

Y TRIBIWNLYS EIDDO PRESWYL  
RESIDENTIAL PROPERTY TRIBUNAL

**Reference: RAC/0026/03/22**

**In the matter of 39 Ariel Reach, Newport, NP20 2FP**

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

**APPLICANT**                      **Tracey Etchells (Tenant)**

**RESPONDENT**                    **POBL Group (Landlord)**

**COMMITTEE:**                    **Mrs K Byrne, Chair**  
   **Mr R Baynham, Surveyor Member**

**DECISION**

**The Decision in Summary**

1. On 9<sup>th</sup> June 2022 the Rent Assessment Committee determined after an oral hearing that the market rent should increase to £565 per month for 39 Ariel Reach, Newport, NP20 2FP from 17<sup>th</sup> April 2022 being the date stipulated in the s.13(2) Housing Act 1988 notice, for the reasons set out below.

**The Application**

2. The Applicant is a Tenant of 39 Ariel Reach, Newport, NP20 2FP (“the property”) the Applicant originally occupied the property under an Assured Shorthold Tenancy with Charter Housing Association Limited, dated 17<sup>th</sup> March 2017 for a 6-month period, which expired on 16<sup>th</sup> September 2017. Under the agreement monthly rent of £475 was to be paid on the first day of the month during the term of the tenancy to the Landlord’s agent, Seren Living Limited. After the expiry of the fixed period the tenancy became a monthly periodic tenancy, as specifically set out in the said tenancy agreement.
3. On 25<sup>th</sup> February 2022 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 £540 per month to £565 per month, which was due to commence on 17<sup>th</sup> April 2022.
4. The Applicant exercised the 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 received by the said Committee on the 17<sup>th</sup> March 2022.

5. On 29<sup>th</sup> March 2022 the Committee gave directions to both parties for the preparation of the case and submission of their respective evidence by 12 noon on 29<sup>th</sup> April 2022. Both parties were to notify the committee and each other whether an oral hearing of the matter was required, by 29<sup>th</sup> April 2022. It was later communicated to the parties that the appeal would be heard by way of an oral hearing.
6. The parties were advised that the property would be inspected by the Chair and Surveyor Member of the Committee on 9<sup>th</sup> June 2022 and an oral hearing would take place on that day.
7. In line with the Directions given on 29<sup>th</sup> March 2022 both parties submitted their evidence by 12 noon on 29<sup>th</sup> April 2022.

### **The Inspection**

8. The Committee's Legal Chair and surveyor inspected the property on the morning of the 9<sup>th</sup> June 2022. There was no attendance by or on behalf of the Respondent who was aware of the inspection but the Applicant, Tracey Etchells was present.
9. The property consists of a modern middle of link house located on a development of similar type houses. The house which was constructed around 10 years ago is conventionally built having brick exterior walls, the majority of which has been cement rendered, a tiled roof and plastic rainwater goods. The windows and doors are double glazed Upvc units. The property has the benefit of full gas central heating and the Applicant confirmed that the carpets throughout the property were provided by the Respondent but these have been replaced by the Applicant on the ground floor with linoleum. The property is within easy reach of two large supermarkets.
10. The accommodation on the ground floor comprises an entrance hall with stairs leading to the first floor, a cloakroom with a wash hand basin and a w/c, a living room with a patio door leading to the rear garden, and to one side of the hall there is a square arch providing access to the kitchen which has adequate base and wall units, an oven and hob and an extractor fan.
11. On the first floor there is a landing, a fitted cupboard housing the gas boiler, 2 double bedrooms and a bathroom consisting of a bath with shower over, wash hand basin and a w/c.
12. At the front the property there is hard standing for two vehicles and a small shrub border adjacent to the house. The rear garden which is enclosed by wooden fencing consists almost entirely of a paved patio area.

## The Law

13. 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).*

14. By reason of the above provisions, where the tenancy includes no clause 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 16<sup>th</sup> September 2017 and the tenancy agreement specifically states that it would revert to a monthly periodic tenancy after the end of the fixed term. The tenancy, on the evidence before the Committee, is a statutory periodic monthly tenancy.

15. 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 £565 per month to take effect from 17<sup>th</sup> April 2022.

(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 is dated 25<sup>th</sup> February 2022.

(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. As the last rental increase was in 2020, there is more than 52 weeks since the last increase and it is more than 52 weeks since the tenancy commenced, then this is complied with in the current case.

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

## **The Hearing**

17. The Committee were duly convened on the afternoon of 9<sup>th</sup> June 2022, where the Chair and Surveyor Member were in attendance at Oak House, the Applicant Tracey Etchells and a representative for the Respondent, Lucy Rosser, appeared via video platform.

## **The following evidence was placed before the Committee**

### **Applicant's Evidence**

18. The Applicant submitted into evidence the following documentation: -
  1. A witness statement dated 14<sup>th</sup> April 2022 from the Applicant.
  2. A letter from POBL dated 25<sup>th</sup> February 2022 to the Applicant enclosing the section 13(2) Housing Act 1988 Notice (also provided).
  3. A letter from POBL dated 23<sup>rd</sup> March 2022 Re Direct Debit.
  4. A letter from POBL dated 11<sup>th</sup> April 2022 Re Direct Debit.
  5. A copy of the Assured Shorthold Tenancy Agreement between Charter Housing Association Ltd and the Applicants signed and dated 17<sup>th</sup> March 2017.
  6. The Applicant made submissions to the committee, she stated that the rent at the property has increased on an annual basis and that this would not occur if the property were owned by a private landlord. She accepted that at paragraph 4.4 of the Tenancy it does state that there could be an annual rental increase or decrease.
  7. The Applicant made submissions that the Respondent should be more in line with Local Authority owned properties and that the Respondent should try to keep the rent affordable. The Applicant made submissions that if the rent were to continue to increase on an annual basis that she would not be able to afford to live at the property, as she lives on a real working wage and does not have much disposable income. She accepted that she is in employment and not in receipt of any state benefits.
  8. The Applicant agreed that any issues that there had previously been in the garden of the property had now been resolved to her satisfaction.

### **Respondent's Evidence**

19. The Respondent submitted into evidence the following documentation: -
  1. A witness statement, set out in letter format dated 11<sup>th</sup> April 2022, duly signed by Emily Samuel Dip RLM (Letting Agency Manager).
  2. A copy an Assured Shorthold Tenancy Agreement between Charter Housing Association Ltd and the Applicants signed and dated 17<sup>th</sup> March 2017.
  3. A photograph of the external view of the property (undated).
  4. A Best Price Guide document created by Pobl Letting agency.

5. A copy of a letter dated 25<sup>th</sup> February 2022 to the Applicants enclosing the section 13(2) Housing Act 1988 Notice (also provided).
6. The Respondent's representative made submissions that the tenancy is not a social tenancy and that rent is valued at 10% below market rent. The representative confirmed that the last rental increase was more than 52 weeks prior to the 17<sup>th</sup> April 2022.
7. The Respondent's representative confirmed that the Best Price Guide submitted is based on research undertaken by the Respondent by considering properties advertised on the open market.

## **Discussion**

20. Once both parties had concluded their submissions, the Committee went on to consider and determine the matter in private.
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 17<sup>th</sup> April 2022, 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 6 months starting on 17<sup>th</sup> March 2017 and ending on and including 16<sup>th</sup> September 2017. As noted, at the end of the fixed term the tenancy became a statutory periodic monthly tenancy. The periodic monthly tenancy therefore commenced on 17<sup>th</sup> September 2017 and the period of the tenancy is the month commencing on the 17<sup>th</sup> of each month and ending on and including the 16<sup>th</sup> of each month.
24. The Committee is satisfied that the notice served on 25<sup>th</sup> February 2022, requiring the rental increase from the start of the new monthly tenancy period on 17<sup>th</sup> April 2022, 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 Committee 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 Respondent; no comparable evidence was provided by the Applicant. The Committee found that the best comparable properties to be similar 2-bedroom properties situated on Ariel Reach and rented by the Respondent for £565 per month.
28. The Committee notes that the Respondent advises that the property is let as one of their private lets as part of an 'intermediate product' which they state is aimed to be no more than 90% of market rent.
29. Based on the comparable evidence, the judgement and experience of the Committee, the Committee is satisfied that the Respondent's proposed rent of £565 per month is the rent that could reasonably be expected to be achieved if the property were to be let in the open market by a willing landlord to a willing tenant under an assured tenancy

### **Undue Hardship**

30. The Committee having decided that the monthly rent should be increased from £540 to £565, went on to consider if there were any grounds for determining that the Applicant would suffer undue hardship if the new rent were to commence from 17<sup>th</sup> April 2022, and whether the Committee should fix a later date for the commencement of the new rent under section 14(7) of the Act.
31. As previously stated, a witness statement, dated 14<sup>th</sup> April 2022 has been provided to the Committee. In that statement the Applicant states that her cost of living rise this year is 1.75%, "there was not a cost of living increase last year for myself and the year before I had an increase of 2% and that this increase was representative for people on a "real living wage". The Applicant also made oral submissions to the Committee as set out in paragraph 18 (7) above.
32. Based on the submissions and lack of evidence provided by the Applicant, the Committee are unable to conclude that the Applicant would suffer undue hardship and it is therefore the Committee's decision that the rental increase should start on the date set out in the section 13(2) Notice, being 17<sup>th</sup> April 2022.



**Decision**

33. The Committee considers that the Market Rent of the property is £565 per month and that the start date of the rental increase is 17<sup>th</sup> April 2022.

**DATED this 19<sup>th</sup> day of July 2022**

**Kelly Byrne  
Chair of the Rent Assessment Committee**