

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL

Reference: RPT/0031/07/18

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

APPLICANT: Mr Rhys Huish

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 2nd May 2018, Rent Smart Wales refused the Applicant's individual agent 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 Wednesday 30th May 2018). Mr Huish completed an appeal application to the tribunal dated 25th June 2018 but received by the tribunal on 3rd July 2018. In the application form under the heading "appealing out of time" Mr Huish wrote "sent a written appeal – called numerous times to check progress – left numerous messages but calls not returned – eventually spoke to someone who told me it hadn't been received."
2. The tribunal emailed Mr Huish on 3rd of July 2018 to acknowledge receipt of the application form and cheque but requesting further documentation. Mr Hewitt emailed promptly back to indicate that he was on holiday until 14 July and would send it in upon his return. On 12th of July 2018 Mr Huish emailed the tribunal to indicate that he had contacted Rent Smart Wales and they would be forwarding the decision but he also attached a copy of the Rent Smart Wales refusal letter to him of 2 May 2018. He sent a hard copy of that letter to the tribunal which was received on 25 July 2018. The tribunal had been in email contact with Christina Brown of Rent Smart Wales and she emailed the tribunal on 23 July to indicate that Huish contacted Rent Smart Wales on 31 May 2018 (the day after his appeal deadline) asking about refund information. His licence fee was refunded on the basis that he had not submitted an appeal in time and he then telephoned Rent Smart Wales on 11 June 2018 stating that he wished to appeal the decision.

3. The tribunal wrote to Mr Huish on 26 of July 2018 giving him information about the procedure on applications to appeal out of time. In response on 1st August 2018 the tribunal received the following representations from Mr Huish; *“my original request to appeal sent on or around 7th of May. I had no response so made numerous attempts to call to make enquiries and left voicemails to request a call back with no response. I eventually spoke to someone who informed me you had not received my application and agreed to send me another form. I completed the form and sent it by return post. I am asking you to consider this out of the time limit as I am in this situation through no fault of my own.”*
4. 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 Huish is a fit and proper person to hold a landlord or agent licence.

Law.

5. 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. As above, Mr Huish sent in the application form duly signed with the statement of truth and he has given reasons for the delay.
6. 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”.

Decision

7. Mr Huish essentially states that his appeal was originally sent in on or around 7th of May. From the documentation he has provided, it appears that he is suggesting the original application was made to this tribunal and that he had made numerous attempts to call to make enquiries and left voicemails to request a call back. I have made enquiries of the tribunal administrative staff and have been told there is no record of any voicemails received requesting a call from Mr Huish. There is also no record of any earlier

application being received or a cheque for £155, being the application fee. I also note that Christina Brown's email of 23rd of July 2018 said that on 31 May Mr Huish made enquiries about refunding his licence fee and indeed it was refunded. This is entirely inconsistent with Mr Huish's claim to have appealed to this tribunal on or around 7th of May.

8. I bear in mind the overriding objective summarised at paragraph 6 above to deal fairly and justly with applications that the tribunal is to determine. If what Mr Huish says is correct and he did submit his appeal on time on 7 May but he has been the victim of circumstances beyond his control then that would in my view constitute a good reason for the failure to appeal in time. As indicated, on the few submissions made to me I certainly cannot be entirely satisfied that is the case. Further, the tribunal did not receive the application form until 3rd of July 2018, nearly 5 weeks after the last date for appealing. Mr Huish also submits upon his form that his tenants speak highly of him and he may have to sell his properties if denied a licence which would result in four families becoming homeless. I am not in a position to determine whether such claims are correct or not. Further such claims do not have a bearing upon whether or not he has demonstrated a good reason to appeal out of time. However, I do consider when bearing in mind the overriding objective, that this demonstrates the importance of the issues that Rent Smart Wales are dealing with and that the tribunal will be required to deal with and they go to the proportionality of whether the substantive matter should be heard or that Mr Huish be denied the opportunity to put his case.
9. I consider this application to be upon the very cusp of refusal. However I have not heard oral evidence and would not do so on an application such as this, to test the truthfulness of all of Mr Huish's reasons for failing to appeal within the time limit. His licence was refused upon the basis of a criminal conviction for a serious offence of violence which resulted in a term of imprisonment. I consider, bearing in mind the overriding objective, that it is important for Mr Huish to be able to put his case and for Rent Smart Wales likewise to put theirs. I therefore upon balance allow the appeal to proceed out of time, giving Mr Huish the benefit of the doubt on his reasons for appealing out of time and I will provide directions for the hearing of this matter accordingly.
10. In considering this matter, I have dealt only with the procedural application. I have not considered at all whether Mr Huish is a fit and proper person to be licensed as a landlord/agent. That decision will be taken in due course by a fully constituted tribunal.

DATED: 10th August 2018.



CHAIRMAN