

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL

Reference: RAC/0024/02/24

In the Matter of Ground Floor Studio Flat, 99 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: 8th November 2024 on the papers.

APPLICANT Roman Jarecki

RESPONDENT Mr A Kham

Decision – With effect from the 14th April 2024 the rent in respect of the subject property is determined as being £875 per month inclusive of utility bills being namely, gas electricity and water but for the avoidance of doubt excluding Council Tax.

Introduction

1. By way of an application dated the 16th February 2024 the Applicant appeals the Respondent's proposed notice to review the rent in respect of the property known as the Ground Floor Studio Flat 99 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 reply in addition to dealing with comparable rental evidence 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 filed and served a further statement in response dated the 11th of June 2024 and the Applicant filed and served a statement dated the 18th June 2024 in response to limited to the issue of jurisdiction.
5. As a consequence the preliminary issue as to Jurisdiction was considered on the papers and by way of a written decision dated the 1st August 2024 the Tribunal found it had Jurisdiction and a Further Directions Order was made on the 1st August 2024 allowing the parties, if so advised to file and serve further statements supported by a statement of truth advancing their respective positions as regards the rental value applicable as at the date of the proposed review.
6. The Respondent filed a further statement dated the 21st August 2024. As a consequence, all the evidence we had before us was limited to the Applicant's first witness statement dated the 16th of April 2024 (plus extracts from Right Move in support of his contention that the revised rent the Respondent seeks is unfair) and the Respondent's two statements dated the 26th of March 2024 and 21 August 2024 which also included comparable evidence as to contended market rent.
7. In addition to the initial application form the Applicant provided two Form RHW 12 Notices. The first is dated the 15th of January 2024 and seeking an increase in the monthly rent from £750 to £1,050. The second notice is dated the 9th February 2024 and seeks to increase the rent from £750 to £1,100 per month. The reason for two separate notices being sent is the fact that the initial one was incorrect in so far as it described the letting as a secure contract. No issue has been taken by the Applicant in relation to the validity of the aforesaid second notice and we proceed upon the basis that the 9th of February notice operative notice for the purposes of this application.
8. Our conclusion in this regard is supported by the fact that the Applicant only makes reference to the most recent notice to review dated the 9th of February 2024.
9. In terms of the evidence before us the Applicant by way of his witness statement tells us that:
 - (i) An initial tenancy for six month term was entered into on the 1st of October 2020. In due course he was given a converted occupation contract dated the 6th of April 2023.
 - (ii) Whilst the Applicant comments at paragraph 3 of his statement that the occupation contract "provides no rent increased clause" that point is not pursued any further. That is despite having assistance from Shelter Cymru.
 - (iii) By way of paragraph 13 of his statements the Applicant relies upon the comparable (he maintains is relevant) evidence attached to the same and contents that a realistic compatibles range lies between £600 and £795 per calendar month. The comparable evidence relied upon by the Applicant are extracts from the Right Move website which do not confirm whether or not the actual lettings proceeded at those rates.

- (iv) At the outset of the letting the property was furnished with white goods in the kitchen and beds. The applicant refers to the property as “small and not up-to-date or modern”.
10. Conversely, the Respondent by way of his statement dated the 26th of March 2024 mainly dealt with the issue of jurisdiction (as referred to above) provides:
- (i) Three examples of (the Respondent maintains) similar properties all of which range between £825 and £1200 per calendar month.
 - (ii) Again, there is no indication from these extracts as to whether or not the lettings actually proceeded at those levels.
11. The Respondent’s second statement provides six examples of (again the Respondent maintains) similar properties which range between £825 and £1,000 per month and makes the point that the property the subject matter of this application also includes all services within the rent contended for.
12. The parties having agreed for the matter to be dealt with on the papers resulted in the Surveyor Member Mr Hefin Lewis FRICS inspecting the property on the 28th October 2024 in the presence of both the Applicant together with his daughter (who provided translation facilities) as the Applicant had indicated within the initial application form a difficulty in understanding English. The Respondent also attended. As a consequence of the site visit Mr. Lewis provided the Tribunal with photographic evidence as to the condition of the property and also confirmed that the parties agreed, despite the contrary indication in the Application Form that electricity gas and water is also included within the current rent passing of £750. No other evidence was taken during the site visit as is the norm. However, as both parties confirmed the position as regards payment for services we are content to rely upon this comment and find as a fact that the existing rent includes such services.

The Property

13. The property comprises a ground floor studio flat extending to some approximately 25.83 square metres floor area within a traditional mid-terrace house built around 1900 and converted into flats at a later date. It comprises of a shared ground floor entrance lobby: living room/bedroom; shower room and w/c; kitchen and door to a shared rear yard.
14. The property benefits from mains gas, electricity and water which are all included (as aforesaid by agreement) within the monthly rent. The Applicant as tenant in addition being responsible for council tax.
15. In terms of condition, the inspection revealed evidence of damp / condensation to the shower room, damaged ceiling with some patch repairs evident, a basic but functional kitchen. Externally, the fabric and common areas were in a poor condition and the rear yard was not accessible due to considerable debris and discarded furniture and is overgrown.

16. In relation to furnishings whilst the initial letting included the same only the white goods being a washing machine cooker and fridge remained the Applicant having replaced all other furnishings.

Legislation – Renting Homes (Wales) Act 2016

Schedule 12 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).

Section 13 Housing Act 1988

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).

Decision

17. In terms of comparable evidence presented by the parties we as a Tribunal reviewed the same and came to the following conclusion.
 - (i) In terms of the Applicant's evidence there was no indication of anything other than the properties concerned being furnished one bedroom flats. No floor area was indicated neither was any EPC rating provided. In addition, there was no date in relation to the comparable evidence or any indication as to if, and

when the letting had been completed and if so, was it at the rate mentioned within the adverts being £795 per month or £600 per month respectively.

- (ii) Conversely, the comparable evidence relied upon by Respondent related in the main,
- (iii) to larger properties which were of a more modern standard than the property in relation to this application.

18. As a consequence of the above the Tribunal undertook its own research and drew from its expertise the evidence set out below (drawn from 4; 1 bedroom flats in the same locality) which equates to an average rent of £799.16 - say £800 per calendar month. All comparable rents did not include utility bills in the per month figure passing and therefore appropriate adjustment is necessary. Furthermore, the Tribunal notes that, in accordance with the Office of National Statistics, the average monthly private rent in Cardiff in September 2024 rose by 10.1% from September 2023.

PROPERTY	RENT	DATE	FLOOR AREA - SQM	EPC RATING	NOTES
172 Cathays Terrace, Cardiff CF24 4HZ	£750	27/11/2023	34	D	First floor studio flat – Furnished.
Lion Court, Daniel Street, Cardiff, CF24 4NX	£850	31/05/2024	26	D	Ground floor flat - Furnished
9 Daniel Street, Cardiff, CF24 4NX	£850	30/05/2024	N/K	D	Ground floor flat - Furnished
53 Donald Street, Cardiff, CF24 4TL	£795	03/05/2024	N/K	D	First floor flat - Unfurnished
54 Mackintosh Place, Cardiff, CF24 4RQ	£850	21/08/2024	40	C	Ground floor flat - Furnished
36 Moy Road, Cardiff, CF24 4TF	£700	11/05/2024	28	E	Ground floor flat - Unfurnished

19. Upon the above basis we determine the rental value to be £875 per calendar month payable with effect from 14th April 2024 calculated as follows:

Open Market rent (based upon our own research) as being	£800.00 per month
Add for inclusive utilities / services	£100.00 per month
Add for White Goods / furnishings	£ 18.00 per month
Gross Rent	£918.00 per month
Deduction of 5% due to the condition of the property	-£ 45.90 per month
Rental Value	£872.10

Rental Value, say £875.00 per month

Dated this 26th day of November 2024

Tribunal Judge T Lloyd