

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
RENT ASSESSMENT COMMITTEE

Reference: RAC/0018/03/21

In the matter of 41, Alway Crescent, Alway, Newport, NP19 9SX.

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

APPLICANTS: Ashton Uwaila and Alice Da Silva

RESPONDENT: Pobl Group

**COMMITTEE: Richard Payne (Chairman)
Roger Baynham (Surveyor)**

REASONS FOR THE DECISION OF THE RENT ASSESSMENT COMMITTEE

The Decision in Summary

1. For the reasons given below, the Rent Assessment Committee finds that the purported notice to increase the rent was ineffective and does not comply with the statutory requirements and therefore the rent remains at £565 per month.

The Application

2. The Applicants are the tenants of 41, Alway Crescent, Alway, Newport, NP19 9SX, ("the Property") which they occupy (together with their four children) under an Assured Shorthold Tenancy agreement between the Applicants and Charter Housing Association Limited which was dated and commenced on 17th September 2019. The agreement was for an initial six-month term ending on 16th March 2020 at a rent of £565 per month, payment to be monthly in advance on the first day of the month during the tenancy, to the Landlord's agent, Seren Living Limited. The tenancy agreement was clear that at the end of the fixed term, the tenancy was to become a periodic monthly tenancy.
3. By a letter dated 18th February 2021 the Respondent Pobl Group served notice under section 13(2) of the Housing Act 1988 (as amended) – hereafter "the Act" - proposing an increase in the monthly rent from £585 to a new rent of £610 which was to commence on 1st April 2021. The notice itself was dated 18th February 2020

and signed by Andrew Vye, Executive Director Homes and Communities. Both the letter and the notice were addressed to E and D Kaya and V and V Uwaila in addition to the Applicants.

4. By an application form dated 16th March 2021, the Applicants applied to this Committee under section 13(4) of the Act to challenge the proposed increase in rent. The tribunal gave directions on 30th March 2021 for the preparation of the case and the submission of arguments and evidence. The Applicants sent in written submissions by e mail of 10th June 2021 and provided a copy of the tenancy agreement. There was no response to the directions from the Respondent at all who have provided no argument, evidence or submissions in support of the proposed rent increase.
5. The tribunal informed the parties by e mail of 30th June 2021 that the matter was to be listed for an inspection on Thursday 19th August 2021 and would then be determined on the papers at 2.30pm on 19th August 2021. The tribunal received an e mail acknowledgement from Laura Skeffington, Lettings Administrator of the Respondent at 14:09 on the 30th June 2021 indicating receipt and understanding of the tribunal's e mail. Notwithstanding this, there was no further communication from or on behalf of the Respondent.
6. The matter was determined on the papers on 19th August 2021 when the Committee convened remotely through the Cloud Video Platform (CVP).

The Property.

7. This Committee's surveyor attended to inspect the property alone owing to the Covid 19 restrictions, on the morning of 19th August 2021. There was no attendance on or behalf of the Respondent who were aware of the inspection as previously noted but the Applicants, Mr. Ashton Uwaila and Ms. Alice da Silva were present.
8. The property comprises a modern three storey semi-detached end of link house situated in a cul-de-sac on a development of similar type houses. The house is conventionally constructed having brick exterior walls and a tiled roof and plastic rainwater goods. The windows and external doors are double glazed uPVC units. The accommodation on the ground floor comprises an entrance hall with a cloakroom having a wash hand basin and a w/c, a kitchen/ breakfast room with adequate base and wall units, and a living room with a patio door leading to the rear garden.
9. On the first floor there is a landing with a fitted cupboard, two double bedrooms, a box room, and a bathroom having a panelled bath, wash hand basin and a w/c. There is a further large bedroom on the second floor, running the entire length of the house, which also has an en-suite shower, wash hand basin and a w/c. The property has the benefit of full gas central heating and the Applicants confirmed

that the vertical blinds and the carpets, where appropriate, were supplied by the landlord whereas the remaining floor covering was laminate boarding.

10. The front garden, which is grassed, is of reasonable size with a hedge border and steps leading to the front door. The rear garden is larger than average and slopes upwards from the rear of the house. It consists of a small patio area (provided by the Applicants) and a grassed area enclosed by wooden fencing. There is a tar macadam drive to the side of the house leading to the single detached garage which has a tiled roof and a metal up and over door. The Applicants pointed out - as indicated in the photograph in the submitted papers - that the garage was prone to flooding and consequently has limited use. This would appear to be due to insufficient tanking to the rear wall which is below the level of the rear garden.

The Law

11. 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 relevant extracts below. The Committee has highlighted in bold wording of particular note.

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).

12. 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 shorthold) the landlord must serve a notice under section 13(2) of the Act in prescribed form. In this case, since the fixed term of the initial tenancy agreement ended on 16th March 2020, then, as the tenancy agreement itself states, “At the end of the fixed term the tenancy will become a periodic monthly tenancy.” The tenancy, on the evidence before the Committee, is therefore a periodic monthly tenancy.

13. 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 this case, the notice proposed the new rent of £610 per month to take effect from 1st April 2021.

(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 was dated 18th February 2020, but since it accompanied a letter dated 18th February 2021, the Committee consider that this is a typographical error and that the notice should have been dated 18th February 2021. The Committee

find that since the notice accompanied a letter dated 18th February 2021, then that was also the date of the notice.

- (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.

14. Section 14 of the Act contains further provisions about the determination of rent by the Committee.

Determination

15. There are three issues that ordinarily require determination in an application to increase the rent under section 13 and 14 of the Act.

- (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 Applicant would suffer undue hardship if the new rent were to commence from 1st April 2021, 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

16. 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 is also to be in the correct form as required by the Assured Tenancies and Agricultural Occupancies (Forms) (Amendment) (Wales) Regulations 2014.

17. The tenancy agreement was for a fixed term of 6 months starting on 17 September 2019 and ending on and including 16 March 2020. As noted, it was clear on the face of the tenancy agreement that at the end of the fixed term the tenancy will become a periodic monthly tenancy. The periodic monthly tenancy therefore commenced on 17 March 2020 and the period of the tenancy is the month commencing on the 17th of each month and ending on and including the 16th of each month.

18. The notice purporting to increase the rent, did so from 1 April 2021. However, although the tenancy agreement required payment of the rent on the first day of each month, this is clearly not the date of a new period of the tenancy which would be the 17th of the month. Therefore, the notice purporting to increase the rent that was sent with the letter of 18 February 2021, does not comply with section 13(2) of the Act. The notice is therefore not valid and is of no effect.

Determination

The Rent Assessment Committee hereby determines that:

1. The rent remains at £565 per month since the notice purporting to increase the rent does not comply with the requirements of section 13(2) of the Housing Act 1988 as the proposed new rent was not to take effect at the beginning of a new period of the tenancy.

DATED this 21st day of September 2021

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

**Richard Payne
CHAIRMAN**