

Y Tribiwnlys Eiddo Preswyl
Residential Property Tribunal Service (Wales)

Reference: RPT/0019/12/17

In the matter of 13 Wern Fach Court, Cwmbran, NP46EX and 24 Heather Court, Cwmbran, NP446JQ

In the matter of an Application under Section 27 of the Housing (Wales) Act 2014 appeal, against a condition of license

Applicant: Anthony Rooke

Respondent: Rent Smart Wales

Tribunal :
Jim Shepherd: Tribunal Judge
Mark Taylor: Surveyor Member
Angie Ash: Lay Member

Venue: RPT Office, Cardiff

ORDER AND REASONS OF RESIDENTIAL PROPERTY TRIBUNAL

ORDER

The appeal against the license condition is dismissed and the Respondent's decision to impose the license condition 5 ("Condition 5") is confirmed.

REASONS

1. The Applicant, Anthony Rooke owns the two properties named in the appeal. Both properties are situated in Cwmbran. Mr Rooke used to live in Cwmbran but now lives in Dublin, Ireland from where he manages the properties. He does not use an agent.
2. Mr Rooke attended the course for Landlords run by Rent Smart Wales in 2016. He made an application for a landlord license in February 2017. On 23rd November 2017 Rent Smart Wales notified him by email that because he was living outside mainland Britain it would be a license condition that he appoints an agent to assist with the management of the properties, alternatively he could

use a UK based member of staff. It was made clear in the email that the agent could be a family member or friend as long as they themselves obtained a license from Rent Smart Wales. Mr Rooke replied by email on 27th November 2017 saying that he understood the license condition. Thereafter the license was granted to Mr Rooke on 6th December 2017. The license lasts for five years. Condition 5 of the license states the following:

" As your main residence is outside Mainland Britain you must either appoint a Rent Smart Wales licensed agent to assist you with the management of the rented property, or alternatively, employ a Mainland Britain based member of staff to assist you in the management of your properties. You will have 8 weeks from the date your license is granted to put such person (s) in place".

3. It transpired during the hearing that this condition is contained in every license granted by Rent Smart Wales, save that in the licenses granted to those landlords in mainland Britain the word *If* replaces the word *As* at the start of the condition.
4. It is fair to say (and indeed Rent Smart Wales candidly admitted) the application of this license condition has been inconsistent. The importance of having local management only became clear after the licensing regime had commenced. It was recognised that there were anomalies created by the condition. In particular there were landlords living in mainland Britain who would not fall foul of the condition even if they lived some way from their properties in Wales. Rent Smart Wales sought to address the anomalies by introducing an application matrix which appears on their website. When dealing with condition 5 the matrix states the following:

Note: Each application is considered on its own facts. This condition may be applied to any applicant including those within Mainland Britain if considered appropriate.

5. In addition the matrix states that landlords *must have someone who is based locally to the rental property to act on the landlord's behalf, who will need to obtain an Agent License (see clause 5 below) within 8 weeks of license being granted.*

The relevant law

6. Part 1 of the Housing (Wales) Act 2014 (In force 23/11/15) introduces regulation of private rented housing in Wales. In particular landlords are required to have a license to manage property. The licensing authority under section 3 of the Act is Rent Smart Wales. Section 4 requires landlords to be registered unless an exception under section 5 applies. Needless to say none of those exceptions apply in the present case. Section 6 introduces requirements for landlords to be licensed to carry out letting activities. Similarly agents who carry out lettings work on behalf of landlords require a license under section 9. Lettings work is defined under section 10. Section 7 requires landlords to be licensed to carry out property management activities and Section 11 requires agents also to be licensed for this work. Property

management work includes collecting rent, being the principal point of contact for the tenant in relation to matters arising under the tenancy; making arrangements with a person to carry out repairs and maintenance etc (section 7(2)).

7. Section 21 of the Act requires Rent Smart Wales to grant a license if the applicant meets the requirements in section 19 of the Act. Under section 22(1) Rent Smart Wales are required to impose a condition requiring the applicant to comply with any code of practice issued by Welsh Ministers under section 40 of the Act. The current Code of Practice is dated October 2015. *Inter alia* the code includes a best practice requirement to *inspect a property periodically to identify any hazards or repairs that require attention. It's a good idea to keep a record of inspections, with a list of any issues identified and action taken.*
8. Under section 22(2) Rent Smart Wales are given the power to grant a license subject to further conditions as it considers appropriate. It is under this provision that Condition 5 has been applied to Mr Rooke's license.
9. Section 27 of the Act deals with licensing appeals. These appeals are dealt with by the Residential Property Tribunal. The jurisdiction of the tribunal includes dealing with an appeal against a license condition (section 27(2)). The tribunal can either confirm the decision of Rent Smart Wales or direct the authority to grant a license on such terms as the tribunal considers appropriate (section 27(5) (a)).

The hearing

10. Mr Rooke represented himself in the appeal. Rent Smart Wales were represented by Mr Grigg Solicitor. Sarah Rivers and Angharad Thomas gave evidence on behalf of Rent Smart Wales.
11. Mr Rooke said 13 Wern Fach Court was occupied by a family. It is a 3 bedroom detached house. 24 Heather Court is a two bedroom property that's occupied by a single man.
12. Mr Rooke said he had been in Ireland for three years. He had moved there after meeting his partner. He was anxious to highlight the potential anomalies thrown up by condition 5. Some of the travel times from parts of mainland Britain exceeded his own travel time from Dublin. He said he regularly returns to the UK for business and to visit friends in Cwmbran. Cwmbran was located between two of his work offices. He has had a dual Sim fitted to his phone so that he can retain a mainland UK number for his tenants to use. He said he had a good working relationship with his tenants and was available to contact 24 hours a day. They could email him at work or at home.
13. Mr Rooke said that he had available trades people to use in Pontypool. In particular he used a company who are a subsidiary of a housing association. He had used them at least half a dozen times. He was not sure if they had an emergency service. He said in an emergency he would find a contractor on line. He used larger contractors who were likely to be more reliable. He said he had

lived in Cwmbran for 20 years previously and knew the area well. Mr Grigg asked if anyone had a key for the properties other than the tenants. Mr Rooke said no. Mr Grigg said that if there were an emergency he could send an agent into the property who was holding a key. Mr Grigg also highlighted the need for someone to sign off large scale works at the property. Mr Rooke said he would travel to the property in order to commission a contractor and sign off works like a roof replacement for example.

14. It became clear that Mr Rooke had not visited his properties for at least 18 months. He said that this had not caused a problem. He could rely on his tenants to inform him of any issues that arose. Mr Grigg highlighted the fact that the tenants could change in the future. Mr Rooke may get tenants who are less reliable.
15. Mr Rooke said he used lettings agents to find his tenants. He had used a local estate agency Roberts and Co. They had not informed him whether they had a license or not although it seemed likely that they did have such a license. Further Mr Rooke had previously used Roberts and Co to manage 24 Heather Court however he had taken back management and now managed both properties himself. He seemed generally sceptical about the value added by agents.
16. When Mr Grigg suggested that Mr Rooke could use a family member or friend as his agent Mr Rooke said he tried to keep his family and friends separate from his business dealings. He used an address in Wales of a friend as a correspondence address but that was the extent of his reliance. He also said that he had "nosey neighbours" close to the properties whom he could rely on in the event of misuse of the properties by the tenants.
17. Angharad Thomas told the Tribunal that the Rent Smart Wales policy in relation to overseas landlords came into force about a year ago. It soon became clear that the policy created anomalies for the reason that Mr Rooke had highlighted and that the matrix (see above) had been introduced to address these anomalies and to seek to clarify that a local presence was required. She gave several examples of how the policy had been applied. An applicant from the Isle of Wight had been caught by the condition but had managed to satisfy Rent Smart Wales that she could access her properties frequently and had done so.
18. Ms Thomas explained the overall purpose of the licensing system. Many landlords had only one or two properties. They often did not have the skills necessary to manage property. Complaints had been monitored for some time. It was decided that the sector needed to be improved and that the licensing system was the way to do this. She emphasised the need for landlords or their agents to visit their properties periodically as recommended in the Code of Practice. She said that she thought 18 months was a long time to leave a property unchecked. The landlord had the responsibility to ensure the safety of their tenants. Ms Rivers repeated this and said it came down to due diligence by the landlord.

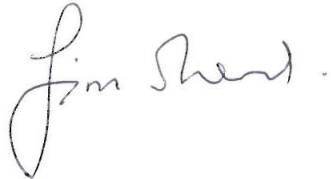
19. In making closing submissions Mr Grigg repeated the importance of visits by landlords to their properties. The fact that a landlord was overseas hampered this. He was not suggesting that overseas landlords were worse than those in mainland Britain. It stood to reason that if a landlord was some distance away he or she would be less likely to make visits. Management was generally easier if you were local to the property. He emphasised the fact that all of the 25,000 license holders have Condition 5 imposed on them. He also said that it was a matter for Rent Smart Wales whether they imposed a condition and that the Tribunal could only interfere if the condition or its imposition was unlawful in a public law sense.

Summary of findings

20. After some deliberation the Tribunal has decided that the appeal must fail and the decision by Rent Smart Wales to impose Condition 5 is confirmed.
21. Mr Rooke's arguments both written and oral were clear. He acquitted himself well without any legal representation. The Tribunal recognised that the condition could and indeed has previously created anomalies in which landlords living in far flung parts of "mainland Britain" such as Newcastle Upon Tyne could freely obtain a license and manage a property in Wales without having to use a local agent. Nevertheless it was equally clear (particularly from the evidence of Angharad Thomas) that Rent Smart Wales' intentions in imposing Condition 5 were entirely valid and commendable. It was part of the overall aim of improving the private rented sector in Wales. In any event the condition had to be read in conjunction with the matrix which emphasised that each case would be looked at on its facts and that local agents were required. In Mr Rooke's case he admitted that he had not been to his properties for some time. He relied on the goodwill of his current tenants in reporting matters that may arise. However the Tribunal considers that Condition 5 is a reasonable condition to impose on a license in circumstances where a landlord is living some distance away. Tenants change as does their level of goodwill. It is important for both landlord and tenant to have a local presence in order to deal with regular inspections, disrepair matters and any other issues that may arise. Therefore the appeal is dismissed.
22. The Tribunal expects that Mr Rooke will be allowed a further period by Rent Smart Wales to comply with the license condition. It would be unjust for him to be prejudiced by the fact that the original 8 week period has now expired.
23. The Tribunal remain concerned about the potential for anomalies to emerge from the continued use of Condition 5 in its current form. During the hearing Mr Grigg accepted that "mainland Britain" may not be the best criterion to use. Further it is not acceptable that part of the condition is contained in a separate matrix. Ultimately this is a matter for Rent Smart Wales to resolve. It would be wrong in light of the Tribunal's decision to refuse the appeal for it to seek to influence what criteria Rent Smart Wales use. Suffice to say that the Tribunal does consider that the condition requires further attention to seek to avoid future anomalies. Equally important in the Tribunal's view is that the condition is publicised properly so that landlords are fully aware of its implications.

According to Mr Rooke he was not made aware of the condition until after he had paid money to attend the landlord course. If this is true it is unacceptable.

Dated this 26th day of April 2018

A handwritten signature in cursive script that reads "Jim Sheard".

CHAIRMAN