

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL

Reference: RPT/0052/09/18

In the Matter of an application under section 27 of the Housing (Wales) Act 2014, appeal against condition of licence.

In the matter of an Application for permission for leave to appeal to the Upper Tribunal.

Applicant: Mr Paul Lawrance.

Respondent: Rent Smart Wales

Tribunal: Legal Chair- Richard Payne
Expert surveyor member- Ceri Jones
Lay member- Angie Ash

DECISION

The application for permission to appeal is refused.

Reasons.

1. By letter dated 16th July 2019, the Respondent seeks permission to appeal against the tribunal's decision of 7th June 2019. The Respondent also seeks leave to appeal out of time but correctly point out that in another unrelated tribunal hearing on 8th July 2019, I indicated that the Respondent would have permission to appeal out of time in this case. The reason for this was because there was confusion about the precise date that the original decision had been received by the Respondent, connected with both the tribunal's recent move of premises and staff leaves within Rent Smart Wales (RSW). The tribunal was satisfied that the original decision did not come to the attention of the correct personnel in RSW until on or around Friday 5th July 2019. Having indicated that permission would be granted to appeal out of time, I allow this application to be made out of time.
2. Permission to appeal will be granted if it appears to the tribunal that there are reasonable grounds for concluding that the RPT may have been wrong for one of the following reasons as set out in the Lands Chamber of the Upper Tribunal Practice Direction 2010 (paragraph 4.2);

1. That the decision shows that the RPT wrongly interpreted or wrongly applied the relevant law.
 2. That the decision shows that the RPT wrongly applied or misinterpreted or disregarded a relevant principle of valuation or other professional practice.
 3. That the RPT took account of irrelevant considerations, or failed to take account of relevant considerations or evidence, or there was a substantial procedural defect or
 4. The point or points at issue is or are of potentially wide implication.
3. Unless the application for permission specifies otherwise, the application will be treated as an application for an appeal by way of review.

Grounds for permission to appeal.

4. RSW give the following as the reasons for seeking permission to appeal;
1. *The Tribunal took account of irrelevant considerations or failed to take account of relevant considerations or evidence, or there was a substantial procedural defect.*
 - a) *The Tribunal failed to take into account that the Appellant could move in the five year term of the licence.*
 - b) *This resulted in the Tribunal not amending the licence with a condition that he be granted the licence as long as he does not move further away and/or inspect the property periodically.*
 - c) *Following the Tribunal's decision to remove condition 5(b) in its entirety means the landlord would not be in breach of the licence if he moved as far away as the north of Scotland, and did not inspect the property for the whole five year term of the licence.*

Decision.

5. It is noted that at condition 8 of Mr Lawrance's licence there is an obligation that says "the licensee must keep their licence details up-to-date either within their Rent Smart Wales account at www.rentsmart.gov.Wales or by notifying Rent Smart Wales by telephone..... or by post.... . These details must be updated within 28 days of the change." It is noted that RSW's website refers to the licensee's obligations to keep their registration information up-to-date for the period of the licence which includes; "Any change in name; correspondence address; contact telephone number; e-mail address or other contact information provided as part of the registration".

6. Further, section 23 of the Housing (Wales) Act 2014 (“the Act”) requires a licence holder to notify the licensing authority in writing of any change in the name under which the licence holder is licensed and any prescribed changes. In addition, section 24 of the Act refers to the amendment of a licence and allows the licensing authority to amend any licence granted by it to impose new conditions or to remove or change existing conditions and sets out the procedures for doing so including the right to appeal to the tribunal on the part of the licence holder.
7. With regard to RSW’s concerns and grounds upon which permission to appeal is sought, it is principally alleged that the tribunal failed to take into account that the appellant could move within the 5 year period and the tribunal erred in law in not imposing a condition that Mr Lawrance could remain a licensee as long as he did not move further away and/or inspect the property periodically. Upon all tribunal members closely revisiting the notes of the hearing, in particular the notes of RSW’s solicitor Mr Grigg’s final submissions, he had made it clear that the 200 mile condition was the issue and whether there were any extenuating circumstances. Mr Grigg did not make any submissions to the effect that an additional condition should be imposed in the event that the tribunal found in Mr Lawrance’s favour.
8. It is also the case that during the evidence given on behalf of RSW the tribunal asked Mrs Sarah Rivers if there were any conditions that could be imposed to meet their policy aims? Mrs Rivers replied in the negative. There was no evidence in the hearing to suggest that Mr Lawrance was planning to move from his current address in Norwich.
9. The tribunal dealt with all relevant evidence and submissions before it. The tribunal’s task was to consider whether or not Mr Lawrance should be granted a licence notwithstanding that he lived more than 200 miles away from his rental property. The possibility that Mr Lawrance might move house within the currency of the licence period was not put to him and there was no evidence to that effect. This, combined with the fact that a licence holder is obliged in any event to notify RSW of changes, including change of address and that RSW have the power at any time under section 24 of the Act to amend the licence conditions mean that there was no error of law by the tribunal nor did the tribunal fail to take into account any relevant considerations.
10. The scenario sketched by RSW at ground 1 (c) in paragraph 4 above is in our view wrong and speculative. If RSW at any time, wish to amend Mr Lawrance’s licence to impose a condition that he is to inform them if he moves house and moves even further away, for example to Scotland, then they have the power to do so under section 24. There is nothing to stop RSW instituting the amendment process right away if this is a concern to RSW. It is an existing obligation in any event for the change to be notified to RSW.

11. There was no evidence or argument put before the tribunal that the condition now contended for should have been imposed and therefore the tribunal did not fail to take into account a relevant consideration. However, to be clear, even had such submissions been made at the hearing, there was no evidence to support fears of a potential move and there would have been no grounds to impose such a condition given that the scenario is covered by condition 8 of the licence and section 23 of the Act, in addition to RSW's existing amendment powers under section 24. In these circumstances the tribunal did not fail to take into account a relevant consideration and there has been no error in law in the decision. Permission to appeal is accordingly refused- there are insufficient prospects of the appeal succeeding.

DATED this 20th day of August 2019

A handwritten signature in black ink, appearing to read 'R Payne', with a stylized flourish at the end.

Richard Payne LLB M Phil
CHAIRMAN