

Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL (WALES)

RENT ASSESSMENT COMMITTEE

Reference: RAC/0005/10/20

In the Matter of: 97B Railway Street, Splott, Cardiff, CF24 2NA

Application: Section 13(4) of the Housing Act 1988 (as amended)

The Committee: Chairman : C Jones
Valuer Member : M Taylor MRICS

Applicant: Mr J Poole

Respondent: Cardiff Community Housing Association

DECISION

The Decision in Summary

1. For the reasons given below, this Tribunal, sitting as a Rent Assessment Committee, hereby determine that the rent at which the Property might reasonably be expected to be let in the open market by a willing landlord under an assured periodic tenancy in October 2020 is £89.31 per week. In accordance with the Housing Act 1988, the rent of £89.31 per week is payable from 5th October 2020.

The Application

2. The Applicant is the tenant of 97B Railway Street, Splott, Cardiff, CF24 2NA (“the Property”) which he occupies under an assured periodic tenancy agreement dated 18th March 2002 (‘the Tenancy’). The Tenancy was initially entered into as an assured shorthold tenancy and has become an assured periodic weekly tenancy. The weekly rent is payable in advance on Monday each week. There is no service charge payable.
3. The Respondent housing association, is the freehold owner and landlord of the Property.
4. By notice dated 4th September 2020 (‘the Notice’), the Respondent served notice under section 13(2) of the Housing Act 1988 (as amended), proposing an increase in the weekly rent from £87.56 to a new rent of £89.31 which was to commence on 5th October 2020.
5. By an application dated 15th September 2020, the Applicant applied to the Tribunal under section 13(4) of the Act with the result that the Notice was referred to this Committee to address the question of the proposed rent increase, namely the additional £1.75 per week that has been sought by the Respondent.

6. On 26th November 2020, the Residential Property Tribunal gave directions for the preparation of the case and for the submission of statements and evidence. Although an oral hearing was offered, both parties stated that they wished for the matter to be dealt with on the papers.

Preliminary Matters

7. A meeting was duly convened at 2.00pm on 7th April 2021 as a Rent Assessment Committee under the provisions of the Act, by means of remote conferencing because of the Covid 19 pandemic. The Surveyor Member of the Committee visited the Property at 10.00am on 7th April 2021. It should be noted that inspection was attended by a single member of the Committee also because of Covid 19 considerations. Neither the Applicant nor the Respondent were in attendance for the inspection and it was therefore only possible for the Surveyor Member to view the exterior of the Property. The Committee was satisfied that the Tribunal office had duly notified the parties by the e-mail addresses previously used by each of the parties, of the time and date of the inspection and considered that it was appropriate to proceed with its determination in all the circumstances.
8. Prior to the meeting the Committee had sought a full copy of the Notice and this was duly supplied by the Respondent. The Committee duly considered the Notice and was satisfied that the correct prescribed form had been used.
9. The Committee considered the question of due service of the Notice as it was required to be served a minimum period of one month before a new rent could take effect. Evidence of the method of service was not presented to the Committee. By virtue of the Interpretation Act 1978 ('the 1978 Act'), service is deemed to have occurred at the time at which the letter would be delivered in the ordinary course of post and if the Notice had been sent by first class post this would normally be the second day after posting. The Applicant's tenancy agreement refers to provision of notice 'in writing'. Schedule 1 of the 1978 Act provides a wide definition of 'in writing' to include a variety of modes in a visible form. In all the circumstances, the Committee considered that, on the balance of probabilities, the Respondent had served the Notice by electronic means as well as by post due to the pandemic and had therefore satisfied the provisions regarding service.
10. The Committee also considered whether the Notice had been served to take effect not earlier than the appropriate date in the light of previous rent increase and was satisfied that the date was 53 weeks after that previous increase took effect and valid in this respect also.
11. The final preliminary matter considered by the Committee was whether under Section 13(1)(b) of the Act, the Applicant's tenancy agreement contained a binding provision regarding increase of rent so that it was not one which then fell within the Act. The Committee were of the view that the wording of the relevant provision encompassed the Act's requirements and as the Respondent had served the Notice in the prescribed form, it was satisfied that Sections 13 and 14 of the Act applied in full.

The Law

12. The main provisions that govern this application are contained in sections 13 and 14 of the Housing Act 1988 as amended. For ease of reference, the Committee includes extracts from the relevant provisions as follows:

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; ...*

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

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

(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;*

13. By virtue 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.

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

14.1 The proposed new rent must be to take effect at the beginning of a new period of the tenancy as per S.13(2).

14.2 For a monthly tenancy, the minimum period of notice given before the proposed new rent can take effect is a month as per S.13(3)(b).

14.3 The starting date for the proposed new rent must not be earlier than 53 weeks after the date on which the rent was last increased under section 13.

15. 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 dwellinghouse 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...*
- (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...*
- (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.

16. The terms of section 14 are self-explanatory. In most applications (including the present application) the key provisions for consideration are broadly confined to sections 14(1) to (3) and 14(7).

The Property

17. The Property is a one-bedroom flat on the first floor, let under an assured periodic tenancy which commenced 18th March 2002. It was let as an unfurnished property, the Applicant being responsible for internal decoration and the Respondent being responsible for the repair of structure and exterior, installations, common parts and exterior decoration. The Property is two-storey, end of terrace property of traditional construction, built approximately 1910 – 1920. The property has a painted brick and stone elevation to the front with others having a rendered finish, with upvc double glazed windows and front door and has a rear extension. It has a slated roof and clay ridge tiles. There are small front and rear gardens and it is not known whether the Property has access to it with access via a side gate from an adjacent service road/lane. From the parties' written evidence, it appears that the accommodation comprises of a living room, bedroom, kitchen and bathroom with a flight of stairs leading from the hallway on the ground floor.
18. The Surveyor Member noted from inspection of the exterior of the Property that it was in a sound condition but coming towards the end of a decorative cycle and did not present well at the time of the visit due to a large amount of domestic rubbish in the front garden. The street was residential in nature and benefited from traffic calming close to the junction with Splott Road end, Splott Road being a busy mixed residential and retail road.

Evidence and Representations

19. The parties each provided written representations. The Applicant provided evidence with his main application and in subsequent e-mails to the Residential Property Tribunal, comprising of the letter to accompany the Notice dated 5th September 2020 and an extract from the tenancy agreement. The Respondent provided a witness statement signed by Ms Suzanna Morgan, the Respondent's Housing Services Co-ordinator, which also including a stock condition survey and energy performance certificates. We have fully and carefully considered all submissions and evidence accordingly.
20. The Respondent's evidence may be summarised as follows:
 - 20.1 Demand is high for this type of accommodation in Cardiff and Splott is a very popular area, so the Respondent does not foresee any problem re-letting the Property. Demand from the Cardiff Common waiting list is also consistently high for flats in the area. As at 1st December 2020, there were 891 applicants with a 1 bed need that had selected Splott as an area of choice.

- 20.2 The Respondent listed repairs and improvements which it had carried out to the Property since March 2002.
- 20.3 The Respondent stated that its average rent for the year April 2020 to March 2021 for one-bedroom (two person) flats with an assured tenancy was £89.70.
- 20.4 The proposed rent of £89.31 is a realistic market rent for the area. The Respondent stated that comparable properties have been rented for sums far in excess of the Property. It stated that local open market rents for a one-bedroom flat in the Splott area have been considered. There were six flats available in the locality of the subject property with an average rent of £137.17 per week.
- 20.5 Local housing allowance rates applicable from April 2020 in terms of housing benefit for weekly rents for Cardiff were £120.82
21. We have also carefully considered the Applicants' written application in full and have noted his concerns that rents may increase year on year to a level which will become unaffordable for him. He states; *"I believe that my rent increase at the rate if inflation increase within 10 years from now i will priced out of my home and I am asking the Tribunal to cap my rent increase"*. The application form referred to 'improvements' as including replacement of furniture, internal decoration, painting and provision of carpets.

Determination

22. There are three questions that require determination by the Committee. Firstly, was the section 13 Notice valid? Secondly, what is the market rent having regard to the matters in section 14 of the Act? Thirdly, are there any grounds for determining that the Applicant would suffer undue hardship if the new rent were to commence as from 5th October 2020 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

23. 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. The notice of 5th September 2020 does comply with the statutory provisions, was in the correct prescribed form for rent increases in Wales and was validly served and therefore the notice is valid. See above under the heading 'Preliminary Matters'.

The Appropriate Rent

24. Under Section 14 of the Act this Committee must determine the rent at which it considers that the Property might reasonably be expected to be let in the open market by a willing landlord under an assured tenancy and which conforms to the relevant characteristics as specified above. For these purposes, upon consideration of all the evidence and following, there are no relevant improvements within the Act to take into account.
25. The Committee therefore confirms the rent as increased by the Respondent and thereby determine that the rent at which the Property might reasonably have been expected to be let in the open market in October 2020, having regard to the factors in section 14 of the Act, was £89.31 per week.

26. The Committee reached this determination for the following reasons:
- 26.1 On the available evidence and bearing in mind the general condition of the Property, the Committee considered that £89.31 was well within the band of rents at which such a property might reasonably be expected to be let on the open market by a willing landlord under an assured periodic tenancy. The Committee considered that the proposed rent was at the lower end of the reasonable band of rent, no doubt reflecting the Respondent's role as a social housing provider of affordable property.
 - 26.2 Although the Property was within the lower band of rent which could reasonably be expected, this was partly due to the current state of the Property externally, both structurally and visually, which made it less desirable than it would otherwise be.
 - 26.3 The Surveyor Member was not able to obtain access to the Applicant's flat, however the Committee had access to the Respondent's property condition survey and EPC certificates and was satisfied that these accurately represented the internal condition of the Property at the relevant time. These demonstrated issues relating to lack of insulation and some damp. These issues were fully taken into account however and did not persuade the Committee that the proposed rent was set at too high a level.
 - 26.4 The comparable properties listed by the Respondent were not specifically identified and were likely to be asking rents rather than completed transactions, however the Committee accepted that this was reflective of the level of rent which could be demanded in the vicinity and confirmed by the Committee's own expertise and knowledge of the market.

Section 14(7) and "Undue Hardship"

27. We were not provided with any specific evidence that if the commencement date of the new rent was to be 5th October 2020 that this would cause undue hardship to the Applicant and therefore there were 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 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 October 2020 is £89.31 per week. The increased rent is payable with effect from the 5th October 2020.

DATED this 12th day of April 2021

C Jones
Chairman
Rent Assessment Committee.