

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
RENT ASSESSMENT COMMITTEE

Reference: RAC/0017/12/21

In the matter of Flat 5, 56 Penylan Road, Cardiff, CF24 3PF

In the matter of an Application under Section 13(4) Housing Act 1988

APPLICANT	Joshua Wheeler (Tenant)
RESPONDENT	Premsaran Patel (Landlord)
TRIBUNAL:	Mrs K Byrne, Chair Mr A Lewis, Surveyor Member

DECISION

The Decision in Summary

1. On 16th March 2022 the Rent Assessment Committee determined that the market rent of £675 per month for Flat 5, 56 Penylan Road, Cardiff, CF24 3PF, should remain unchanged for the reasons set out below.

The Application

2. The Applicant is a tenant of Flat 5, 56 Penylan Road, Cardiff, CF24 3PF (“the property”) who originally occupied the property under an Assured Shorthold Tenancy, the latest tenancy agreement being from 19th August 2020 for a 12-month period. After the expiry of this period the tenancy became a monthly periodic tenancy.
3. On 21st October 2021 an agent acting on behalf of the Respondent served a notice under Section 13(2) of the Housing Act 1988 (“the Act”) on the Applicant, proposing that the rent for the property increase from £675 per month to £795 per month, which was due to commence on 19th December 2021.
4. The Applicant exercised their right to appeal the said notice under Section 13(4)(a) of the Housing Act 1988 by submitting the prescribed form to the Rent Assessment Committee (“the Committee”), which was dated 12th December 2021.
5. On 6th January 2022 the Committee gave directions to both parties for the preparation of the case and submission of their respective evidence by 12 noon on 9th February 2022. Both parties were to notify the committee and each other whether an oral hearing of the matter was required, by 16th February 2022. As both parties were content that an oral hearing was not required, the matter would proceed on the papers.

6. The parties were advised by the Committee that the property would be inspected by the Surveyor Member of the Committee on 15th March 2022 and that there would be a determination on the papers on 16th March 2022.
7. In line with the Directions given on 6th January 2022 both parties submitted their evidence by 12 noon on 9th February 2022.

The Inspection

8. On 15th March 2022 Mr Andrew Lewis, the Surveyor Member, carried out an inspection of the property when both the Applicant and Respondent were present. The property was a top floor flat in a converted Victorian terraced house laid out over three floors. Around 2008 the Respondent converted the house into five self-contained flats, with a communal entrance hall and staircase to the first floor. Access to the subject flat is off the first-floor landing, leading to a staircase to the accommodation on the second floor, which includes a lounge/kitchen, bedroom, and shower room/toilet. The lounge/kitchen and bedroom had electric night storage heating with the shower room having an electric towel heater.
9. Dampness was noted on the ceiling adjoining the chimney breast in the lounge/kitchen, and similarly in the bedroom, which had also tracked down the chimney breast. There were also indications of dampness on the lower section of rear wall of the bedroom and on part of the ceiling in the bedroom.

The Law

10. The material provisions that govern this application are to be found in sections 13 and 14 of the Housing Act 1988 as amended. For ease of reference, we recite relevant extracts below. The Committee has highlighted in bold wording of particular note.

13 Increases of rent under assured periodic tenancies

(1) This section applies to—

(a) a statutory periodic tenancy other than one which, by virtue of paragraph 11 or paragraph 12 in Part I of Schedule 1 to this Act, cannot for the time being be an assured tenancy; and

(b) any other periodic tenancy which is an assured tenancy, other than one in relation to which there is a provision, for the time being binding on the tenant, under which the rent for a particular period of the tenancy will or may be greater than the rent for an earlier period.

(2) For the purpose of securing an increase in the rent under a tenancy to which this section applies, the landlord may serve on the tenant a notice in the prescribed form proposing a new rent to take effect at the beginning of a new period of the tenancy specified in the notice, being a period beginning not earlier than—

(a) the minimum period after the date of the service of the notice; and

(b) except in the case of a statutory periodic tenancy—

(i) in the case of an assured agricultural occupancy, the first anniversary of the date on which the first period of the tenancy began;

(ii) in any other case, on the date that falls 52 weeks after the date on which the first period of the tenancy began; and

(c) if the rent under the tenancy has previously been increased by virtue of a notice under this subsection or a determination under section 14 below—

(i) in the case of an assured agricultural occupancy, the first anniversary of the date on which the increased rent took effect;

(ii) in any other case, the appropriate date.

(3) The minimum period referred to in subsection (2) above is—

(a) in the case of a yearly tenancy, six months;

(b) in the case of a tenancy where the period is less than a month, one month; and

(c) in any other case, a period equal to the period of the tenancy.

(3A) The appropriate date referred to in subsection (2)(c)(ii) above is—

(a) in a case to which subsection (3B) below applies, the date that falls 53 weeks after the date on which the increased rent took effect;

(b) in any other case, the date that falls 52 weeks after the date on which the increased rent took effect.

(3B) This subsection applies where—

(a) the rent under the tenancy has been increased by virtue of a notice under this section or a determination under section 14 below on at least one occasion after the coming into force of the Regulatory Reform (Assured Periodic Tenancies) (Rent Increases) Order 2003; and

(b) the fifty-third week after the date on which the last such increase took effect begins more than six days before the anniversary of the date on which the first such increase took effect.]

(4) Where a notice is served under subsection (2) above, a new rent specified in the notice shall take effect as mentioned in the notice unless, before the beginning of the new period specified in the notice,—

(a) the tenant by an application in the prescribed form refers the notice to the appropriate tribunal; or

(b) the landlord and the tenant agree on a variation of the rent which is different from that proposed in the notice or agree that the rent should not be varied.

(5) Nothing in this section (or in section 14 below) affects the right of the landlord and the tenant under an assured tenancy to vary by agreement any term of the tenancy (including a term relating to rent).

11. By reason of the above provisions, where the tenancy includes no term allowing rent increases then to secure a rent increase in respect of a periodic assured tenancy (including a periodic assured shorthold) the landlord must serve a notice under section 13(2) of the Act in prescribed form. In this case, since the fixed term of the initial tenancy agreement ended on 18th August 2021 and the tenancy agreement does not specifically state that it would revert to a periodic tenancy after the end of the fixed term, s.5 of The Housing Act 1988 becomes applicable. It is noted by the Committee that the tenancy agreement does make provisions within the ‘General Notes’ of the tenancy agreement, for the notice period required if the tenancy were to become a

periodic tenancy at the end of the fixed term. The rent is payable monthly. The tenancy, on the evidence before the Committee, is a statutory periodic monthly tenancy.

12. Under section 13 there are three requirements for the starting date specified for the new rent in any notice:

- (I) The proposed new rent must be to take effect at the beginning of a new period of the tenancy (per s.13(2)). In this case, the notice proposed the new rent of £795 per month to take effect from 19th December 2021.
- (II) For a monthly tenancy, the minimum period of notice given before the proposed new rent can take effect is a month (per s.13(3)(b)). The notice was dated 21st October 2021.
- (III) In most cases, the starting date for the proposed new rent must not be earlier than 52 weeks after the date on which the tenancy commenced or the date on which the rent was last increased under section 13. Since there has not been a previous increase and it is more than 52 weeks since the tenancy commenced, then this is complied with in the current case.

13. Section 14 of the Act contains further provisions about the determination of rent by the Committee.

The following documentation was placed before the Committee

Applicant's Evidence

14. The Applicant submitted into evidence the following documentation: -

1. A witness statement in the name of the Applicant dated 8th January 2022
2. Copies of email correspondence dated between 3rd November 2020 to 1st February 2022 between various recipients
3. A document entitled 'Evidence of Similar Properties for Lower Rent' containing details of various rental properties in the Cardiff area.
4. A copy of a letter addressed to the Applicant dated 8th November 2021 from Corinne Davies on behalf of the Shared Regulatory Service for Cardiff, Bridgend and the Vale of Glamorgan Local Authorities.
5. A copy of an Improvement Notice served under Section 12 of the Housing Act 2004 dated 8th November 2021 by the Shared Regulatory Service in relation to the property.
6. A copy of an unsigned, undated Assured Shorthold Tenancy Agreement in relation to the property for the term of 12 Months commencing on 19th August 2019, with rent payable at £675.00 per month.
7. A copy of a Document from the Deposit Protection Service entitled 'Prescribed Information Relating to Tenancy Deposits', relating to the property detailing a deposit of £843.75. This document is unsigned and undated.
8. A copy of an Assured Shorthold Tenancy Agreement in relation to the property for the term of 12 Months commencing on 19th August 2020, with rent payable at

£675.00 per month. This document is signed by the then Landlord Ms Minal Patel, but is undated.

9. A number of photographs provided of the interior and exterior of the property.

Respondent's Evidence

15. A witness statement in the name of Premsaran Patel signed and dated 1st February 2022. The said statement refers to Appendices.

Appendix 1

1. A copy of an Assured Shorthold Tenancy Agreement dated 14th January 2022 between the Respondent and a 3rd party for Flat 1, 56 Penylan Road, Roath, Cardiff; with the monthly rent listed as £750.00, which has been signed by the Respondent and the 3rd party as the Tenant. For the period of 14th January 2022 to 13th July 2022.
2. A copy of an Assured Shorthold Tenancy Agreement dated 6th February 2022 dated 6th February 2022 between the Respondent and a 3rd party for Flat 2, 56 Penylan Road, Roath, Cardiff; with the monthly rent listed as £750.00, which has been signed by the Respondent and the 3rd party as the Tenant. For the period of 14th February 2022 to 13 February 2023.
3. A copy of an Assured Shorthold Tenancy Agreement undated between the Respondent and a 3rd party for Flat 3, 56 Penylan Road, Roath, Cardiff; with the monthly rent listed as £775.00 which has been signed by the Respondent and the 3rd party Tenant on 8th February 2022. For the period of 22nd February 2022 to 21st August 2022.

Appendix 2

16. Which is a link to a Google Drive folder containing screen shots of 1-bedroom properties being advertised for rent in Cardiff.

Further submissions

The Respondent

17. On 13th March 2022 a further submission was received via email communication from the Respondent, attached to the email correspondence was a copy of an Assured Shorthold Tenancy Agreement undated between the Respondent and a 3rd party for Flat 4, 56 Penylan Road, Roath, Cardiff; with the monthly rent listed as £780.00 which is undated and unsigned. For the period of 13th April 2022 to 12th April 2023. Also provided is a photograph of the passport of the 3rd party.

The Applicant

18. On the 14th March 2022 a submission in reply to the Respondent's submission was received from the Applicant by the Committee via email.
19. Photographs that were taken on 15th March 2022, by the Surveyor Member were also before the Committee.

Discussion

20. The matter was considered and determined on the papers on 16th March 2022 when the Committee convened remotely through the Cloud Video Platform (CVP).
21. There are three issues that ordinarily require determination in an application to increase the rent under section 13 and 14 of the Act.
- (I) Firstly, was the section 13 Notice valid?
 - (II) Secondly, if so, what is the market rent having regard to the matters in section 14 of the Act?
 - (III) Thirdly, are there any grounds for determining that the Applicant would suffer undue hardship if the new rent were to commence from 19th December 2021, and should the Committee fix a later date for the commencement of a new rent under section 14(7) of the Act?

The validity of the Notice

22. Section 13(2) expressly states that the section 13(2) notice must propose a new rent to take effect at the beginning of a new period of the tenancy specified in the notice. The notice is also to be in the correct form as required by the Assured Tenancies and Agricultural Occupancies (Forms) (Amendment) (Wales) Regulations 2014.
23. The tenancy agreement was for a fixed term of 12 months starting on 19th August 2020 and ending on and including 18th August 2021. As noted, at the end of the fixed term the tenancy became a statutory periodic monthly tenancy. The periodic monthly tenancy therefore commenced on 19th August 2021 and the period of the tenancy is the month commencing on the 19th of each month and ending on and including the 18th of each month.
24. The Committee is satisfied that the notice served on 21st October 2021, requiring the rental increase from the start of the new monthly tenancy period on 19th December 2021, complies with section 13(2) of the Act.

The Market Rent

25. S.14 of The Housing Act 1988

Determination of Rent

- (1) Where, under subsection (4) (a) of section 13, a tenant refers to the appropriate tribunal a notice under subsection (2) of that section, the Tribunal shall determine the rent at which, subject to subsections (2) and (4) below, the Tribunal consider that the dwelling-house concerned might reasonably be expected to be let in the open market by a willing landlord under an assured tenancy-*
- (a) which is a periodic tenancy having the same periods as those of the tenancy to which the notice relates;*
 - (b) which begins at the beginning of the new period specified in the notice;*

- (c) *the terms of which (other than relating to the amount of the rent) are the same as those of the tenancy to which the notice relates; and*
- (d) *in respect of which the same notices, if any, have been given under any of Grounds 1 to 5 of Schedule 2 to this Act, as have been given (or have effect as if given) in relation to the tenancy to which the notice relates.*

(2) *In making a determination under this section, there shall be disregarded-*

- (a) *any effect on the rent attributable to the granting of a tenancy to a sitting tenant;*
- (b) *any increase in the value of the dwelling-house attributable to a relevant improvement carried out by a person who at the time it was carried out was the tenant, if the improvement-*
 - (i) *was carried out otherwise than in pursuance of an obligation to his immediate landlord, or*
 - (ii) *was carried out pursuant to an obligation to his immediate landlord being an obligation which did not relate to the specific improvement concerned but arose by reference to consent given to the carrying out of that improvement; and*
- (c) *any reduction in the value of the dwelling-house attributable to a failure by the tenant to comply with any terms of the tenancy.*

(3) *For the purposes of subsection (2)(b) above, in relation to a notice which is referred by a tenant as mentioned in subsection (1) above, an improvement is a relevant improvement if either it was carried out during the tenancy to which the notice relates, or the following conditions are satisfied, namely-*

- (a) *that it was carried out not more than twenty-one years before the date of service of the notice; and*
- (b) *that, at all times during the period beginning when the improvement was carried out and ending on the date of service of the notice, the dwelling-house has been let under an assured tenancy; and*
- (c) *that, on the coming to an end of an assured tenancy at any time during that period, the tenant (or, in the case of joint tenants, at least one of them) did not quit.*

(4) *In this section "rent" does not include any service charge, within the meaning of section 18 of the Landlord and Tenant Act 1985, but, subject to that, includes any sums payable by the tenant to the landlord on account of the use of furniture, in respect of council tax or for any of the matters referred to in subsection (1) (a) of that section, whether or not those sums are separate from the sums payable for the occupation.*

26. The Tribunal is required to determine the rent at which the subject property might reasonably be expected to be let in the open market by a willing landlord to a willing tenant under an assured tenancy under the requirements set out in s.14(1) of the Act.

27. The Committee reviewed the comparable evidence submitted by the parties and found that the best comparable properties to be the recent letting of other flats at 56 Penylan Road. This evidence demonstrates that a one bedroom flat would achieve a rental in the region of £750 - £780 per month.

28. The committee noted that the property is currently subject to an Improvement Notice which has been served under The Housing Act 2004 by Cardiff Council. The Committee also note the variation in representations made by each party in respect of the said Notice.
29. The Committee were satisfied that they should consider the requirements under s.14 on the presentation of the property on the date of inspection, being the 15th March 2022. Dampness was noted in both the lounge/kitchen and bedroom, which had been present for some months, including when the Notice of Increase was served. This disrepair would detract from the appeal of the subject property in the marketplace and would result in a lower rent than a flat in good repair.
30. Based on the comparable evidence, the judgement and experience of the Committee, the Committee is satisfied that the Respondent's proposed rent of £795 per month is likely to only be achievable once essential repairs have been carried out, and to reflect the current condition of the property there must be a discount applied.

Decision

31. Therefore, the Committee considers that the Market Rent of the flat in its current condition is £675 per month.
32. As there has been no rental increase the Committee did not go on to consider significant hardship of the Applicant.

DATED this 27th day of April 2022

Kelly Byrne
Chair of the Rent Assessment Committee