Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL

Reference: RPT/0052/09/18

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

APPLICANT: Mr Paul Lawrance

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.

Backgound.

1. By an email dated 5th of July 2018 the respondent Rent Smart Wales (RSW) informed the Applicant that he had been granted a landlord licence under section 21 of the Housing (Wales) Act 2014, ("the Act"). A copy of that licence was attached to the email, it was granted on 5 July 2018 and expires on 4 July 2023. The licence is subject to a number of conditions, including at 5b, the following; *"If a licensee's main residence/business address is located in England, Scotland or Wales but is 200 or more miles from the rental property, the licensee must either appoint a Rent Smart Wales licensed local agent, or employ a locally based member of staff to assist in the management of the rental property(s)"*.

2. There are similar requirements at condition 4 if the licensee is going to be away or unable to manage their property for four or more consecutive weeks. Mr Lawrance lives in Norwich but is the landlord of a property in Swansea.

3. Under section 27 (3) an appeal against the condition of the licence must be made before the end of the period of 28 days beginning with the date the applicant was notified of the decision. In this case, the notification was given on Thursday 5th July 2018, and the 28 day period would end on Wednesday, 1 August 2018. The applicant Mr Lawrance appealed to the tribunal by the appropriate HWA2 application form dated 17th of September 2018 received by the tribunal on Tuesday 18 September 2018, one day short of 7 weeks after the time limit for appealing expired.

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 ("the regulations") 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 Lawrance included with his application form grounds for appealing out of time and further documentation in support of his application, and his signed application form contained a statement of truth, thereby complying with the procedural requirements for an appeal out of time.

Reasons for appealing out of time.

5. The grounds for the out of time appeal are that Mr Lawrence says he believed when the licence was issued that the most appropriate way to set out his problem was in the form of a complaint. He says that he complained to RSW on 10 July 2018, received by them on 12 July. This complaint included the wording "*A member of RSW staff has told me that the Residential Property Tribunal Wales recommended that the RSW introduce a new condition for landlords managing their own property. This is in addition to the existing rule that landlords live on the UK mainland. The new 200 mile condition is presumably supposed to ensure that the landlord can attend the property within a reasonable timescale.*" He also added "*the option of appealing the condition would seem to be futile, if it was the Residential Property Tribunal that recommended this new 200 mile rule.*" He says that he received an undated letter in response from RSW on 8th of August.

6. Mr Lawrance wrote back to RSW on 15th August 2018 and he also contacted his Assembly Member for Swansea West, Julie James who in turn wrote to Rebecca Evans, Assembly Member and Minister for Housing and Regeneration in the Welsh Government on his behalf. The Minister wrote to Julie James AM on 14th of August 2018 and her reply, upon the question of the requirement for landlords to live within 200 miles of the property they manage as a condition of their licence, said "*As Mr Lawrence says, Rent Smart Wales has introduced this 200 mile distance as a licence condition as a result of advice given by the Residential Property Tribunal (RPT).*" The Minister also commented that she noted Mr Lawrence had already submitted a complaint to RSW and she described this as being the most appropriate way to raise concerns with RSW and reminded him that if he was not happy with the response then he has recourse to the Public Service Ombudsman in Wales, who has a statutory duty to investigate complaints against public bodies.

7. Mr Lawrence wrote to the Ombudsman on 21st of August 2018 and they replied to him by emailed letter 11 September 2018 telling him that the Ombudsman was not able to investigate a complaint if the aggrieved person has the right to appeal to a statutory tribunal unless it is satisfied that you could not reasonably be expected to do so. As a

result, Mr Lawrence then appealed to the tribunal and explained that the foregoing was the reason for the delay.

Decision.

8. I also remind myself that regulation 3 of the regulations 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".

9. I was concerned to read the Minister's comments that the 200 mile distance limit was as a result of advice given by this tribunal, and equally concerned to read the Applicant's comments in his complaint letter of 10 July 2018 that he had been told by a member of RSW staff that the tribunal recommended the 200 mile condition. If he was told this it is unfortunate because it is simply incorrect and wrong. The tribunal does not advise RSW but decides cases brought before it. In the case of RPT/0019/12/17, decided by this tribunal by a written decision dated 26 April 2018, a landlord of properties in Cwmbran lived in Dublin and RSW had imposed a condition upon his licence that an agent living in mainland Britain should be appointed to manage the properties. In its decision refusing the landlord's appeal against this condition the tribunal said this; "
   "*The Tribunal remain concerned about the potential for anomalies to emerge from the continued use of Condition 5 in its current form. During the hearing [RSW solicitor] Mr Grigg accepted that "mainland Britain" may not be the best criterion to use. Further it is not acceptable that part of the condition is contained in a separate matrix. Ultimately this is a matter for Rent Smart Wales to resolve. It would be wrong in light of the Tribunal's decision to refuse the appeal for it to seek to influence what criteria Rent Smart Wales use. Suffice to say that the Tribunal does consider that the condition requires further attention to seek to avoid future anomalies. Equally important in the Tribunal's view is that the condition is publicised properly so that landlords are fully aware of its implications. According to [the appellant] he was not made aware of the condition until after he had paid money to attend the landlord course. If this is true it is unacceptable."*

10. The decision of the tribunal in that earlier case does not anywhere mention a 200 mile distance limit and I am unaware of any other case before this tribunal mentioning such a limit. In any event, each case has to be decided upon its own individual merits and this tribunal has at no stage determined or recommended a generic 200 mile limit.

11. Upon the information available to me, I am satisfied that the applicant was told by a member of RSW staff that it was the tribunal who have recommended this two hundred mile condition, since this inaccurate information is also included in the letter from the

Minister to his Assembly Member. It is understandable that Mr Lawrance felt there would be little point in appealing to this tribunal after having received that (incorrect) information. He was clearly unhappy with the condition and has sought to challenge it by way of complaint and the Ombudsman as he had been advised to do. I have no hesitation at all in finding that it was as a result of inaccurate and incorrect information given to him that he pursued a complaint rather than an appeal within 28 days to this tribunal. I find that these are good reasons for his appeal out of time and I consider that it is in the interests of justice that this appeal should go forward, not only for Mr Lawrance's individual case, but so that there may be an opportunity for this tribunal to hear evidence and argument about the 200 mile condition in the course of dealing with the appeal.

12. Therefore the appeal is allowed out of time and directions for the management of this case through to final hearing will be given in due course. Both parties must understand that this decision is concerned solely with the application to appeal out of time. I have not considered the substantive merits of either party's position and it would be for a fully constituted tribunal to decide appeal in due course upon the evidence before it.

DATED: 12th of October 2018.

President