

Y TRIBIWNLYS EIDDO PRESWYL  
RESIDENTIAL PROPERTY TRIBUNAL

Reference: RPT/0018/05/18

In the Matter of an Application under Section 27 of the Housing (Wales) Act 2014, appeal against refusal of licence.

APPLICANT: Mr David Lubin

RESPONDENT: Rent Smart Wales.

**DECISION ON APPLICATION TO APPEAL OUT OF TIME**

**The tribunal allows the appeal to proceed.**

**REASONS FOR THE TRIBUNAL'S DECISION.**

**Background.**

1. By a letter dated 29<sup>th</sup> of March 2018, Rent Smart Wales refused the Applicant's landlord licence application under the Housing (Wales) Act 2014 ("the Act") upon the basis that it was not satisfied that he was a "fit and proper person" to hold a licence. The letter informed the applicant that he was able to submit an appeal within 28 days of the date of that letter to the Residential Property Tribunal, (that is by Thursday 26 of April 2018). By a letter dated 9th May 2018, and received by the tribunal on 11<sup>th</sup> May 2018, Mr Lubin sought to appeal and in his letter indicated that he realised that his application should have been made by April 26.
2. The tribunal wrote to Mr Lubin on 21 May 2018 stating that the tribunal would be prepared to treat his application as having been received on 11 May provided he returned the correct completed application form, the fee and any other supporting information by 30<sup>th</sup> of May 2018. Mr Lubin duly did so and enclosed further information both in support of his appeal and in support of his application to appeal out of time.
3. I am concerned solely with the application to appeal out of time. Nothing in my considerations or decision relates to the question of whether or not Mr Lubin is a fit and proper person to hold a landlord licence.

**Law.**

4. Section 27(4) of the Act states that "*the tribunal may allow an appeal to be made to it after the end of the appeal period if it is satisfied that there is a good reason for the failure to appeal before the end of that period (and for any delay in applying for permission to appeal out of time).*" Further, regulation 4 of the Residential Property

Tribunal Procedures and Fees (Wales) Regulations 2016 deals with requests for extensions of time to make an application and further adds that any request must be in writing and give reasons for the failure to make the application before the end of that period and for any delay since then, to include a statement that the person making the request believes that the facts stated in it are true, and is to be dated and signed. Further the applicant making such a request must at the same time send the completed application to the tribunal. Mr Lubin has complied with the procedural requirements of regulation 4, albeit that the statement of truth appears upon the application form, but the specific information in relation to appealing out of time which was included both in his letter of 9 May 2018 and subsequently accompanying his application, are signed by him.

5. I also remind myself that regulation 3 relates to the overriding objective of the tribunal. The tribunal when exercising any power under the Regulations or interpreting any Regulation must *“seek to give effect to the overriding objective of dealing fairly and justly with applications which it is to determine”*. Further guidance is given in Regulation 3(2) about dealing with an application fairly and justly and these include *“(2)(a) dealing with it in ways which are proportionate to the complexity of the issues and to the resources of the parties;*  
*(b) ensuring, so far as practicable, that the parties are on an equal footing procedurally and are able to participate fully in the proceedings”*.

**Reasons for appealing out of time.**

6. Mr Lubin’s original letter to the tribunal dated 9 May 2018, stated that his application was being made late for two main reasons, namely that a letter sent to Rent Smart Wales on his behalf by his then solicitors Hugh James dated 20<sup>th</sup> of April 2018 was not responded to until May 8th 2018, and that his solicitors also advised that he should not appeal the decision. Indeed, it is clear from Hugh James’s letter that was indeed the case since the letter says that Mr Lubin does not intend to submit a formal appeal of the decision but would appreciate some clarity moving forward. That letter concluded that in view of the length of time that Mr Lubin’s application had been pending, his solicitors asked for an early response.
7. Rent Smart Wales replied to Hugh James by letter dated 8 May 2018 which, in addition to dealing with other matters, agreed an extension of time until 24 May 2018 for Mr Lubin to appoint an agent to satisfy the legal obligations. The letter noted that Mr Lubin had not appealed the refusal of his licence and that more than 28 days have now passed.
8. Mr Lubin says that if the reply from Rent Smart Wales to his solicitor’s questions had been received earlier than 8 May then it would most likely have led to him taking further advice from a different legal source earlier and subsequently appealing within the time limit. He says that he has since taken new legal advice which suggests that he does have good grounds for a hearing by the tribunal. He also complains that on four separate occasions he has made telephone enquiries to Rent Smart Wales to be told that people

were unavailable but he would receive a call back but not once has he done so. He says that this has added to his delay in requesting the appeal.

9. Mr Lubin says that he did not receive the letter from Rent Smart Wales of 29<sup>th</sup> of March refusing him a licence until the afternoon of Tuesday, 3rd April 2018, Monday 2nd April having been a bank holiday. He also says that he immediately replied to Rent Smart Wales by notifying them in a letter written on that day, namely 3rd April of his intention to appeal the decision. He asked for further time as he intended to seek legal advice. He asserts that he telephoned Hugh James solicitors on Wednesday, April 4<sup>th</sup> and had an appointment with a solicitor on Thursday, April 5<sup>th</sup>. He says that he was advised not to appeal the decision but rather to write to Rent Smart Wales and informally challenge the decision. He said that the letter to Rent Smart Wales was not sent out by Hugh James until 20<sup>th</sup> April 2018. Mr Lubin points out that these delays have caused him considerable anguish.

### **Decision.**

10. I bear in mind the overriding objective summarised at paragraph 5 above to deal fairly and justly with applications that the tribunal is to determine. I have considered the reasons that Mr Lubin has given for appealing out of time and I am satisfied that when he received the initial refusal letter from Rent Smart Wales on 3rd April 2018, that he took prompt steps to arrange for legal advice. He is a landlord with a large portfolio and this was an entirely reasonable thing to do. I am also satisfied that, as Mr Lubin points out, there was a delay of 15 days, namely from Thursday, April 5<sup>th</sup>, the date of his appointment, until Friday, 20<sup>th</sup> April, the date of Hugh James's letter to him.
11. I accept that Mr Lubin relied upon the advice that he was initially given not to appeal as the letter from Hugh James of 20<sup>th</sup> April 2018 confirms this. I also note that it was not until 8<sup>th</sup> May that Rent Smart Wales responded to the various questions that Hugh James had raised in their letter of 20 April, again a period in excess of two weeks, and that Rent Smart Wales were prepared to allow him further time for an agent application. Mr Lubin prepared his own appeal to the tribunal promptly after receiving that letter by writing to the tribunal to appeal on 9<sup>th</sup> May 2018, received by the tribunal on 11<sup>th</sup> May.
12. I am satisfied from this chronology of events that Mr Lubin did seek advice and that his solicitors had sought further information from Rent Smart Wales, and that there were delays both in the initial letter from Hugh James being sent out after the appointment with Mr Lubin, and in receiving the 8<sup>th</sup> May response from Rent Smart Wales, which cumulatively exceeded 28 days. Whilst Mr Lubin was throughout, aware of the appeal deadline of 26 April and he accepts as much, I find that his reliance upon the initial legal advice that he received and the delays set out above, do constitute a good reason for failing to appeal in time and for the subsequent delay in submitting his appeal out of time.
13. Against the background and timetable of events set out above, I note that Mr Lubin's initial registration with Rent Smart Wales was completed on 16<sup>th</sup> January 2017 and that he gave the further information requested by Rent Smart Wales about his conviction to

them on 5th May 2017 but did not receive their decision, following their investigation, until 29th March 2018. I do not find that the delay in submitting his appeal of just over two weeks from 26th April until 11th May 2018, was so great that he should not be permitted to continue, particularly where good reasons have been given for that delay.

14. It is in the interests of both parties and of justice that Mr Lubin should be able to appeal and advance his arguments against Rent Smart Wales' initial decision. Accordingly I allow the request for an extension of time to make an application until 11th May and subsequently 30th May 2018 to supply further information and I allow the application to be made to go forward outside of the initial time period.

15. I shall accordingly give directions for the ultimate preparation and consideration of this matter. It must be noted by Mr Lubin that my decision to allow the application out of time has concentrated on the factors relevant to that narrow issue. I have not considered in any way the substantive issues of whether or not he is a fit and proper person to hold a landlord licence. Such issues will be determined in due course by the tribunal.

DATED this 19<sup>th</sup> day of June 2018.

A handwritten signature in black ink, appearing to be 'C. J. Jones' or similar, written in a cursive style.

CHAIRMAN