Committee proceeds to determine the matter referred to it on the basis of the application as brought. That, in our view, is the appropriate course.
16. In so proceeding, the Committee stresses that it is not adjudicating upon whether Ms. Cooper has a regulated tenancy. Moreover, this Committee's determination of a fair rent does not determine that the Applicant is entitled to charge the rent so determined if, in fact, Ms. Cooper is an assured or assured periodic tenant to which the alternative scheme in the 1988 Act would apply. Artificial though it may be, this Committee proceeds only to determine what would be a fair rent if the 1977 Act applied.

The Property

17. Cole Court is a residential sheltered housing complex located on the eastern fringe of Caerphilly within reach of local shops and a relatively short distance from the town centre. It is constructed on a sloping site partly on two floors and partly on three floors.
18. The Property was built in the mid 1970s and is conventionally constructed, having brick exterior walls with a tiled roof. The windows and exterior doors are double glazed. The entire building including the flats is heated by means of a communal heating system.

19. The development consists of 14 three room flats and 18 four room flats and has the benefit of a communal lounge with a kitchen and a computer room. In addition, there is a laundry room which has 2 washing machines and 2 tumble dryers. There is also a guest room for which there is a relatively nominal charge. There is no longer a resident warden.
20. The front garden is laid to lawn with a hard standing for 8 unallocated car parking spaces. The rear garden comprises a large paved patio and lawned areas. The access to the Property is via the communal entrance and communal hallway and comprises an entrance hall with storage cupboard, a bed sitting room with recessed cupboard, a small kitchen with base and wall units and a shower room consisting of a walk in shower, wash hand basin and a w/c. The flat is central heated via the communal heating system.

The Law

21. 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) ...”.

22. 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."*

23. 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

24. 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.
25. The Rent Officer determined that a market rent for the Property was £92.31 per week. In so determining he had regard to market evidence for studio flats across a fairly wide area in the broad vicinity of the Property.
26. 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. Neither the Respondent nor the Applicant, in its short written submission, takes any issue with the Rent Officer's determination of the market rent. In all, 16 of the Rent Officer's comparables (i.e. the vast majority) fall within a range of around £80 to £110 per week and 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 £92.31 per week is an appropriate market rent for this property.
27. Carpets and curtains would usually be provided by the landlord in a rented property but that was not the case here. We have deducted only £3.00 to reflect that fact given the small size of the accommodation. 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.
28. On the issue of scarcity the Rent Officer had made a deduction of 10%. 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. There is, in our view, a strong demand for

sheltered housing of this type and in this locality compared with other types of accommodation.

29. In relation to the variable service charge, the figures supplied to the Rent Officer for bedsits totalled £39.42 which he reduced to £38.78. The figure we were given at the inspection was the slightly lower total of £39.16. We adopt the figure documented for the Rent Officer as that is the most reliable evidence available to this committee.
30. 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 sheltered accommodation of this type. 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 of these premises we do consider that a more appropriate administration charge is 12.5%.
31. The resulting calculation by reason of the foregoing is as follows:

Market Rent:		£ 92.31
Less deductions: -		
Carpets/Curtains:	£3.00	
Condition:	£3.00	
		- £6.00
Sub-total:		£86.31
Scarcity at 12.5%		-£10.79
Fair rent net of service charge:		£75.52
Add variable services charge:		£39.42
Fair rent:		£114.94
Fair rent adjusted to nearest £0.50:		£115.00

32. The Rent Acts (Maximum Fair Rent) Order 1999 does not apply to first registrations of a fair rent. Of course, first registrations are extremely rare because new Rent Act tenancies have not generally been capable of creation since 1989. Here there was a prior registration in relation to this dwelling but not in relation to this tenancy which, in reality, is almost certainly governed by the provisions of the Housing Act 1988 instead.
33. We have, however, calculated the maximum fair rent on the basis assumed by the Rent Officer and the Applicant. Namely that there was a material prior registration on 22 January 2014 (at which time the RPI was 252.6).

34. Using the RPI current at the date of the inspection of 263.4 we determined that the maximum fair rent under the Order on these assumptions would have been £72.00 net of service charges and £111.42 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 would have applied to this case.

Conclusion

35. In reality it is almost wholly artificial and very probably somewhat academic to determine what would be a fair rent for the Property based on the assumptions that underpin both the Applicant's approach (and the Application itself) and the approach of the Rent Officer based upon the particulars placed before him by the landlord Applicant. Nonetheless, that is the basis upon which the Applicant has pursued this application and in the absence of any application or submission seeking to amend the basis upon which it is brought we consider that it would be inappropriate to adopt an alternative basis (particularly as that would be prejudicial to respondent tenant who has been faced with the application as framed). In the circumstances, we accordingly determine that the rent that would be a fair rent under a regulated tenancy based upon the common assumption that this was not a first registration is £111.42.

36. 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