

**Y TRIBIWNLYS EIDDO PRESWYL**  
**RESIDENTIAL PROPERTY TRIBUNAL**  
**RENT ASSESSMENT COMMITTEE**

Reference: RAC/0034/02/23

In the Matter of 32 Buttercup Court, Ty Canol, Cwmbran, NP44 6JY

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

APPLICANT	Katie Behnan
RESPONDENT	Angelina White t/a Premier Properties
COMMITTEE:	Mr T Rakhim, Chairman Ms J Coupe, Surveyor

**DECISION**

**Summary of Decision**

1. **The tribunal lacks the jurisdiction to deal with the purported rent increase as no valid or effective notice has been given in accordance with the Renting Homes (Wales) Act 2016 and there is accordingly no valid application before the tribunal.**

**Background**

2. The case concerned the determination of a market rent for the subject property following a referral by the Applicant Tenant.
3. On 28<sup>th</sup> January 2023 the Landlord served a notice under section 123(1) of the Renting Homes (Wales) Act 2016. This notice proposed a new rent of £1,300 per month, in place of the existing rent of £925 per month, to take effect from 28<sup>th</sup> March 2023.
4. The Committee received an application dated 9<sup>th</sup> February 2023 from the Applicant using the tribunal's form used for applications under Section 13(4) (a) of the Housing Act 1988. The tribunal was prepared to proceed on the basis of this application form given that the Renting Homes (Wales) Act 2016 has only recently come into force.
5. The matter was listed for a hearing and the hearing took place on 2<sup>nd</sup> June 2023 via Microsoft Teams. Neither party attended.

6. The Committee had sight of the email sent to the Applicant to notify her of the hearing. The Surveyor member had met the Applicant at the site inspection on 16<sup>th</sup> May and had reminded her about the hearing. The Applicant had indicated that she would attend the hearing. However, it was noted that the Applicant had also indicated that she was vacating the property on the weekend.
7. The Committee noted that the Respondent had been sent a letter by Royal Mail on 14<sup>th</sup> February 2023 which enclosed the application and directions order. The Committee also had sight of the letter sent to the Respondent which notified the Respondent of this hearing. It was noted that there had been a lack of response or engagement by the Respondent.
8. The Committee was satisfied that the parties were aware of the hearing. The Committee waited 20 minutes before deciding to proceed to consider the application. The Committee noted that neither party had attended or had been in touch 90 minutes after the start of the hearing.
9. The Committee was satisfied that it was able to fairly determine the matter in the absence of the parties and on the basis of the documentary evidence alone.

### **Inspection**

10. Ms J Coupe, the Committee Surveyor, inspected 32 Buttercup Court, Ty Canol, Cwmbran, NP44 6JY ("the Property") on 16<sup>th</sup> May 2023.
11. The property comprises a 4-bedroom detached house situated at the end of a cul-de-sac within an established residential area.
12. The photos contained within the Applicant's evidence provided a fair reflection of the condition of the property, albeit some areas of disrepair have been remedied by the Respondent. The category 1 and category 2 hazards identified by the HHSRS persisted. The property was presented in a tired and dated condition requiring general repair and maintenance.
13. The following defects were noted:
  - a. Living room ceiling damage from an escape of water in the bathroom above;
  - b. Damage to internal decorations and poorly presented throughout;
  - c. Failed front door sealant;
  - d. Loose or missing door furniture;
  - e. Poorly fitting doors;
  - f. Multiple blown double glazing panels;
  - g. Surface mould in multiple rooms;
  - h. Ensuite - wall tiles missing;
  - i. External - loose steps to raised patio area, uneven and loose surface and inadequate safety handrail.

14. At the time of inspection, the house was noted to be incredibly cluttered and was inadequately ventilated; there had been a failure to open the windows. The Surveyor member considered the lifestyle of the Applicant and the occupants was contributing to the mould and damp issues experienced, albeit in tandem with the heating and ventilation issues identified by the Applicant.

### **Applicant's Evidence**

15. The following was provided by the Applicant:

- a. Section 13 Notice;
- b. Tenancy agreement;
- c. HHSRS assessment (inspection of 5<sup>th</sup> July 2022 and 13<sup>th</sup> January 2023) inclusive of property photos;
- d. Improvement notice for category 1 hazards (dated 7<sup>th</sup> February 2023);
- e. Improvement notice for category 2 hazards (dated 8<sup>th</sup> February 2023);
- f. Applicant's further evidence following directions:
  - i. annotated photos of the property;
  - ii. links to details of comparable properties;
  - iii. screenshots related to deposit protection evidence.

### **Respondent's Evidence**

16. There was no statement from the Respondent, despite this being directed by the Committee on 14<sup>th</sup> February 2023. The Directions Order did warn that a failure to comply with the directions may result in the Committee being unable to consider important evidence or documents.

17. No response had been provided by the Respondent to the Committee. There was no evidence of comparable properties on behalf of the Respondent to consider.

### **The Law**

18. The Renting Homes (Wales) Act 2016 (Commencement No. 2 and Consequential Amendments Order 2022, (Statutory Instrument 2022/906, W.197) confirmed that section 239 of the Act came into force on 1 December 2022. Section 239 abolished assured, secure and other tenancies in Wales. Existing tenancies were converted into occupation contracts by section 240, which were either secure or standard occupation contracts.

19. Section 236 of the Act confirms that a notice must be in writing and where the Welsh ministers have prescribed the form of the notice, then unless regulations provide otherwise, a notice not in the prescribed form is of no effect. Under Regulation 15 of the Renting Homes (Prescribed Forms) (Wales) Regulations 2022 the prescribed form under section 123 (1) of the Act is form RHW 12. Regulation 3(2) provides that a notice or other document in a form substantially to the same effect as the prescribed form is valid.

20. The Renting Homes (Wales) Act 2016 stipulates some relevant requirements in relation to varying the rent at Section 123. For ease of reference, the Committee recite the relevant extracts below and have highlighted in bold wording of particular note:

**123 Variation of rent**

*(1) The landlord may vary the rent payable under a periodic standard contract by giving the contract-holder a notice setting out a new rent to take effect on the date specified in the notice.*

*(2) The **period between the day on which the notice is given to the contract-holder and the specified date may not be less than two months.***

*(3) Subject to that—*

*(a) the first notice may specify any date, and*

*(b) subsequent notices must specify a date which is not less than one year after the last date on which a new rent took effect.*

*(4) This section is a **fundamental provision** which is incorporated as a term of all periodic standard contracts under which rent is payable.*

**Consideration**

21. Prior to being able to consider the valuation of the appropriate rent, the Committee have to first consider the issue of whether there is a valid application.

22. The Committee considered this matter on the papers.

23. As stated above, Renting Homes (Wales) Act 2016 came into force with effect from 1 December 2022. Section 239 abolished assured tenancies in Wales and accordingly the applicant's tenancy was converted to a standard occupation contract as a matter of law. The Housing Act 1988 has been of no application to the tenancy or contract between the parties since 1 December 2022.

24. The relevant correct form was used to notify of the rental increase, namely Form RWH12, as the provisions of Section 123 of the Renting Homes (Wales) Act 2016 did apply from 1<sup>st</sup> December 2022.

25. The Committee found the notice to vary the rent was invalid. The notice was dated 28<sup>th</sup> January 2023 and stated that the increased rent is payable from 28<sup>th</sup> March 2023. The following is noted:

- a. The Form RWH12 used by the Respondent is a single page form and on the form it states the following: *"The specified date from which the new rent is payable must not be less than two months from the date that this notice is given."* Accordingly the Respondent is expected to be aware of the requirement of Section 123 (2) which is stated in similar terms. It is noted

that the Respondent is a company, thus should have been aware of Section 123 requirements even if this was not repeated on Form RWH12.

- b. It is unclear how this notice was served as no evidence on this has been provided. The Respondent has failed to engage or attend the hearing despite being notified of the application and the hearing. The Committee would assume service was effected by post, unless evidenced to the contrary, and thus two days should be allowed for postal service. This would mean that insufficient notice was given to comply with the notice period stipulated by Section 123.
  - c. Even allowing for next day service, or allowing for same day electronic service, the notice would fail to satisfy the notice period requirement of "*may not be less than two months.*" However, it was noted neither of these were applicable here.
  - d. The Committee do not consider they have discretion on allowing the matter to proceed where the notice is short by a few days as Section 123 (4) states that Section 123 "*is a fundamental provision.*"
26. The Committee had regard to **Mooney v Whiteland [2023] EWCA Civ 67** where the ability of the rent assessment committee to decide upon the validity of a section 13 notice was determined but note that case turned on the effect of section 40(1) of the Housing Act in relation to the jurisdiction of the County Courts. There is no equivalent provision in the 2016 Act and thus it can be distinguished. The purported notice dated 28<sup>th</sup> January 2023 is simply not a valid notice to increase the rent of this occupation contract and is of no legal effect. That being the case, there is no valid application before this tribunal and therefore the tribunal's jurisdiction is not engaged.
27. The tribunal is unable to take any other action on this matter other than to close its file.

DATED this 14 day of July 2023

T Rakhim  
Tribunal Judge