

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL

Reference: RPT/0018/09/20

In the Matter of: 12, Picton Place, Carmarthen, SA31 3BZ

In the matter of an Application under Section 30(1) Housing (Wales) Act 2014 (“the Act”) for a Rent Stopping Order

APPLICANT: Rent Smart Wales

RESPONDENT: Mrs Jean Herbert

Tribunal: Richard Payne, President RPT for Wales
Trefor Lloyd, Vice-President RPT for Wales

Appearances; Mr Richard Grigg, Solicitor and Ms Elizabeth Rees-Jones, Enforcement Officer for the Applicant.

There was no appearance by or on behalf of the Respondent.

FINAL DECISION

UPON consideration of the matter at an oral hearing via Cloud Video Platform (CVP) on Friday 5th February 2021.

IT IS ORDERED THAT;

1. The interim Rent stopping order made in relation to 12, Picton Place, Carmarthen SA31 3BZ (“the dwelling”) with effect from, and including, 27th November 2020, (“the stopping date”), is made final and will remain in force unless and until it is revoked.
2. All periodical payments payable in connection with a domestic tenancy of 12, Picton Place, Carmarthen, which relate to the period from and including the stopping date of 27th November 2020, are stopped.
3. Any periodical payments stopped by this order but made by a tenant of the dwelling (whether before or after the stopping date) must be repaid by the landlord Respondent.
4. An obligation under a domestic tenancy of the dwelling to pay an amount stopped by the order is treated as being met, and all other rights and obligations under such a tenancy in relation to the dwelling continue unaffected.

Reasons for decision.

5. On the 27th November 2020 the tribunal made an interim Rent Stopping Order. Since that order was made on an interim basis, and the Respondent had not been heard, nor had any arguments on her behalf been considered at that date, further directions were given and the Respondent was given the opportunity to provide evidence and to apply to the tribunal to request that the interim order be varied, set aside or revoked. A copy of the interim order, directions and reasons is attached at Appendix One to this decision for ease of reference. That order also provided the date of the 5th February 2021 as the final hearing date.
6. It can be seen that the Respondent was to provide any evidence to the tribunal in response to the Applicant's evidence (the witness statement of Elizabeth Rees-Jones dated 28th September 2020 and exhibits), and any submissions, by 18th December 2020.
7. The Respondent did not and has not provided any information or evidence to the tribunal in response to the directions of 27th November 2020, or at all. In fact, there has been no communication from the Respondent to the tribunal of any kind either in response to the original application or the order of the 27th November 2020.
8. Regulation 32 of the Residential Property Tribunal Procedures and Fees (Wales) Regulations 2016 ("the regulations") is headed "Failure of a party to appear at a hearing." The regulation states;
"Where a party fails to appear at a hearing the tribunal may proceed with the hearing if -
(a) it is satisfied that notice of the hearing has been given to that party in accordance with these Regulations; and
(b) it is not satisfied that there is a good reason for the failure to appear. "
9. Regulation 27 of the regulations requires the tribunal to give not less than 21 days' notice to the parties of the date, time and place of any hearing. In this case, notice was given of the hearing date and time of the 5th February 2021 at 10.30am in the interim decision and directions order of 27th November 2020. That order was sent by e mail by the tribunal to the e mail address for the Respondent. On the 22nd December 2020 the tribunal office sent a further e mail to the Respondent's e mail address chasing up a response to the directions order since nothing had been received from the Respondent. That e mail was sent with a delivery receipt which was confirmed. On 26th January 2021 the tribunal sent a further e mail to the Respondent's e mail address, again with a confirmed delivery receipt, again seeking details of the non-compliance with the directions and reminding the Respondent of the hearing date. There was no response or reply from the Respondent to any of these e mails.

10. Mr Grigg confirmed that in respect of the directions order regarding service, that letters from the Applicant were posted first class to the Respondent and her tenants separately on 4th December 2020 with the receipt showing that they had been received on 7th December 2020.
11. In the circumstances the tribunal were satisfied that regulation 32 has been complied with and there is no good reason notified either to the tribunal or to the Applicant that might explain why the Respondent has failed to appear. The tribunal noted that throughout the entire process, as set out in Ms Rees-Jones witness statement, that the Respondent has failed to engage (with correspondence and pre and post Magistrates Court).
12. Ms Rees- Jones confirmed the contents of her witness statement of 28th September 2020 and exhibits. She also said that she had been in touch with the tenants of the dwelling, she had spoken to one of the tenants on 28th January 2021 who told her that they had not heard anything from the Respondent at all recently, their last contact being with the Respondent by text message in August 2020. There had not been contact with the tenants either by any agent or family member or friend of the Respondent. There are apparently items of disrepair at the dwelling which have been the subject of Improvement Notices served by Carmarthenshire County Council and some works have been undertaken by the Council in default.
13. Ms Rees-Jones said that she had a mobile telephone number for the Respondent and that she has called this periodically, the last time being around the time that the tribunal's directions order was sent out. She explained that sometimes there has been a dialling tone and at other times it has gone to answering machine but there has not been any contact from the Respondent.
14. Mr Grigg confirmed that there had not been any application from the Respondent to become licensed as a landlord and that therefore the Respondent was continuing to commit an offence under section 7(5) of the Housing (Wales) Act 2014 and that the matters under section 30(6) of which the tribunal must be satisfied have all been complied with. There has not been any change since the tribunal was satisfied of those matters and made the interim order. Mr Grigg also confirmed that to the best of the Applicant's knowledge, there was no personal reason relating to health or disability that had been brought to the Applicant's attention that would prevent the Respondent dealing with this matter.
15. The tribunal refers to the reasons given for the making of the interim order on 27th November 2020 as set out in Appendix One (which will not be repeated here). There has been no change in circumstances. The tribunal remains satisfied of the matters in section 30 (5) and (6) of the Act and the reasons given for the making of the interim order continue to apply. The tribunal accordingly is satisfied that a final Rent Stopping Order should be made, with effect from 5th February 2021, (confirming for the avoidance of doubt that the rent stopping date is 27th November 2020), to remain in force unless and until it is revoked.

Richard Payne
President, RPT for Wales

DATED: 23rd February 2021

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL

Reference: RPT/0018/09/20

In the Matter of: 12, Picton Place, Carmarthen, SA31 3BZ

In the matter of an Application under Section 30(1) Housing (Wales) Act 2014 (“the Act”) for a Rent Stopping Order

APPLICANT: Rent Smart Wales

RESPONDENT: Mrs Jean Herbert

Tribunal;
Richard Payne, President RPT for Wales
Trefor Lloyd, Vice-President RPT for Wales

INTERIM DECISION AND DIRECTIONS ORDER

UPON consideration of the matter on the papers on an interim basis on 27th November 2020.

IT IS ORDERED THAT;

16. An interim Rent stopping order is made in relation to 12, Picton Place, Carmarthen SA31 3BZ (“the dwelling”) with effect from, and including, 27th November 2020, (“the stopping date”).
17. All periodical payments payable in connection with a domestic tenancy of 12, Picton Place, Carmarthen, which relate to the period from and including the stopping date of 27th November 2020, are stopped.
18. Any periodical payments stopped by this order but made by a tenant of the dwelling (whether before or after the stopping date) must be repaid by the landlord Respondent.
19. An obligation under a domestic tenancy of the dwelling to pay an amount stopped by the order is treated as being met, and all other rights and obligations under such a tenancy in relation to the dwelling continue unaffected.
20. This order is to be served by the Applicant upon the Respondent, and any tenants of the dwelling forthwith and the Applicant is to provide a statement of service to the tribunal, by e mail, verified by a statement of truth detailing the methods of service and the names of those served as soon as reasonably practicable and in any event by no later than 4pm on 9th December 2020.

Further directions.

21. The rent stopping order above is made on an interim basis and is an interim order. The interim order was made without first giving the parties the opportunity to make

representations with regard to making it and therefore either party may request that the interim order be varied, set aside or revoked. Any such request may be made;

- a. orally at a hearing requested by either party or listed by the tribunal, any such request to be made by no later than **4pm on Friday 18th December 2020**;
 - b. by application in writing to the tribunal or by application by email to the tribunal by no later than **4pm on Friday 18th December 2020**.
22. The tribunal will review the interim order at a hearing to take place by Cloud Video Platform (CVP) at **10.30am on Friday 5th February 2021** or such earlier date that may be listed on application by either of the parties, when a decision on a final order will be made.
23. Any application by the Respondent to vary, set aside or revoke the interim Rent Stopping Order is to include a statement of case as set out below.
24. The **Respondent**, (who has failed to respond to the tribunal's letter and respondent's notice of 1st October 2020 is to provide to the Tribunal by **12 noon on 18th December 2020**, by e mail, and a copy to the Applicant, a witness statement and submissions containing the following;
- a. A response to the Application and the witness statement of Elizabeth Rees-Jones and exhibits dated 28th September 2020
 - b. A statement of case, to be indexed if appropriate and with the pages consecutively numbered, verified by a statement of truth (*"I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth"*) containing;
 - i. all other relevant information, evidence and documents that the Respondent wishes the Tribunal to take into account. The statement should include full information on the reasons why the Respondent failed to obtain a license to carry out property management activities as she was required to do, and any information in support of any application to revoke the rent stopping order.
 - ii. any further response that the Respondent has to the Applicant's statement.
25. The Applicant is at liberty to file by e mail at the tribunal and to serve upon the Respondent, by **4pm on 8th January 2021** any statement in response to the Respondent's statement, if appropriate, verified by a statement of truth.
26. There be liberty to the parties to apply to the Tribunal for further directions.

WARNING

It is important that these Directions are complied with. Failure to do so may result in the Tribunal being unable to consider important evidence or documents which could prejudice your case.

Reasons for the making of the interim order.

1. Under section 30 (1) of the Housing (Wales) Act 2014, (“the Act”), the tribunal has the power to make a rent stopping order if certain conditions are met. Under regulation 21 of the Residential Property Tribunal Procedures and Fees (Wales) Regulations 2016, (“the regulations”), the tribunal has the power to make an interim order. Under regulation 21(1)(b) the tribunal may make an interim order “*for the time being granting any remedy which it would have had power to grant in its final decision.*” The tribunal therefore has the power to make a rent stopping order on an interim basis and for the reasons given below, considers that it is appropriate to do so in this case.
2. This application is made by Rent Smart Wales (“RSW”), the Licensing Authority for Wales under the Act. RSW applied for a rent stopping order to the tribunal by application form dated 14th September 2020. The date when the hard copy form was received is not exactly clear since the tribunal office is not fully staffed owing to the Covid 19 pandemic. The Applicant relies on a witness statement of Elizabeth Rees-Jones, an Enforcement Officer with RSW, dated 28th September 2020. The exhibits to the witness statement were provided on 5 November 2020.
3. The tribunal may only make a rent stopping order if it is satisfied of the matters mentioned in section 30 (5) and (6) are met. Firstly, under section 30 (5), the tribunal must be satisfied that an offence is being committed under section 7 (5) or 13 (3) in relation to the dwelling, whether or not a person has been convicted or charged for the offence. Section 7(5) relates to the requirement that a landlord should be licensed to carry out property management activities, and that if not so licensed an offence is committed, liable on summary conviction to a fine.
4. The witness statement of Elizabeth Rees-Jones and exhibits demonstrates that freehold land registry checks were undertaken on 12, Picton place on 6 November 2018 which established that the owners were Dilwyn Stuart Herbert and Jean Herbert. It was also established through Council tax information provided by the local authority that the property was tenanted and the owner was Mrs Jean Herbert. A Fixed Penalty Notice for failure of a landlord to be registered contrary to section 4 (2) of the Act was sent to the physical and electronic addresses upon file for Mrs Herbert on 8th of November 2018.
5. Case reviews on 3rd January and 28th February 2019 established that the property remained unregistered and the Respondent remained unlicensed with RSW. The Respondent had not been in contact with RSW and the Fixed Penalty Notice remained unpaid. The case was heard in Cardiff Magistrates Court on 30 May 2019 and Mrs Herbert was convicted in her absence of three offences committed in November 2018 contrary to sections 4, 6, 7(1) and (5) of the Act, (failure to register the property at 12 Picton Place as a let property, failure to obtain a licence for letting the property, and separately failing to obtain a licence for the managing of the property.) Mrs Herbert

was also convicted of failing to update the licensing authority with the required information contrary to section 16 (3) of the Act. Whilst Elizabeth Rees-Jones's statement says that there were total charges imposed of £2055, the exhibited certificate of conviction from Cardiff Magistrates Court indicates that the total amount to be paid was £1335 (four fines of £220 for the offences, a costs order for £425 and a victim surcharge of £30).

6. Further steps were taken by RSW, including writing to Mrs Herbert on 24 June 2019 to inform her of the result of the prosecution undertaken on 30 May 2019 and allowing her further until 8 July 2019 to register and licence as a landlord. During a case review on 15th July 2019, it was noted that 12 Picton Place remained unregistered and Mrs Herbert remained unlicensed.
7. Elizabeth Rees-Jones prepared and sent a Notice of Intended Proceedings for a rent stopping order to Mrs Herbert on 10 September 2019 by post and email, (at exhibits 9 and 10 of the statement) seeking any representations against the making of a rent stopping order, on or before 8 October 2019. Details were given in the Notice that representations could be made in person, in writing or by email and full addresses were given. There has been no response from Mrs Herbert to the Notice.
8. The witness statement gives full details, supported by copies of correspondence, of communication with the Respondent and with the tenants of the property in 2019 and 2020, establishing that as at 27th August 2020 the rental property remained unregistered and Mrs Herbert remained unlicensed as a landlord. Attempts to contact Mrs Herbert by telephone have also proved fruitless. At that date tenants A and B remained in residence, a third tenant who had been in communication with RSW, tenant C, had vacated the property on 5 August 2020.
9. On 1st October 2020 the tribunal sent a copy of the application and enclosures (which at that stage included the statement but not the exhibits to the statement), together with a Respondent Notice to Mrs Herbert seeking confirmation that she had received the application and enclosures, whether or not she intended to oppose the application, the name and address of each interested person known to the Respondent and her address. That information was requested by 4 pm on Friday, 16th October 2020. The Respondent's Notice also clearly contained a warning that if the Respondent does not respond as requested then the tribunal may assume that the Respondent does not intend to oppose the application and may proceed with the matter in any way it considers to be reasonable in the circumstances of the case.
10. It appears therefore that since 2018, the Respondent has ignored and failed to respond to correspondence sent to her by RSW and the tribunal.
11. Accordingly, and in the light of the information in Elizabeth Rees-Jones's statement and exhibits, the tribunal is satisfied, by reason of the convictions in Cardiff Magistrates Court on 30 May 2019 referred to above, that an offence was committed under section 7(5) of the Act. Upon the basis of the information before us, we remain satisfied that an offence under section 7(5) continues to be committed in that the Respondent is not licensed to carry out property management activities.
12. Further, the tribunal is satisfied that a notice of intended proceedings was given to both the respondent landlord on 10 September 2019 and the tenants of the dwelling

on 11 September 2019, as exhibited at exhibits 9 – 13 inclusive to Elizabeth Rees-Jones' statement. Those notices contained the mandatory information set out in section 30(6)(a) (i) to (v) of the Act. The period for making any representations has expired. The Respondent landlord did not make any representations and there was therefore nothing for RSW to consider in this regard.

13. The tribunal therefore makes the rent stopping order sought, but upon an interim basis. The matter will be further considered in accordance with the directions given above. The tribunal has made this interim order without first giving the parties the opportunity to make representations with regard to making it and therefore either party may request that the interim order be varied or set aside. Any such request may be made orally at a hearing, in writing by letter to the tribunal, or by email to the tribunal.
14. The tribunal will send a copy of the order to the Respondent but the Applicant is to ensure that this order and decision is served upon the Respondent and the tenants of the dwelling as ordered above.

Richard Payne
President, RPT for Wales

DATED: 27th November 2020