

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
RENT ASSESSMENT COMMITTEE

Reference: RAC/0020/01/22

In the Matter of Flat K12, Penrhos Polish Village, Pwllheli, LL53 7HN

In the matter of an application under Section 22(1) Housing Act 1988

APPLICANT Sylwia Bovarska
RESPONDENT Clwyd Alyn Housing
TRIBUNAL: Mr. T Rakhim, Chairman
Mr. T Daulby, Surveyor Member
Mr. J Rostron, Lay Member
Date of determination: 28 April 2022

DECISION

Summary of Decision

1. For the reasons given below, the Rent Assessment Committee finds the application is not valid as it does not comply with the requirements of Section 22(1) and Section 22(2) of the Housing Act 1988. Therefore, the Committee have no jurisdiction to determine the rent under Section 22 of the Act.
2. The application is thus dismissed.

REASONS FOR DECISION

Background

3. The case concerned the determination of a market rent for the subject property following a referral by the Tenant (Applicant) pursuant to Section 22(1) Housing Act 1988.
4. The Applicant resided in a flat subject to a tenancy with the Polish Housing Society Ltd since January 2005. The control of the property, as well as for other properties on the site, was transferred to Clwyd Alyn Housing (the Respondent).

5. The Respondent requested the Applicant vacate her flat as the site of the flat she resided in at the time was going to be redeveloped. They asked her to move to another flat of a similar size (the subject property). After moving, the Applicant states she was informed the rent would increase from £67.00 per week to £118.85 per week.
6. There was no notice of increase in respect of the rent. The rent is reflected in the contract (tenancy agreement) for the subject property. The Applicant thus contests the initial rent set. Various other issues are raised by the Applicant, but the main issues are the flat number on the contract being incorrect and not being provided with details of the service charges.
7. The Tribunal received an application dated 18 December 2021 from the Applicant under Section 22(1) Housing Act 1988.
8. The Applicant had sought a paper hearing as expressed within the application. The parties were further afforded an opportunity to inform the Tribunal if an oral hearing was required by notifying the Tribunal by 15 February 2022 (as per the Tribunal Order of 13 January 2022). The date was extended to 22 February 2022 (as per the Tribunal's amended Order of 18 February 2022). No such request for an oral hearing was made and the parties sent in statements and/or submissions as well as documents in support of their respective positions.
9. The matter was listed for a paper hearing on 28 April 2022 via the Cloud Video Platform. No parties attended and the Committee was satisfied it could fairly determine the matter and that the parties had been informed of the date of the paper determination.

Inspection

10. Mr Tom Daulby, the Surveyor Member, inspected Flat K12, Penrhos Polish Village, Pwllheli, LL53 7HN (the subject property) on 28 April 2022.
11. For the reasons set out below, the Committee do not intend to set out the details of the inspection as they do not fall to be relevant.

Applicant's Evidence

12. The Applicant's evidence was set out in an annex to the application dated 18 December 2021, the Tenancy Agreement of 3 May 2021, an amended Tenancy Agreement of the same date and a witness statement dated 1 February 2022 with enclosures. The evidence included details of some comparables and service charges.

Respondent's Evidence

13. The statement of the Respondent dated 8 March 2022 was before the Committee setting out the history of the tenancy, together with a number of comparables for consideration.
14. The Respondent's legal submissions dated 8 March 2022 were also before the Committee. The Respondent's primary position is that jurisdiction is contested on the grounds of the application not complying with Section 22 of the Housing Act 1988. In the alternative, the application is outside the scope of Section 22 as the application was not made in time. Other issues are raised on this being an initial rent and not an increase, as well as the issue of jurisdiction in respect of service charges.

The Law

15. The following excerpts of the law are relevant to the issues (with wording of particular relevance to this application highlighted in bold).
16. Section 22 (1) of the Housing Act 1988;

*(1) Subject to section 23 and subsection (2) below, the **tenant under an assured shorthold tenancy . . . may make an application** in the prescribed form to the appropriate tribunal for a determination of the rent which, in the appropriate tribunal's opinion, the landlord might reasonably be expected to obtain **under the assured shorthold tenancy**.*

17. Section 22 (2) of the Housing Act 1988;

*(2) **No application may be made under this section if—***

(a) the rent payable under the tenancy is a rent previously determined under this section; . . .

*(aa) the tenancy is one to which section 19A above applies and **more than six months have elapsed since the beginning of the tenancy** or, in the case of a replacement tenancy, since the beginning of the original tenancy; or*

(b) the tenancy is an assured shorthold tenancy falling within subsection (4) of section 20 above (and, accordingly, is one in respect of which notice need not have been served as mentioned in subsection (2) of that section).

18. Schedule 2A of the Housing Act 1988;

Tenancies excluded by notice

(1)An assured tenancy in respect of which a notice is served as mentioned in sub-paragraph (2) below.

(2)The notice referred to in sub-paragraph (1) above is one which—

(a)is served before the assured tenancy is entered into,

(b)is served by the person who is to be the landlord under the assured tenancy on the person who is to be the tenant under that tenancy, and

(c)states that the assured tenancy to which it relates is not to be an assured shorthold tenancy.

Determination

19. The Committee is required to first consider whether it has jurisdiction.
20. The law sets a time limit in which the application is to be made, namely within six months, as per Section 22 (2) of the Housing Act 1988. No application can be made under Section 22 of the Act if the application is not made within this six month period.
21. The tenancy is dated 3 May 2021, thus the application was required by 3 November 2021. The application is dated 18 December 2021. The application is therefore out of time.
22. To the extent the Applicant raises issue with the contract stating the door number as 'K11' when in fact she resided at 'K12'; the Committee notes the contract was later amended at some point. The Committee accepts the Respondent's submission that the Applicant resided at flat K12, the parties knew the Applicant would reside at Flat K12 when the contract was signed and she never resided in Flat K11. A reasonable person would have concluded what the parties did intend and mean, namely Flat K12.
23. The Committee thus concludes the application fails on the primary ground of time limit.
24. Having made the above determination, the Committee also considered the additional ground raised in respect of jurisdiction in relation to whether the tenancy agreement was an Assured Shorthold Tenancy.
25. The application has to be in relation to an Assured Shorthold Tenancy in order to be valid, as per Section 22 (1) of the Housing Act 1988. This is the only form of tenancy that grants rights for an application to be made under Section 22.
26. It is presumed tenancies are an Assured Shorthold Tenancy unless one of the exemptions in Schedule 2A of the Housing Act 1988 applies.

27. The Applicant's tenancy agreement is titled "Assured Tenancy". Further, on the first page of the agreement, under the Section titled "Type of tenancy", the following is expressly stated:

"This is an Assured Weekly Tenancy NOT an Assured Shorthold Tenancy, the terms of which are set out in this Agreement".

28. The tenancy agreement specifically states on the first page that the agreement is not an Assured Shorthold Tenancy. The tenancy thus falls to be excluded from being considered as an Assured Shorthold Tenancy, as per Section 2(c) of Schedule 2A (Housing Act 1988).

29. Therefore, this tenancy is of a type that cannot be considered under a Section 22 application for rent consideration. The Committee do not find the application to be valid and the Committee have no jurisdiction to consider the application.

30. The application is thus dismissed.

DATED this 24th day of May 2022

T Rakhim

Chairman