

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL

Reference: RAC/0022/01/24

In the Matter of 67 Mackintosh Place, Cardiff, CF24 4RL

In the matter of an Application under the Renting Homes (Wales) Act 2016
The Renting Homes (Rent Determination) (Converted Contracts) (Wales) Regulations 2022.

Tribunal Judge: Mr. Trefor Lloyd
Surveyor member: Mr. Hefin Lewis FRICS
Lay Member: Mr. Eifion Jones JP

Date and Venue of Hearing: 12th April 2024 on the papers.

APPLICANT **Denisa Novacovici**

RESPONDENT **Mr A Khan**

Introduction

1. By way of an application dated the 29th of February 2024 the Applicant appeals the Respondent's proposed notice to review the rent in respect of the property known as 67 Mackintosh Place Cardiff dated the 6th of January 2024.
2. The usual standard directions were issued requiring the Respondent to initially provide submissions to justify the rent increase with then an opportunity for the Applicant to comment upon the same.
3. The Respondent's initial reply dated the 12th of March 2023 did not deal with the substantive issue of the rent but challenged this Tribunal's Jurisdiction to deal with this application. As a consequence, the parties were directed to file and serve further submissions limited to the question of jurisdiction with agreement reached that the matter would be dealt with as a preliminary issue on the papers.
4. The Respondent made the following submissions (reproduced verbatim):
 - (a). The appellant has not provided a valid application with the required documents that include the said tenancy agreement. In not doing so the

application is deemed invalid and the Tribunal has no jurisdiction to deal with this matter.

- (b). The Appellant has failed to set out their grounds of jurisdiction regarding variation under the said Act. According to the respondent, the tribunal does not have jurisdiction to deal with the variation of rent under paragraph 15(3) of schedule 12 of the renting homes (Wales) Act 2016 and or Housing Act 1988. The said legislation is not applicable to assured shorthold tenancies that includes a rent review clause in the initial agreement. Section 13 of the Housing Act 1988 does not apply where there is a rent review clause in the tenancy agreements.
- (c). The respondent has been provided with no evidence that indicates that the variation of rents can be subject to appeal, to the Residential Property Tribunal in accordance with the Renting Home (Wales) Act 2016 and or Housing Act 1988. A converted contract subject to appeal is one that is immediately before the commencement date was an assured periodic tenancy rather than assured shorthold tenancy in accordance with schedule 12 paragraph 15 (3).

5. The Applicant in response makes the following points:

- (a). The initial assured shorthold tenancy does not include a rent review clause.
- (b). That by virtue of Chapter 3 Paragraph 239 of the Renting Homes (Wales) Act 2006 from the 1st December 2022 onwards all assured shorthold tenancies were abolished.
- (b). They were converted into standard occupation contracts in terms of the private rental sector. When the fixed term ended which was on the 24th January 2023 a converted periodic standard occupation contract was created.

Legislation – Renting Homes (Wales) Act 2016

15(1) Sections 104 and 123 (variation of rent) apply to a converted contract (other than a contract mentioned in paragraph 13B) as if any variations in the rent payable under the contract before the appointed day were variations under whichever of those sections applies.

1A) Sections 104 and 123 (variation of rent) apply to a converted contract under which the landlord is a community landlord as if, for subsection (3)(a) in each of these sections, there were substituted—

“(a) the first notice given after the appointed day must specify a date which is not less than 51 weeks after the last date on which a new rent took effect, and”.

(2) The Welsh Ministers must by regulations make provision—

(a) enabling the contract-holder under a relevant converted contract, following receipt of a notice under section 104 or 123, to apply to a prescribed person or persons for a determination of the rent for the dwelling, and

(b) for the rent determined by the prescribed person or persons, in accordance with such assumptions as may be prescribed, to be the rent for the dwelling under the contract (unless the landlord and contract-holder otherwise agree).—

(3) A converted contract is a relevant converted contract if—

(a) immediately before the appointed day it was a tenancy or licence to which section 13 of the Housing Act 1988 (c. 50) (increases of rent under assured periodic tenancies) applied,

(b) it is a periodic standard contract which is a substitute contract.—

(i) arising under section 184(2), or

(ii) within section 184(6),

and which immediately before the appointed day was an assured tenancy, but not an assured shorthold tenancy, for a fixed term, or

(c) it is a secure contract which immediately before the appointed day was an assured tenancy, but not an assured shorthold tenancy, for a fixed term.

239 Abolition of assured, secure and other tenancies

(1) On and after the appointed day, no tenancy or licence (whenever made) can be—

(a) a restricted contract;

(b) a protected shorthold tenancy;

(c) a secure tenancy;

(d) an assured tenancy (including an assured shorthold tenancy);

(e) an introductory tenancy;

(f) a demoted tenancy.

(2) If, immediately before the appointed day, the landlord under a protected or statutory tenancy might have recovered possession of the dwelling-house subject to the tenancy under Case 19 of Schedule 15 to the Rent Act 1977 (c. 42) (former protected shorthold tenancies), the tenancy ceases to be a protected or statutory tenancy on the appointed day.

(3) Nothing in this section ends a tenancy or licence within subsection (1) or (2)

240 Conversion of tenancies and licences existing before commencement of Chapter 3

(1) For the purposes of determining the matters in subsection (2), a tenancy or licence which existed immediately before the appointed day is to be treated as if it were made on the appointed day.

(2) The matters are—

(a) whether the tenancy or licence is an occupation contract,

(b) the identity of the contract-holders under the contract, and

(c) whether the contract is a secure contract or a standard contract.

(3) Subsections (4) to (7) apply to a tenancy or licence which becomes an occupation contract on the appointed day.

(4) The fundamental provisions applicable to the contract are incorporated as terms of the contract.

(5) The existing terms of the contract continue to have effect, except to the extent that they—

(a) are incompatible with a fundamental provision incorporated as a term of the contract, or

(b) are terms of the contract because of an enactment repealed or revoked under this Act.

(6) The supplementary provisions applicable to the contract are incorporated as terms of the contract, except to the extent that they are incompatible with the existing terms of the contract.

(7) This section is subject to Schedule 12 (which makes further provision about existing tenancies and licences, modifies the application of this Act, and includes a fundamental provision incorporated into certain standard contracts).

Decision

6. The first part of the Respondents challenge to this Tribunal's jurisdiction can be dealt with swiftly. The application that was received at the tribunal office included a copy of the initial fixed term assured shorthold tenancy. Having considered the content of the documents carefully it is clear that there was no rent review clause within the copy we have seen.
7. Accordingly, even if the failure to supply a copy of the tenancy in some way challenged our jurisdiction that is not the case in this instance and therefore we do not have to determine the point any further.
8. In relation to the second and third points raised by the Respondent these are interlinked. It appears that the nub of the Respondent's argument is that due to the initial creation of a fixed term assured shorthold tenancy we are prohibited by the wording within section 15 of Schedule 12 to the Renting Homes (Wales) Act 2016 ("RHW Act") from having jurisdiction.
9. When the wording of Section 15 of schedule 12 to the RHW Act is considered it is clear that in relation to the letting in issue here that:
 - (i) On the Appointed Day being the 1st December 2022 there existed a Fixed term Assured Shorthold Tenancy (Created on the 25th July 2022 and expiring on the 24th of January 2023 i.e. after the Appointed Day).
 - (ii) As a consequence of the above the remainder of the original term was converted by the RHW Act into a fixed term occupation contract.
 - (iii) It was only upon expiry of the fixed term on the 24th January 2023 that it became a Periodic Occupation Contract.
 - (iv) As a consequence of the above at the Appointed Day it was not a periodic tenancy and therefore Section 13 of the Housing Act did not apply.

10. The result of the above is that the Respondent is correct in his submissions that this Tribunal does not have jurisdiction to deal with this case and the Application is therefore dismissed.

11. Having come to the above conclusion we need not go further but for the sake of clarity make the point that the Respondent's further submission (if made in isolation) reliant on Section 15(3)(c) would have failed as the Respondent could not have created a Secure Tenancy as a private landlord.

Dated this 10th day of May 2024

T Lloyd
Tribunal Judge