

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
RENT ASSESSMENT COMMITTEE

Reference: RAC/0006/07/19

In the matter of 39, New Road, Haverfordwest, Pembrokeshire, SA61 1TU

In the matter of an application under Section 13(4) of the Housing Act 1988

COMMITTEE: Richard Payne (Chairman)
Peter Tompkinson (Surveyor)

APPLICANTS: (1) Mr Jamie Pearce
(2) Mrs Emma Pearce

RESPONDENTS: (1) Mr Glyn Davies
(2) Mrs Julie Davies

REASONS FOR THE DECISION OF THE RENT ASSESSMENT COMMITTEE

The Decision in Summary

1. For the reasons given below, the Rent Assessment Committee hereby determine that the rent at which the material premises might reasonably be expected to be let in the open market by a willing landlord under an assured short-hold tenancy in July 2019 is £625 per month. In accordance with the law, the rent of £625 is payable from 15th July 2019.

The Application

2. The Applicants are the tenants of 39 New Road, Haverfordwest, Pembrokeshire, SA61 1TU ("the Property") which they occupy under an Assured Short-hold Tenancy agreement dated 1st September 2014 which was to commence on 15th September 2014 ("the Tenancy"). The Tenancy was for a fixed term of 6 months and the rent was £600 per month payable in advance on the 15th of each month. Under that agreement, the tenants are responsible for the payment of all the utility bills. This was an unfurnished let save for the curtains in all rooms and the carpets in the rooms that had carpets as recorded in the inventory to the agreement.
3. The Respondents, Mr and Mrs Davies, are the freehold owners and landlords of the Premises.

4. By notice dated 11th June 2019 (“the Notice”) the Respondents served notice under section 13(2) of the Housing Act 1988 (as amended) – hereafter “the Act” - proposing an increase in the monthly rent from £600 to a new rent of £700 which was to commence on 15th July 2019. This was the first time that a rent increase had been proposed under the Tenancy since its commencement in September 2014.
5. By an application dated 9th July 2019, the Applicants applied to this Committee under section 13(4) of the Act with the result that the Notice has been referred to the Committee to address the question of the proposed rent increase, namely, the additional £100 per month that has been sought.
6. On 18th July 2019 the tribunal gave directions for the preparation of the case and the submission of arguments and evidence, which have been complied with by the parties. Although an oral hearing was offered, both parties indicated that they wished for the matter to be dealt with on the papers.

The Property.

7. This Committee was convened on 4th October 2019 to undertake an inspection of the Premises at 11.00 a.m. The Respondents were in attendance for the inspection but the Applicants made it clear that they would prefer the Respondents not to accompany the Committee members on the inspection and refused entry to them (as they are entitled to do). The Committee however explained in the presence of all the parties before the inspection commenced, that the matter would be determined on the basis of both sides written representations and that no oral evidence would be taken from the Applicants during the inspection. The Respondents indicated that they understood this.
8. 39 New Road Haverfordwest is a semi-detached house built during the middle part of the twentieth century. The property has rendered elevations, with upvc double glazed windows, to the front is a single storey porch extension and to the rear a kitchen extension has been formed. The property sits under a dual pitched hipped roof clad in man-made fibre tiles. To the front of the property is a sloping tarmac drive and small grassed lawn area, to the rear is a back garden laid to patio slabs and steps leading to an undercroft storage area. A single garage now used as a storage shed sits at the end of the sloping drive. The accommodation comprises, on the ground floor, front porch leading into hallway, reception room, lounge, kitchen dining area, and a utility area. From the hallway a flight of stairs leads to access to two bedrooms and a bathroom and a further steep stair accessing the converted loft now also used as a bedroom. The property is connected to all mains services and was in fair condition for its type and age.

The Law

9. The material provisions that govern this application are to be found in sections 13 and 14 of the Housing Act 1988 as amended. For ease of reference, we recite those provisions in full. Section 13 is in the following terms:

13 Increases of rent under assured periodic tenancies

(1) *This section applies to—*

(a) *a statutory periodic tenancy other than one which, by virtue of paragraph 11 or paragraph 12 in Part I of Schedule 1 to this Act, cannot for the time being be an assured tenancy; and*

(b) *any other periodic tenancy which is an assured tenancy, other than one in relation to which there is a provision, for the time being binding on the tenant, under which the rent for a particular period of the tenancy will or may be greater than the rent for an earlier period.*

(2) *For the purpose of securing an increase in the rent under a tenancy to which this section applies, the landlord may serve on the tenant a notice in the prescribed form proposing a new rent to take effect at the beginning of a new period of the tenancy specified in the notice, being a period beginning not earlier than—*

(a) *the minimum period after the date of the service of the notice; and*

(b) *except in the case of a statutory periodic tenancy—*

(i) *in the case of an assured agricultural occupancy, the first anniversary of the date on which the first period of the tenancy began;*

(ii) *in any other case, on the date that falls 52 weeks after the date on which the first period of the tenancy began; and*

(c) *if the rent under the tenancy has previously been increased by virtue of a notice under this subsection or a determination under section 14 below—*

(i) *in the case of an assured agricultural occupancy, the first anniversary of the date on which the increased rent took effect;*

(ii) *in any other case, the appropriate date.*

(3) *The minimum period referred to in subsection (2) above is—*

(a) *in the case of a yearly tenancy, six months;*

(b) *in the case of a tenancy where the period is less than a month, one month; and*

(c) *in any other case, a period equal to the period of the tenancy.*

(3A) *The appropriate date referred to in subsection (2)(c)(ii) above is—*

(a) *in a case to which subsection (3B) below applies, the date that falls 53 weeks after the date on which the increased rent took effect;*

(b) *in any other case, the date that falls 52 weeks after the date on which the increased rent took effect.*

(3B) *This subsection applies where—*

(a) *the rent under the tenancy has been increased by virtue of a notice under this section or a determination under section 14 below on at least one occasion after the coming into force of the Regulatory Reform (Assured Periodic Tenancies) (Rent Increases) Order 2003; and*

(b) the fifty-third week after the date on which the last such increase took effect begins more than six days before the anniversary of the date on which the first such increase took effect.]

(4) Where a notice is served under subsection (2) above, a new rent specified in the notice shall take effect as mentioned in the notice unless, before the beginning of the new period specified in the notice,—

(a) the tenant by an application in the prescribed form refers the notice to the appropriate tribunal; or

(b) the landlord and the tenant agree on a variation of the rent which is different from that proposed in the notice or agree that the rent should not be varied.

(5) Nothing in this section (or in section 14 below) affects the right of the landlord and the tenant under an assured tenancy to vary by agreement any term of the tenancy (including a term relating to rent).

10. By reason of the above provisions, where the tenancy includes no term allowing rent increases then to secure a rent increase in respect of a periodic assured tenancy (including a periodic assured short-hold) the landlord must service a notice under section 13(2) of the Act in prescribed form.

11. Under section 13 there are three requirements for the starting date specified for the new rent in any notice:

(I) The proposed new rent must be to take effect at the beginning of a new period of the tenancy (per s. 13(2)). In the case of a monthly tenancy commencing on 15th September 2014, a new rent must accordingly commence on the 15th of the month and the notice of 11th June 2019 correctly identifies the date of increase to be 15th July 2019.

(II) For a monthly tenancy, the minimum period of notice given before the proposed new rent can take effect is a month (per s. 13(3)(b)). The notice of 11th June 2019 complies with this provision.

(III) In most cases, the starting date for the proposed new rent must not be earlier than 52 weeks after the date on which the tenancy commenced or the date on which the rent was last increased under section 13. Since there has not been a previous increase and it is more than 52 weeks since the tenancy commenced, then this is complied with in the current case.

12. Section 14 of the Act adds the following:

14 Determination of rent by tribunal

*(1) Where, under subsection (4)(a) of section 13 above, a tenant refers to the appropriate tribunal a notice under subsection (2) of that section, the appropriate tribunal shall determine the rent at which, subject to subsections (2) and (4) below, **the appropriate tribunal consider that the dwelling-house concerned might reasonably be expected to be let in the open market by a willing landlord under an assured tenancy—***

(a) which is a periodic tenancy having the same periods as those of the tenancy to which the notice relates;

(b) which begins at the beginning of the new period specified in the notice;

(c) the terms of which (other than relating to the amount of the rent) are the same as those of the tenancy to which the notice relates; and

(d) in respect of which the same notices, if any, have been given under any of Grounds 1 to 5 of Schedule 2 to this Act, as have been given (or have effect as if given) in relation to the tenancy to which the notice relates.

(2) In making a determination under this section, **there shall be disregarded—**

(a) any effect on the rent attributable to the granting of a tenancy to a sitting tenant;

(b) **any increase in the value of the dwelling-house attributable to a relevant improvement carried out by a person who at the time it was carried out was the tenant, if the improvement—**

(i) was carried out otherwise than in pursuance of an obligation to his immediate landlord, or

(ii) was carried out pursuant to an obligation to his immediate landlord being an obligation which did not relate to the specific improvement concerned but arose by reference to consent given to the carrying out of that improvement; and

(c) **any reduction in the value of the dwelling-house attributable to a failure by the tenant to comply with any terms of the tenancy.**

(3) For the purposes of subsection (2)(b) above, in relation to a notice which is referred to by a tenant as mentioned in subsection (1) above, an improvement is a relevant improvement if either it was carried out during the tenancy to which the notice relates or the following conditions are satisfied, namely—

(a) that it was carried out not more than twenty-one years before the date of service of the notice; and

(b) that, at all times during the period beginning when the improvement was carried out and ending on the date of service of the notice, the dwelling-house has been let under an assured tenancy; and

(c) that, on the coming to an end of an assured tenancy at any time during that period, the tenant (or, in the case of joint tenants, at least one of them) did not quit.

(3A) In making a determination under this section 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, the appropriate tribunal shall have regard to the amount of council tax which, as at the date on which the notice under section 13(2) above was served, was set by the billing authority—

(a) for the financial year in which that notice was served, 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 “rent” does not include any service charge, within the meaning of section 18 of the Landlord and Tenant Act 1985, but, subject to that, includes any sums payable by the tenant to the landlord on account of the use of furniture, in respect of council tax or for any of the matters referred to in subsection (1)(a) of that section, whether or not those sums are separate from the sums payable for the occupation of the dwelling-house concerned or are payable under separate agreements.

(5) Where any rates in respect of the dwelling-house concerned are borne by the landlord or a superior landlord, the appropriate tribunal shall make their determination under this section as if the rates were not so borne.

(6) In any case where—

(a) the appropriate tribunal have before them at the same time the reference of a notice under section 6(2) above relating to a tenancy (in this subsection referred to as “the section 6 reference”) and the reference of a notice under section 13(2) above relating to the same tenancy (in this subsection referred to as “the section 13 reference”), and

(b) the date specified in the notice under section 6(2) above is not later than the first day of the new period specified in the notice under section 13(2) above, and

(c) the [appropriate tribunal] propose to hear the two references together, the [appropriate tribunal] shall make a determination in relation to the section 6 reference before making their determination in relation to the section 13 reference and, accordingly, in such a case the reference in subsection (1)(c) above to the terms of the tenancy to which the notice relates shall be construed as a reference to those terms as varied by virtue of the determination made in relation to the section 6 reference.

(7) Where a notice under section 13(2) above has been referred to the appropriate tribunal, then, unless the landlord and the tenant otherwise agree, the rent determined by the appropriate tribunal (subject, in a case where subsection (5) above applies, to the addition of the appropriate amount in respect of rates) shall be the rent under the tenancy **with effect from the beginning of the new period specified in the notice or, if it appears to the appropriate tribunal that that would cause undue hardship to the tenant, with effect from such later date (not being later than the date the rent is determined) as the committee may direct.**

(8) Nothing in this section requires the appropriate tribunal to continue with their determination of a rent for a dwelling-house if the landlord and tenant give notice in writing that they no longer require such a determination or if the tenancy has come to an end.

(9) This section shall apply in relation to an assured short-hold tenancy as if in subsection (1) the reference to an assured tenancy were a reference to an assured short-hold tenancy.

13. The terms of section 14 are self-explanatory. In most applications (including the present) the key provisions for consideration are broadly confined to sections 14(1) to (3) and 14(7), parts of which are highlighted above for convenience.

Evidence and Representations

14. The parties each provided written representations, Mr and Mrs Davies by letter and enclosures dated 7th August 2019, and Mr and Mrs Pearce by letter of 27th August 2019 and enclosures (which included previous correspondence between the parties).
15. We have fully considered the Respondent landlords' written submissions which may be summarised as follows:
 - (I) The Property is a 3 bedroomed semi-detached house with garage and parking for several cars.
 - (II) There has not been any increase in the rent since the tenancy commenced in 2014.
 - (III) The proposed rent of £700 per month is a realistic market rent for the area. Similar properties have been rented for comparable sums, for example the next door property at number 37 New Road a smaller property, was rented in 2014 4 £650 per calendar month and continues to be rented out. Number 44 New Road, a 3 bedroomed property was recently advertised at £695 per month and Number 1 Cleddau Avenue nearby, although for bedroomed, is advertised at £900 per month.
16. We have also carefully considered the Applicants' written submissions in full. They say that the garage at the property is not accessible for a vehicle and internally is soaking wet in the winter and damp in the summer. The family washing machine is kept in the garage and until very recently had to be powered via an extension lead from the house as the internal electrics and garage were constantly wet and caused the house electrics to trip out. This has now been rectified.
17. There was reference to a previous problem with the oven which was replaced by the Applicants in February and the Applicants included a copy of an email sent to the Respondents on 10th of February 2019 which detailed the problems with the oven, the safety of the electrics and various other repairs and works undertaken by the Applicants. It was shortly after this that the Respondents purported to increase the rent but did not do so at that point in the correct manner. The Committee wish to make it clear that we have disregarded evidence on both sides about the oven and other issues that are not relevant to the determination that we have to make.
18. The Applicants however did take issue with the Respondents' description of the property as a three bedroomed semi-detached property. They indicated that it was their understanding that before a landlord can market a room for rent or sale it has to meet certain standards with regard to health and safety and Building Regulations to be advertised as a habitable space such as a bedroom. The Applicants referred to the pitch of the stairs leading to the attic room and contended that the correct description of the property is a 'two

bedroomed, semi-detached with attic room'. They further said that the insulation is not up to standard and the small radiator inadequate as the room is bitterly cold in the winter. They submit that two bedroomed houses in the Haverfordwest area are marketed between £500 and £550 per month.

19. With regard to the comparable properties cited by the Respondents, they state that number 37 New Road, the next door property, pays £625 a month and not £650 and that they have spoken to the tenants to confirm this, and that it is a full three bedroomed house. They say that number 1 Cleddau Avenue is a four bedroomed detached house and was advertised on Facebook at £900 per month with all bills included, but this has since been removed due to the property being let and so they are unable to verify which bills were included.
20. They also indicated that in discussion with a representative from West Wales Properties recently, that the Company had let a 4 bedroomed house on New Road for £750 and purportedly the representative had offered the opinion that the £700 being sought by the Respondents was "high for a three bedroomed semi".

Determination

21. There are three issues that require determination.
 - (I) Firstly, was the section 13 Notice valid?
 - (II) Secondly, if so, what is the market rent having regard to the matters in section 14 of the Act?
 - (III) Thirdly, are there any grounds for determining that the Applicants would suffer undue hardship if the new rent were to "bite" in July 2019 and should the Committee fix a later date for the commencement of a new rent under section 14(7) of the Act?

The Validity of the Notice

22. Section 13(2) expressly states that the section 13(2) notice must propose a new rent to take effect at the beginning of a new period of the tenancy specified in the notice. As considered under paragraph 11 above, the notice of 11th June 2019 does comply with the statutory provisions and moreover was on the correct prescribed form for rent increases in Wales. Therefore the notice is valid.

The Appropriate Rent

23. Under section 14 of the Act this Committee must determine the rent at which we consider that the Premises might reasonably be expected to be let in the open market by a willing landlord under an assured tenancy and (a) which is a periodic tenancy having the same periods as those of the tenancy to which the notice relates, (b) which begins at the beginning of the new period specified in the notice, (c) the terms of which (other than relating to the

amount of the rent) are the same as those of the tenancy to which the notice relates, and (d) in respect of which the same notices, if any, have been given under any of Grounds 1 to 5 of Schedule 2 to the Act, as have been given in relation to the tenancy to which the notice relates. That determination is subject to the additional provisions of sections 14(2) and (4). For those purposes, upon the evidence and following the inspection there are neither relevant improvements nor relevant disrepair to take into account.

24. We determine that the rent at which the Premises might reasonably have been expected to be let in the open market in July 2019, having regard to the factors in section 14 of the Act, was £625.00 per calendar month.

25. We have reached that determination for the following reasons:

- (I) We consider that for a market rent of £700 per month as sought by the Respondents the property would need to be in excellent condition with modern fittings. In the property, the general standard of accommodation did not meet this level, for example the bathroom and kitchen were dated and tired. Further the attic conversion would not comply with current Building Regulations. Please note that we are not saying that the conversion did not comply with the regulations in force at the time of the conversion since we simply do not have any information on that. However, the circulation space at the base of the stairwell is confined and inadequate and the angle of the staircase is too steep. The access into the room from which the staircase rises, is obstructed by the staircase itself.
- (II) The Committee visually externally inspected the comparables to which we had been referred. Number 44 New Road that we were told was a three-bedroom property advertised at £695 per calendar month is a detached property, outwardly of smarter appearance and with a more attractive front garden area. Number 37 New Road is next door to the property and does not have attic an conversion. Number 1 Cleddau Avenue is a short walk away but occupies a corner plot in a quiet cul-de-sac. It is a detached property with an integral garage and appears to have a rear extension and a decent sized garden. Whilst we do not know if it was rented out and for what amount, it is in any event a more substantial property and in a different location, albeit close by, to the subject property and would be likely to let for more even without the benefit of an internal inspection. The comparables were therefore of limited assistance to us.
- (III) We do treat the property as a three bedroomed one since as a matter of fact it does have three bedrooms including the attic room. It would not be appropriate to treat the property as a two bedroomed one as we are urged to do by the Applicants However, since the attic room and access to it has the limitations and difficulties described earlier, then the market rent will be less than for a three bedroomed semi-detached property where these problems of access and design are absent.
- (IV) Having regard to the character and location of the property, the garage can't be used for vehicles and the back garden is small. The front

- garden does have room for more than one vehicle (including the Applicants) work van, but is on a fairly steep incline.
- (V) Taking into account all of the above factors, we consider that the open market rental value of the property as it currently stands is £625 per calendar month.

Section 14(7) and “Undue Hardship”

26. We were not provided with any evidence that if the commencement date of the new rent was to be 15th July 2019 that this would cause undue hardship to the Applicants and therefore there are no grounds why the commencement date for any new rent should be varied under section 14(7) of the Act.

Determination

The Rent Assessment Committee hereby determines that:

1. The rent at which the property might reasonably be expected to be let in the open market by a willing landlord under an assured or assured short-hold tenancy in July 2019 is £625 per month. The increased rent is payable with effect from the 15th July 2019.

DATED this 31st day of October 2019



**Richard Payne
CHAIRMAN**