

**Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL (WALES)**

Reference: RAC/0001/04/22

In the Matter of an Application under Section 13(4) Housing Act 1988 in respect of 9 St Dyfrig Road Penarth CF64 3FZ.

APPLICANT: Mr Anthony Bright

RESPONDENT: Newydd Housing Association (Mr Martin Asquith represented by Mr Strelitz of Five Paper Chambers instructed by Mr Woods Capsticks Solicitors)

TRIBUNAL: R Price, Chair
R Baynham FRICS , Surveyor
C. Calvin-Thomas, Lay Member

**ORDER AND REASONS FOR THE DECISION OF TRIBUNAL
(Numbers in [] refer to the page in The Committee bundle)**

The Committee confirms the increase of rent in respect of 9 St. Dyfrig Road from 4 April 2022. The new rent liability will be £107.35 per week inclusive of £1.61 service charge.

BACKGROUND

1. We convened as a Rent Assessment Committee under the provisions of the Housing Act 1988 (the Act). The Respondent had served a Notice on the Applicant, dated 1st February 2022 pursuant to S13 (4) of the Act proposing a new rent from 4 April 2022 of £107.35 inclusive of £1.61 service charge per week.

PRACTICAL ISSUES RESOLVED AT THE COMMENCEMENT OF THE HEARING

2. This appeal had previously been adjourned on 7th July 2022 because Mr Bright had not been able to fully connect to the remote video platform. The Committee had a visual connection with Mr Bright on this occasion, but no audio connection. After several attempts of trying to connect using a variety of methods the matter was adjourned. It came before The Committee again on 4th October 2022.
3. There were further connection issues at the commencement of this hearing, however, Mr Bright eventually connected by audio only by phoning into the video platform. All participants to the proceedings turned off their cameras. The mode of hearing was effectively a telephone hearing. The Committee considered that all the issues in the appeal could be resolved using this hearing format. It was not in the interests of justice to delay the matter any further. The hearing commenced shortly after 11am.

4. Mr Strelitz, at the commencement of the hearing stated that Newydd Housing Association had not had sight of the photographs. Mr Strelitz went on to state that his client became aware of the existence of such photographs via a handwritten document received by Mr Woods (Capsticks Solicitors instructing Mr Strelitz) on 22 August 2022, from Mr Bright, that referred to the attempt made by Mr Bright to send the photographs to The Committee and Newydd Housing Association). Mr Strelitz shared this document via the screen as it was not in the possession of The Committee members. As Mr Bright could not view the screen, the document displayed on screen was described, Mr Bright confirmed he recalled the document which was a form memo, and he had a copy of it.
5. Mr Strelitz informed The Committee that he did not have before it the same bundle that The Committee had referred to. The hearing was adjourned briefly to allow Mr Strelitz to review the documents with his client. This set of papers was sent to Mr Strelitz by the Chair. Mr Bright had a copy of the papers concerned, which were the RAC1 application completed by Mr Bright (dated 30 March 2020, which was a typographical error, and should have been 2022) a copy of the tenancy agreement dated 17 November 2001, a copy of the Section 13 Notice dated 1 February 2022, the Chairman's directions dated 11 April 2022, Mr Bright's email dated 17 May 2022 and the Respondent's response to the directions notice dated 16th May 2022.
6. During the adjournment, it came to light that the eight photographs referred to in the email of Mr Bright dated 17 May 2022 had been received by The Committee, however only one panel member had seen them. These were sent to Mr Strelitz prior to The Committee reconvening.
7. Upon the hearing reconvening, The Committee were also made aware of another email sent to Mr Woods at Capsticks solicitors dated 17 August 2022. The contents were read out by Mr Strelitz and made available to The Committee Chair via email. The hearing proceeded at 12pm.

CHRONOLOGY

8. On 11 April 2022, a procedural Chairman gave directions for the parties to make submissions, in particular the parties were invited amongst other matters, to provide details of similar properties upon which they wished to rely, including what furnishings were provided and who was responsible for repairs and decoration in respect of those properties.
9. The Applicant wrote an email dated 17 May 2022 referring to anti-social behaviour issues, in particular, against his next-door neighbour, fly tipping on the estate and the invasion of privacy caused by a playground situated to the rear of the property. Mr Bright, in the same document refers to historical problems with children's behaviour in the area and the fact the children do not comply with the 'No Ball Games' sign. This email, from Mr Bright, did not provide evidence of the rent levels of any similar properties in the area.

10. The Respondent, in a letter dated 16th May 2022, wrote to The Committee with reasons why the proposed increase in rent should, be considered to be, reasonable. The Respondent's letter included a list of comparable rents on the same estate as 9 St Dyfrig Road [30].

THE LAW

11. Section 13 (2) of the Act requires a landlord seeking to increase the rent of an assured periodic tenancy to serve a Notice on the Applicant 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. This being a period beginning not earlier than the minimum period after the date of service of the Notice, such minimum period being, in the case of a tenancy where the period is less than a month, one month. A Notice will be valid if it complies with the provisions of Section 13(2) of the Act.
12. Section 14 of the Act requires The Committee to determine the rent which it considers the Property might reasonably be let in the open market by a willing landlord under an assured tenancy, disregarding the effect on the rental value of any of the Applicant's improvements.

THE TENANCY AGREEMENT

13. The Applicant entered into an Assured Tenancy Agreement with the Respondent on 17 November 2001 in respect of 9 St Dyfrig Road Penarth at a rent of £51.28 per week. The terms of the tenancy agreement are set out in the agreement that appears at pages 13-23 of the 35-page bundle.
14. Paragraph 4 of the tenancy agreement provides that changes in rent may occur on the 1st April each year, and if rent is paid weekly then four weeks-notice will be provided, if rent is paid monthly then one calendar month notice will be provided.
15. The tenancy contains standard provisions. In summary, it provides that the tenant is responsible for internal decoration and that the landlord is responsible to keep in good repair the structure and the outside of the home, to include the supply of utilities and installations that maybe inside or outside the home. It also requires tenants not to cause any nuisance or antisocial behaviour.

THE INSPECTION

16. The Committee Chair and Surveyor attended a site inspection on the morning of 7th July 2022. There was no attendance on or behalf of the Respondent who was aware of the inspection. The Applicant was present as was his partner and joint tenant Mrs Crane.
17. The property comprises a relatively modern semi-detached end of link house situated on a development of 65 similar type and slightly larger houses. The house is conventionally constructed having brick exterior walls and a tiled roof and plastic rainwater goods. The windows and doors are double glazed UPVC units. The property has the benefit of full gas

central heating and the Applicants confirmed that, where appropriate, the carpets and curtains were supplied by the Applicants.

18. The accommodation on the ground floor comprises an entrance hall with stairs leading to the first floor, a living room with a door providing access to the rear garden and a kitchen which has adequate base and wall units.
19. On the first floor there is a landing with a fitted cupboard, a double bedroom, a 3/4 size bedroom, and the former bathroom which has been converted into a wet room with an electric shower, wash hand basin and a w/c.
20. The front garden is relatively small and consists of some overgrown shrubs and a tree and is enclosed by wooden fencing. The rear garden comprises a small, paved area and a grassed area at a slightly higher level which is also enclosed by wooden fencing. To the side of the property is a concrete hard standing area suitable for the parking of two cars.
21. The Applicant drew the Committee's attention to the discolouration of part of the ceiling in the main bedroom and the bathroom and to the fact that the paved area at the rear was subject to flooding after heavy rain.
22. The demand for rented accommodation in the Penarth area is considerable and this property is well located for most amenities which are available in the centre of Penarth and all other facilities are present in Cardiff which is approximately 7 miles distant.

THE HEARING

23. Both Applicant and Respondent attended a remote telephone hearing. The Applicant gave evidence in support of his application. He stated that he was challenging the proposed rent increase because of anti-social behaviour in the communal areas and the failure to undertake repairs. He gave an example about the Respondent failing to keep an appointment on 15 September 2022 to address the mould issue in the main bedroom. He referred to the fly tipping and the patch of grass at the front of the property that is used as a rubbish dump.
24. In response to the question posed by the Committee surveyor Mr Bright confirmed that the white doors that were fly tipped in February, which form part of the photographic evidence were removed on 5 May 2022, the sofa was removed on 15 June 2022 and the bed was removed on 11 July 2022. The Committee did not hear when the sofa or the bed were left on the grass area but assume it was after May 2022 when the doors were removed.
25. Mr Bright asserted that the Respondent owned the highways either as leaseholders or freeholders. Mr Bright referred to a letter that he had received from the Respondent in April 2021 that the Respondent would be purchasing either the freehold of the properties in St Luke's estate or the leasehold. Mr Bright contended that the Respondent was responsible for removing the fly-tipping, although he accepted that the local authority collect his recycling, general waste and food caddy on a weekly or fortnightly basis.

26. Mr Bright confirmed that he had not provided evidence of comparable properties in the area, and that his challenge was the anti-social behaviour in the communal areas.
27. Mr Bright explained that he and Mrs Crane receive state retirement pension. They receive council tax reduction and partial housing benefit. They pay a shortfall of the rent that is not covered by housing benefit. Mr Bright confirmed that he has paid the increased rent liability since April 4th, 2022 and if he was successful with his application against the proposed rent increase then he hoped for a refund.
28. Mr. Asquith, Head of Housing for the Newydd Housing Association, relied upon his written evidence of the 16th May 2022 which also contained a schedule of comparable rental properties Mr Strelitz directly challenged Mr Bright upon his assertion that the Respondent was now responsible for the public road outside Mr Bright's home. There was no documentary evidence before the Committee. This point could not be resolved. The Committee address in its reasons below why this was not material to its decision.

ISSUES

29. Is the Section 13 (2) Notice valid?
30. Is the Section 13(4) application valid to confer jurisdiction upon the Committee to resolve the dispute?
31. Should the rent be increased to the level proposed having regard to the matters raised in Section 14 of the Housing Act 1988?

THE DECISION

32. The first issue, only raised by the Respondent in response to the Committee's directions, the Committee had to determine if it had in fact the jurisdiction to hear Mr Bright's application, as the application did not include Mrs Crane's name. The Respondent referred the Committee to the case of **Turely v Panton (1975) 29 P. & C. R. 397 QBD** which held that an application, such as one made under Section 13(4) of the Rent Act 1988, should be made by all tenants. The Committee, at the time of the site inspection met with Mrs Crane, who was clearly aware of the application that her partner and joint tenant – Mr Bright had made and was engaged with the process. The Committee are satisfied that Mrs Crane has consented to the application and applying the principle set out **R v. Rent Officer for Camden LBC ex p. Felix (1988) 21 H.L.R. 34 QBD** concluded that the Committee had jurisdiction to determine the appeal.
33. In respect of the second issue, the Directions Notice issued on 10th July 2022 directed the Respondent to address the issue of the validity of the Section 13 Notice which was not in the prescribed form; as provided in Section 13(2) of the Housing Act 1988, and the Assured tenancies and Agricultural Occupancies (Forms)(Amendment)(Wales) Regulations 2014, SI 2014/374. These Regulations made minor amendments to Form 4D

which is the prescribed form as provided under the Assured Tenancies and Agricultural Occupancies (Forms)(Amendment) (Wales) Regulations 2003.

34. The Committee decided that the notice that had been served by the Respondent on 1 February 2022 proposing the increase in rent, whilst not in the prescribed format, was substantially to the same effect. The Committee concluded that the notice that had been issued served its statutory purpose. The recipient of the notice (i.e., in this instance the Applicant Mr Bright), was informed of its terms, to the extent that he was aware that he was able to challenge the substance of the notice by lodging an application to this Rent Assessment Committee.
35. The Committee considered the fact that the Section 13(4) Notice had not been issued to the other joint tenant of the property Mrs F Crane. This actual omission was not in issue. It was an IT software failure that had led to this oversight. Whilst the Notice should have been issued to Mrs Crane, the Committee accept that the failure to include Mrs Crane on the notice is not fatal. Mr Bright did not raise the fact Mrs Crane was not recorded on the Section 13 Notice of increase of rent, and this omission has not caused any prejudice to either tenant.
36. Turning to the third issue and the substance of the appeal, the Committee considered whether the rent increase should be confirmed. The Committee had before it the evidence provided by Mr Asquith's written evidence dated 16th May 2022. The Committee accept the written evidence. Newydd Housing Association sets its rents within the spirit of Welsh Government rent setting guidelines.
37. The Committee heard submissions from Mr Strelitz that in setting the rent levels Newydd Housing Association applied the Consumer Price Index (CPI) increase, relative to the time of 2.1% plus 1%. The Committee were informed that there is also further flexibility built into the Welsh Government guidelines for a further 1% to be applied, however Newydd Housing Association chose not to exercise this flexibility. The Committee also heard evidence that the increased rent remained lower than the local housing allowance that has been set, by the Local Authority, for the same geographical area.
38. Mr Bright did not provide evidence of comparable market rents for properties in the same area. Mr Bright's application was based upon the fact that he asserts he and his partner experience anti-social behaviour and fly tipping in the area. Mr Bright also raised the disrepair issues within his property that have been reported to Newydd Housing Association, and the fact that Newydd have failed to attend an inspection on 15 September 2022, that had been organised to inspect the mould growth in the bedroom. The Tribunal heard evidence from Mr Bright in respect of dog excrement being left outside in his neighbour's garden and also saw photographic evidence of the same, and evidence of items that had been discarded on an area outside the property.
39. Whilst the Rent Assessment Committee acknowledge that the assumptions and disregards contained within Section(s) 14(1) and 14(2) of the Housing Act 1988 are not an exhaustive list of matters which the Committee may take into account or must

disregard when setting the level of rent; the Committee can only take into account other matters if they are relevant.

40. The Committee accept Mr Bright should not be expected to tolerate the matters of nuisance, he has raised within this application, however, the Committee conclude that the relevant evidence to be considered when considering an increase of rent are the comparable market rents in the area. Mr Asquith in his written evidence set out the rent levels for comparable properties in the area. Those let by Newydd are let at the same rent. Properties let by private landlords attract an average weekly rental figure of £385.69, and the median rent for a two-bedroom property in Penarth is £282.69. The Committee were provided with the details of the source of this evidence. Mr Bright did not challenge this evidence.
41. Having regard to all the available evidence, and the findings following the inspection by the Committee, the Committee decide to confirm the rent increase from 4 April 2022. The issue of hardship did not arise as Mr Bright confirmed that he had been paying the increase since this date.

Dated this 24th day of October 2022

R. Price
Chair