Y Tribiwnlys Eiddo Preswyl

Residential Property Tribunal Service (Wales)

Rent Assessment Committee (Wales)

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DECISION AND REASONS OF RENT ASSESSMENT COMMITTE (WALES)

HOUSING ACT 1988 s.13 &14

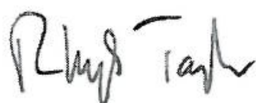
Premises:	5 Barnwood, Brooklea Park, Lisvane, Cardiff, CF14 0XF. ("the property")
Ref:	RAC/0024/04/12
Hearing:	22 March 2013
Applicant:	Ms Joy Grundstrom
Respondent:	Mr Andrew Hannah
Tribunal:	Rhys Taylor – Legal chairman Roger Baynham MRICS

ORDER

Upon the parties having agreed, by reference to s.14(7) of the Housing Act 1988, that the rent determined by this committee shall run from the 16 March 2013.

1. The Applicant shall pay the Respondent £585 per calendar month in respect of the property.

22 March 2013



Chairman

REASONS

Background.

1. This is an application dated 12 November 2012 for the market rent of the property to be determined.
2. The Applicant has a tenancy dated 15 April 2009 for an initial term of 6 months from the 16 April 2009 at a rent of £575 per calendar month. The fixed term within the tenancy agreement has expired and by virtue of s.5 of the Housing Act 1988 ("the Act) the tenancy has become a statutory periodical assured shorthold tenancy. There are no provisions in the tenancy for any rent increases.

Issues with the notice and service.

3. By s.13(2) of the Act a landlord may serve a notice of increase of rent upon the tenant, provided that the notice complies with certain statutory criteria. The notice must either be in the prescribed form or substantially the same as the prescribed form. In this case the Respondent served a notice designated for a rent increase on a property in England. However, the form is substantially the same as the Welsh form and nothing turns on this point. We are satisfied as to compliance with the formalities of the notice. However, there were two particular points in respect of the notice:-
    a. The notice, although sent on the 15 October 2012 is dated 15 October 2013 and referred to a rent increase which was intended to take effect on the 16 November 2013.
    b. Second, it was not clear from the paperwork alone whether the notice had been served on the 16 or 17 October 2012. In order to affect a valid increase of rent (and thereby invoke our jurisdiction to consider an operative notice) the period of service must have been at least 1 month prior to the date when it was intended to take effect. As the original tenancy ran from the 16 April the statutory periodical tenancy will have had the same start date every month. By s.13(3)(c), the period of notice must be equal to the period of the tenancy. If served on the

16 October 2012 the notice complied with the requirement to give a month's notice, if served on the 17 October 2012 the notice is a day short and therefore invalid.

The wrong date.

4. So far as the "2013" dates on the notice, the Respondent submitted to us that this is clearly a mistake and that it is absolutely clear that the date "2012" was intended. In support of this the Respondent produced an email dated 15 October 2012 in which he referred to a November rent increase, without reference to which year he intended. This is in the context of this committee having found that a previous notice of increase of rent was invalid; this determination was on the 21 September 2012. The Applicant's case was that whilst she assumed that the Respondent intended to say 2012, she was left confused by the date which had been inserted.

5. At the hearing the committee drew the parties' attention to the case of *Campbell v Daejan Properties Ltd* [2012] EWCA Civ 1503, [2013] HLR 6. In that case the Court of Appeal, in another residential property context, applied well known rules of interpretation of contracts.

   a. As part of this decision it approved the decision of Brightman LJ in the case of *East v Pantiles (Plant Hire)* [1982] 2 EGLR 111 CA in which it was stated, "It is clear on the authorities that a mistake in a written instrument can, in certain limited circumstances, be corrected as a matter of construction without obtaining a decree in an action for rectification. Two conditions must be satisfied: First, there must be a clear mistake on the face of the instrument; secondly, it must be clear what correction ought to be made in order to cure the mistake. If those conditions are satisfied, then the correction is made as a matter of construction."

   b. It further stated, by reference to the above test "In *KPMG LLP v Network Rail Infrastructure Ltd* [2007] EWCA Civ 363: [2007] Bus LR 1336 Carnworth LJ expressed agreement with this formulation subject to two qualifications. First, the correction of mistakes by construction is an aspect of interpretation, not a separate branch of the law. Secondly,

in deciding whether there is a 'clear mistake' the court can look beyond the document itself. The court can have regard to the background or context.

c. *Campbell* then records that these two authorities were approved of by Lord Hoffman in the case of *Chartbrook Ltd v Persimmon Homes* [2009] UKHL 38: [2009] 1 AC 1101, where His Lordship stated, "All that is required is that it should be clear that something has gone wrong with the language and that it should be clear what a reasonable person would have understood the parties to have meant."

6. Applying the above test to the notice in this case, we are easily satisfied that a reasonable person would have understood the Respondent to have meant 2012. In fact, the Applicant accepts that she assumed so in any event.

Service.

7. We are also satisfied that there has been proper service of this notice. The Respondent produced an email dated 15 October 2012 (time sent 14.36) in which he stated to the Applicant, "Here is an email copy of the document that is being posted to you today advising you of a rent increase at 5 Barnwood."

8. The Applicant's case was that she was unsure if she had received this on the 16 or 17 October. The Respondent's case was that he was clearly intending to send it during the afternoon of the 15 October 2012 and that he would have been at work. He did not send personal mail using the work franking machine, but habitually carries first class stamps. His evidence was that he would have either taken an opportunity to post the notice into a post box on High Street during the working afternoon or done so after work at about 5pm or 5.15pm. He also did not rule out the possibility of having asked a member of staff at his work to include his pre-paid letter of notice within the work postbag. The Respondent was not saying that he could remember which particular mode he adopted, but it appears to us that one of these are the most likely, on the balance of probabilities, to have occurred during the afternoon of the 15 October 2012.

9. The original tenancy agreement itself did not provide for service via email. Instead at paragraph 5.3 it states, "Any notice served by the landlord on the

tenant shall be sufficiently served if sent by standard first or second class post to the tenant at the property or the last known address of the tenant or left at the property addressed to the tenant."

10. Adopting an analogy with s.7 of the Interpretation Act 1978, we are entitled to assume, unless the contrary is proved, that the letter will have been delivered in the ordinary course of the post.

11. We are satisfied that a first class stamp was used and that accordingly, in the absence of any contrary rebuttal evidence from the Applicant, that the notice was indeed served on the 16 October 2012. This fact having been found we are satisfied that the notice was validly served and that consequently we have jurisdiction to determine this matter.

The inspection.

12. The committee attended for an inspection of the property on the morning of the hearing. The Respondent did not attend. The Applicant invited us into the property.

13. The property is a 1960s first floor apartment located in a block of 9 similar type units. The block itself forms part of a larger development which includes two further blocks, provided 24 units of accommodation in total. The development is pleasantly situated in Lisvane, a sought after area in Cardiff. The development is near to local amenities and a railway station. It is set back off the main road, is spaciously apportioned and has well maintained communal gardens. Each unit benefits from its own garage.

14. The property itself is approached by a communal entrance hall with a staircase leading to the first and second floors. There is no lift. The property comprises an entrance hall, living room, kitchen, two bedrooms and a bathroom with WC. The property is south westerly facing over the communal gardens and benefits from a good sized balcony.

15. The property had a mixture of window fittings. The larger bedroom and lounge benefitted from UPVC double glazed units, albeit that the glass in the bedroom appears to have blown. However, the remaining windows were the original steel framed single glazed units which were in poor condition. Further,

the access to the balcony was via the second bedroom which had a large glass door and adjacent windows, all in poor condition. The extent of this feature and its poor condition no doubt exacerbates extremes of temperature, depending upon the weather. We also noted in both bedrooms and other rooms, moisture problems arising from condensation.

16. The heating for the property is the original electric underfloor type which is an expensive way to heat it and the controls for altering the timing were not functioning.

17. The property was part furnished to the extent that the Respondent had provided curtains, carpets, a sofa, coffee table, TV stand, shelves, lamp, mirror, 4 kitchen stool and all white goods save for the drier. In the bedroom two bedside tables, shelves and a wall cabinet had been supplied. We find that this has a minimal effect on rent.

Comparables.

18. We had three sets of comparables to consider:-

    a. The first was a ground floor apartment immediately below the property. We had a signed letter from the tenant indicating that he pays a rent of £575 pcm. This property has been fully modernised and benefits from gas central heating and UPVC double glazing. At the hearing it was agreed between the parties, however, that this comparable had been altered by an owner having previously reduced the area of the flat by selling the bedroom space to a neighbouring property. Quite what this says about the historical management of the block is not a matter for us to determine, but this rather unusual feature must reflect upon the market value of the remaining accommodation space. We were told that the kitchen had been converted into a substitute second bedroom and that the living room now incorporated a walk in kitchen. The total footprint is therefore somewhat less than the subject property, but we must balance that against the fact that it has been fully modernised.

    b. The second set of comparables were two properties produced by the Respondent showing sales particulars in the development for £650 and £625. We were unable to make much use of these are they derive from

a Rightmove printout dated 31 December 2012 which does not include the full particulars. We are simply unable to say whether these are helpfully comparable.

c. The third set of comparables were two properties supplied to the parties by the committee, again taken from Rightmove on the 19 March 2013. However, unlike the Respondent's comparables, these are current and the committee and the parties were able to consider the full description and see photos at the hearing when all present consulted the iPhone Rightmove App for details. One property was on the market for £695 per month. This was clearly developed to a luxurious standard including a Jacuzzi bath and is not in the same bracket as this property. The second property was being marketed for £595 pcm which appeared to have been modernised with UPVC double glazing, gas centre heating and the balcony being enclosed as a sun lounge. This was on an unfurnished basis.

Determination.

19. We find the Applicant's comparable something of a benchmark, having pros and cons not applicable to the subject property. The modernisation must be balanced against the reduced footprint. We find the second comparable provided by the committee, the details of which were studied by all at the hearing, to be the most helpful. It is clearly superior accommodation to the subject property and yet it seeks no more than £595 per month.

20. We should add that the parties had come to a private arrangement as to rent in 2009, having contacted each other via Gumtree. There was some dispute as to who had contacted the other but we do not find it necessary to resolve that point. The fact remains that the parties were able, in 2009 to agree a rent at £575 pcm. Given that it was an arms length transaction in the market we do not propose to seek to delve further back at historical rentals which have been achieved. The going rate for this property in 2009 was £575 pcm

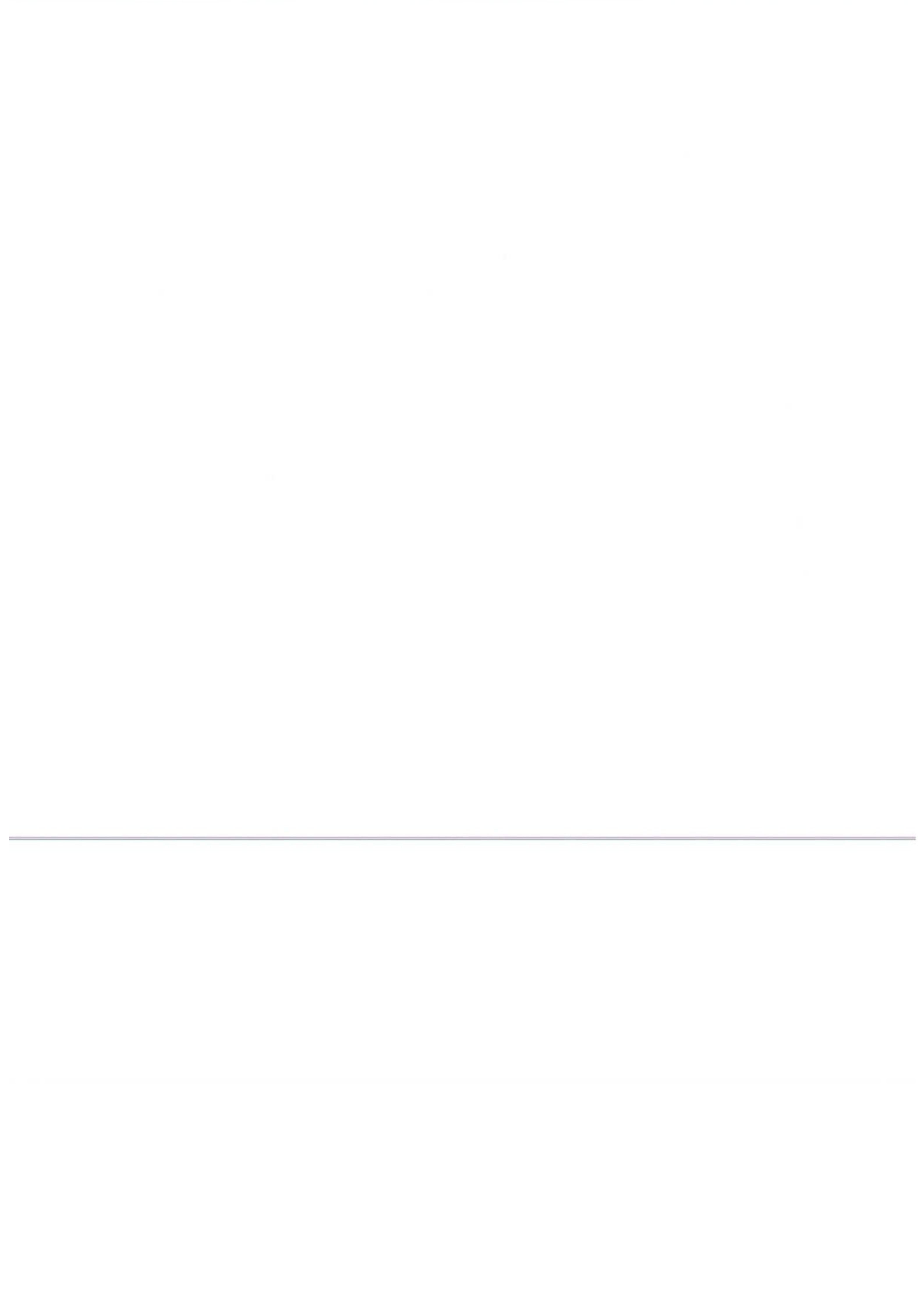
21. Each party agreed that there had been general price inflation since 2009, although neither, wisely, sought to say that the increase in rent would have tracked the Retail Price Index; it was merely a general acceptance that prices

had gone up during this time. Further, each party accepted that the state of the mortgage market meant that the demand for rental properties was higher than it would have been in 2009.

22. It appears to us that there has been an increase in the market value of the rent since 2009 driven in part by the mortgage market. We have in mind the comparables as described and we conclude that the market rent for this property is appropriately set at £585 per calendar month.

22 March 2013

Chairman



Residential Property Tribunal

File Ref No. RAC/0024/04/12

Notice of the Rent Assessment Committee Decision and Register of Rents under Assured Periodic Tenancies
(Section 14 Determination)

Housing Act 1988 Section 14

Address of Premises

5 Barnwood, Brooklea Park, Lisvane, Cardiff.

The Committee members were

Mr R Taylor (Chair)
Mr R Baynham MRICS

Landlord	Mr Andrew Hannah
Address	21 Marle Close, Cardiff, CF23 7EP
Tenant	Ms Joy Grundstrom

1. The rent is: 585 **Per** Month **(excluding water rates & council tax but including any amounts in paras 3&4)**

2. The date the decision takes effect is: 16 March 2013

***3. The amount included for services is** 0 **Per** Na

***4. Services charges are variable and are not included**

5. Date assured tenancy commenced 16 April 2009

6. Length of the term or rental period 6 months (now stat periodical, one month)

7. Allocation of liability for repairs Landlord

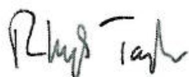
8. Furniture provided by landlord or superior landlord

Sofa, coffee table, TV stand, shelves, stand alone lamp, mirror, 4 kitchen stools, all white goods save drier, wall cabinet, shelves, 2 bedside tables. Carpets and curtains.

9. Description of premises

2 bedroom first floor flat with garage. See decision for details.

Signed by the Chairman of the Rent Assessment Committee.



Date of Decision 22 March 2013