

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL (WALES)

Reference: RPT/0059/12/18

In the Matter of an Application under Section 27 of the Housing (Wales) Act 2014

Applicant: Joseph Power

Respondent: Rent Smart Wales

TRIBUNAL AVS Scott Chair
Roger Baynham FRICS
Andrew Lewis FRICS

ORDER AND REASONS FOR THE DECISION OF TRIBUNAL

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

REASONS

2. The Applicant, Mr. Joseph Power, owns Bryn Mor, 4, Giltar Terrace, Penally, Tenby, SA70 7QD (the Property) in respect of which Mr. Power was issued with a licence by Rent Smart Wales (RSW) on 3 November 2018. He registered the Property on 27 July 2016 but did not submit a licence application. This came to the attention of RSW in October 2018, who also noticed that the Property was owned and managed by Mr. Power and in respect of which no agent had been appointed. It was also noted that Mr. Power lived over 200 miles away in Huddersfield. Mr. Power was told by email that he should submit his licence application if he still required a licence and was informed of a condition which would apply to the licence, which was that he would be required to appoint a local agent unless he had a locally based staff member. After some discussion between RSW and Mr. Power, a licence application was submitted 3 October 2018. Mr. Power appealed to the Residential Property Tribunal on 20 November 2018 in respect of the condition that he should appoint a local agent as he lived more than 200 miles from the Property.
3. Mr. Power's grounds of appeal were that he had appointed his tenant as his agent to look after his property. The Tenant had moved in around 2009 and there had never been any problems with the tenant. At the beginning of the tenancy, Mr. Power had employed an agent but he was said to be "not very good". Mr. Power's tenant was an ex colleague and Mr. Power found her to be reliable. In return, he reduced the rent from £600 to £525 per calendar month. The tenant arranged for a plumber to issue the gas safety certificate every year and emailed Mr. Power if repairs were needed, to which he always agreed. In addition, his mortgage was about to expire and he anticipated that any new mortgage was likely to be on less favourable terms, given his age and the less favourable tax regime for landlords with a mortgage. The added expense of appointing an agent led him to have to consider raising the rent or selling the property.
4. Mr. Power enclosed a letter from his tenants dated 8 November 2018, who asserted it was likely to be detrimental to them to have a local agent. They also referred to problems with

the agent at the beginning of the tenancy (again, they were non-specific in their complaints). The arrangement whereby they managed the Property and tenancy issues directly with Mr. Power had been successful. It also kept the rent low.

5. RSW provided a detailed submission regarding the imposition of Condition 5 on 10 January 2019. Subsequently, Mr. Power asked for a hearing on the papers. As RSW had requested a hearing, the Tribunal was duly convened on 5 April 2019 at the offices of the residential property tribunal at 10 am, when it heard submissions from RSW. Mr. Power had written twice on 30 January and 20 March 2019 to the Clerk to the tribunal stating he would not be able to attend the hearing due to the distance involved. He submitted that the circumstances in his particular case should be considered on their merit and should not be judged on what should be the case in general.
6. RSW's detailed submission set out the framework of the legislation relating to the licensing scheme introduced in Wales in 2014 and in particular referred to Section 22 of the Housing (Wales) Act 2014 (the Act), which provides as follows:

(1) A licence must be granted subject to a condition that the licence holder complies with any code of practice issued by the Welsh Ministers under section 40,

(2) A licensing Authority may grant a licence subject to such further conditions as it considers appropriate.

7. The submission also sets out the reasoning for the imposition of condition 5. RSW considers it important for a licensee to be able to drive to a rental property without excessive time, cost and planning implications, though all applications were considered on a case by case basis and there had been two instances where the condition had not been imposed due to a licensee's specific circumstances.
8. In this case, RSW had considered it appropriate to impose Condition 5, in order to facilitate good management of rental properties in Wales and so that Licensees could meet the requirements of the Code of Practice. Condition 5 requires a licensee to be available locally to respond to tenant requests, deal with any emergencies which arise and proactively inspect the property at regular and appropriate intervals. RSW sought to drive up standards in the private rented sector. RSW felt it important to have appropriate management arrangements in place and set out in the submission the various pieces of legislation applicable to residential property. RSW also referred to a previous decision of the Tribunal, in RPT/0019/12/17, in which it was said that RSW's intentions in imposing condition 5 were entirely valid and commendable. RSW submitted that 200 miles or more away from a rental property is too far for a licensee effectively to manage. In their view, asking a tenant to carry out the landlord's responsibilities put the tenant in a position of conflict and was an abdication of responsibility by the landlord for his duties under, inter alia, the Landlord and Tenant Act 1985, the Housing Act 2004, Building Regulations 2010 and the Gas Safety (Installation and Use) Regulations 1998.
9. RSW also pointed out that Mr. Power had stated that he used the tenants as his agent. However, the tenants did not have a licence and if they applied for one, the application would have been rejected by RSW due to the conflict position.

10. The submission also addressed the Appellant's concern regarding a previous agent appointed, noting that there are 190 licensed agents operating in Pembrokeshire, whose activities are regulated by RSW. In any event, the licensed agent could be a family friend.
11. The fact that the tenants were known to the Appellant and found to be reliable was also addressed in the submission. RSW needed to take account of the fact that the licence was for 5 years and circumstances might change over the duration of the licence. RSW was also concerned at the attempt to delegate his statutory duties to the tenant by asking the tenants to arrange the gas safety certificates.

Tribunal's findings

12. The Tribunal accepted RSW's submissions. It was clearly important in this particular case for there to be a locally based agent to carry out the licensee's duties as a Landlord effectively. Mr. Power seemed to accept this, as he employed agents in Bristol and Plymouth where he also owned properties. These properties were also more than 200 miles from Huddersfield. The Tribunal also noted there were at least 6 other letting agents in Tenby. Further, it did not seem to the Tribunal to be fair on the tenants to have the landlord's obligations imposed on them. In any event, the nature of the relationship might change and there may be a change of tenants during the life of the licence. It was also conceivable that Mr. Power might purchase other properties in Wales.
13. The Tribunal therefore dismissed the Appeal. Condition 5 would remain.

Dated this 11th day of April 2019



Chair