

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
RENT ASSESSMENT COMMITTEE

Reference: RAC/0023/03/22

In the Matter of 103 Laws Street, Pembroke Dock, Pembrokeshire, SA72 6DQ

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

APPLICANTS: (1) Tanya Rees (2) Patricia Rees

Ms Tanya Rees attending in person. Ms Patricia Rees not attending

RESPONDENTS: (1) Ms Michelle Copeman (2) Mr Tom Cutting

Both Respondents attending in person

The Committee: Mrs Siân Westby (Tribunal Judge/Chairperson)

Mr Peter Tompkinson MRICS (Surveyor Member)

Mr Eifion Jones (Lay Member)

Date of determination: 27 July 2022

DECISION

The Decision in Summary

The Rent Assessment Committee hereby determines that the rent at which the Property might reasonably be expected to be let in the open market by a willing landlord under an assured tenancy or assured shorthold tenancy in March 2022 is £650 per calendar month. This is unchanged from the previous rent.

REASONS FOR DECISION

Background

1. The Applicants are the tenants of 103 Laws Street, Pembroke Dock, Pembrokeshire, SA72 6DQ ("the Property"). They entered into an assured shorthold tenancy agreement with the Respondent landlords on 7 June 2013. The tenancy was for a fixed term of 6 months commencing on 17 May 2013, becoming a monthly periodic tenancy at the end of the fixed term. The agreed monthly rent was £650, with the rent being paid in advance by equal instalments on the 17th of each month.
2. By notice dated 4 February 2022 an agent, acting on behalf of the Respondent landlords, served a notice upon the Applicants pursuant to Section 13(2) of the Housing Act 1988 ("the Notice" and "the Act" respectively). The Notice was sent to the Applicants under cover of a letter of the same date. The Notice proposed that the rent for the Property be increased from £650 per month to £750 per month with effect from 17 March 2022.
3. The Applicants exercised their right to appeal the Notice, pursuant to Section 13(4)(a) of the Act, by submitting an application dated 1 March 2022 on a prescribed form to this Rent Assessment Committee.
4. By way of an order dated 17 March 2022, this Committee gave directions to both parties for the preparation of the case and the submission of arguments and evidence by 12 noon on 13 April 2022. In accordance with that order, both parties submitted statements by 12 noon on 13 April.
5. The parties were advised by the Committee that the Property would be inspected by the Surveyor Member of the Committee on 20 July 2022 and that there would be an oral hearing on 27 July 2022.

The Inspection

6. On 20 July 2022, Mr Peter Tompkinson, the Surveyor Member, carried out an inspection of the Property. The first Applicant, Ms Tanya Rees, was present with her children and both Respondents also attended the inspection.
7. The Property is a four-bedroom mid-terrace property built around 1900. It has rendered elevations, a pitched slate roof and a small garden to the rear. The basement to the Property, as well as the garage, does not form part of the tenants' demise.
8. There was no designated parking for the Property but parking was available on Laws Street itself. Externally and from the front the Property appeared to be in good repair. On entering the Property, there is a hallway with two reception rooms and a flat-roofed kitchen extension to the rear. Upstairs to the first floor are two bedrooms and a bathroom and to the second floor there were a further two bedrooms in the attic.
9. Internally, it was noted that the Property looked tired. Stains were noted to the ground-floor ceiling due to a leak emanating from the bathroom. On the first floor, it was noted that there was damp in the window reveals and on the second floor there was evidence of further damp penetration along the walls of both second-floor bedrooms. To the rear of the Property, the

fascia boards above the kitchen were rotting and there was water damage to the shower tray in the bathroom. The Surveyor Member noted from the inspection that although the Property was not in poor condition, it had not been well maintained.

The Law

10. The material provisions that govern this application are to be found in sections 13 and 14 of the Act, as amended. For ease of reference, we recite the provisions below.

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 virtue 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 tenancy), the landlord must serve a notice under Section 13(2) of the Act in a prescribed form.

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

- 10.1 The proposed new rent must take effect at the beginning of a new period of the tenancy (Section 13(2));
- 10.2 For a monthly tenancy, the minimum period of notice given before the proposed new rent can take effect is a month (Section 13(3)(c)); and
- 10.3 The starting date for the proposed new rent must not be earlier than 53 weeks after the date on which the rent was last increased under Section 13

13. The relevant extracts of section 14 of the Act state the following:

14 Determination of rent by tribunal

- (1) *Where, under subsection (4)(a) of section 13 above, a tenant refers to the appropriate tribunal a notice under subsection (2) of that section, the appropriate tribunal shall determine the rent at which, subject to subsections (2) and (4) below, the appropriate tribunal consider that the dwellinghouse 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...*
- (7) *Where a notice under section 13(2) above has been referred to the appropriate tribunal, then, unless the landlord and the tenant otherwise agree, the rent determined by the appropriate tribunal (subject, in a case where subsection (5) above applies, to the addition of the appropriate amount in respect of rates) shall be the rent under the tenancy with effect from the beginning of the new period specified in the notice or, if it appears to the appropriate tribunal that that would cause undue hardship to the tenant, with effect from such later date (not being later than the date the rent is determined) as the committee may direct.*

14. The terms of section 14 are self-explanatory. In most applications (including the application before this Tribunal) the key provisions for consideration are sections 14(1) to (3) and 14(7), as set out above.

Evidence and Representations

15. Following directions set down by the Committee, both parties provided written representations. The Applicants provided evidence by way of two separate letters to the Committee dated 11 April and 13 April 2022. The letter dated 11 April 2022 referred to a letter from the Pembrokeshire County Council (which is dated 19 October 2021) and a 'party structure notice', dated 19 July 2016, from the owner of 105 Law Street. The letter from the Council noted there was damp in the Property, stated that there were no cover flashings on either of the two chimneys shared with the adjoining properties and suggested that the landlord should be trying to work out a solution to the damp issue with the owners of the neighbouring properties. The 'party structure notice' referred to proposed works to the chimney situated between the Property and 105 Laws Street.
16. In addition to the Council letter and the 'party structure notice', the Applicants also provided a screenshot of two comparable properties understood to be available to rent on Zoopla in April 2022; one being a four-bed maisonette to rent on Dimond Street in Pembroke Dock offered for rent at £595 per calendar month, the other being what appeared to be a detached house, with an unknown number of bedrooms, on Ocean Way in Pembroke Dock and being offered for rent at £750 per calendar month.
17. The Applicants' letter of 13 April 2022 stated that when they moved into the Property, the heating for the Property was run off a Rayburn and that there were no radiators in the bedrooms. The letter stated that shortly after moving into the Property, the Applicants were asked by the Respondents to apply to the government's NEST scheme which they did and, consequently, a new boiler was installed in the Property as well as radiators in the bedrooms. The letter goes on to state that Applicants were eligible to apply to the NEST scheme as they were in receipt of a qualifying benefit.
18. The Respondents provided evidence by way of a letter dated 11 April 2022 with accompanying photographs of comparable properties available to rent on Zoopla within 10 miles of postcode SA61. The letter referred to the previous rents achieved for the Property and stated that the Respondents' agent had in the last year achieved a rent increase from £775 per calendar month to £1,100 per calendar month for a four-bedroomed property in Haverfordwest. The Respondents also stated that a further four-bedroomed detached property in Haverfordwest had recently achieved a rental of £1,100 per calendar month, increased from £725 per calendar month.
19. A hearing was convened remotely on the Kinly platform on 27 July 2022. The First Applicant attended in person and represented herself and the Second Applicant. Both Respondents attended in person.
20. The First Applicant's representations may be summarised as follows:
 - 20.1 The damp issue first occurred at the property in about 2014/15. It remains an issue and has worsened over the years. The Respondents were informed of the damp issue when it occurred, but no steps have been taken to rectify the damp, despite the Council's letter which was passed to the Respondents and the neighbour also raising it as an issue with the Respondents.

- 20.2 The Applicants made the application to the NEST scheme in approximately September 2013 and the new boiler and radiators were installed in around October/November 2013. The Applicants were eligible for the scheme as they received a qualifying benefit. The boiler and radiators were installed at no cost to the Applicants.
- 20.3 The comparables put forward by the Respondent as evidence of the market rent are not good comparables as the properties are in a better condition than the Property and are not situated in Pembroke Dock. The areas in which many of the comparables are located are in more expensive areas and many of the properties have their own driveway. The Property is a terraced house which the comparables are not.
21. The Respondents' evidence may be summarised as follows:
- 21.1 The Respondents were made aware of a damp issue in one attic bedroom around two years after the Applicants moved into the Property and then later on were notified of a similar issue in the second attic bedroom. The Respondents were not aware of the damp in the third bedroom, on the second floor, until the inspection on 20 July. The Respondents had not carried out any remedial works to the Property as the Applicants had informed them that it was not causing an issue. The Respondents had received a letter from one of the neighbours regarding the works required to be carried out to a chimney, but as the neighbour had expected the Respondents to cover the full costs of the remedial works required, the Respondents had refused to carry out the works as the chimney was considered a party wall, jointly owned by both parties.
- 21.2 The Respondents have carried out maintenance to the Property when they have been given access to the Property by the Applicants. They have offered to come and carry out works to the attic bedrooms, including dry-lining of walls. However, this would involve the Applicants vacating and clearing the bedrooms and the Respondents were told that this would not be convenient.
- 21.3 The Respondents had tried to apply to the NEST scheme themselves but were not eligible as they were not living at the Property so then spoke to the Applicants about them making the application to NEST. The boiler and radiators were installed at no cost to the Respondents, save that the Respondents did pay the Applicants £100 for the inconvenience of the works being carried out and the Second Respondent carried out some repairs to the floor in the bathroom after some damage caused by the installation.
- 21.4 In obtaining the comparables sent to the Committee, the Respondents simply conducted a search of other available properties in the area. The Respondents state that smaller properties than the Property are attracting the same or higher rent than the £750 proposed. Properties of a similar size to the Property have achieved rent values of £900 per calendar month, which is what their agent has said that the Property should be marketed at.

Matters to be determined

22. There are three questions that require determination by the Committee:
- 1) Was the section 13 notice valid?
 - 2) If so, what is the market rent having regard to the matters in section 14 of the Act?
 - 3) Are there any grounds for determining that the Applicant would suffer undue hardship if the new rent were to commence from 17 March 2022 and should the

Committee fix a later date for the commencement of a new rent under Section 14(7) of the Act

Validity of the Notice

23. Section 13(2) of the Act 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 of 4 February 2022 does comply with the statutory provisions, was in the correct prescribed form for rent increases in Wales and was validly served and, therefore, the notice is valid.

Appropriate Rent

24. Under Section 14 of the Act, this Committee must determine the rent at which it considers that the Property might reasonably be expected to be let in the open market by a willing landlord under an assured tenancy and which conforms to the relevant characteristics of the Property as described above.

25. Pursuant to Section 14(2)(b) of the Act, this Committee must disregard any increase in the value of the Property attributable to an improvement carried out by the tenant (unless that improvement was carried out in pursuance of an obligation to the landlord). The Committee considers that it is the Applicants' eligibility and their application to NEST that enabled the new boiler and radiators to be installed at the Property, at no cost to either party. Accordingly, the installation of the new boiler and radiators is a relevant improvement to the Property carried out by the tenant and, therefore, any increase in the value of the Property attributable to the installation of the boiler and radiators must be disregarded by this Committee, pursuant to the Act.

26. Of the comparables offered by both parties, the Committee considers the most relevant is the four-bedroom maisonette in Pembroke Dock with an asking rent of £595 per calendar month put forward by the Applicants. The majority of the comparables referred to by the Respondents were outside Pembroke Dock, with the majority being based in Haverfordwest or Milford Haven which the Committee considers, utilising its own experience and expertise, to be a more sought-after area attracting higher rental values.

27. The Committee, having made its own enquiries, utilising its own experience and expertise and having regard to the requirements of Section 14(2)(b) of the Act above determine that the rent at which the Property might reasonably have been expected to be let in the open market in March 2022 is £650 per calendar month.

28. The Committee reached this determination for the following reasons:

27.1 On the available evidence and bearing in mind the condition of the Property and the presence of damp, the Committee considered that £650 per calendar month was within the band of rents at which such a property might reasonably expect to be let on the open market by a willing landlord under an assured shorthold tenancy.

27.2 The Committee considered that although £650 per calendar month was within the lower band of rent which could reasonably be expected for the Property, this was due

to the condition of the Property, as referred to above, and the fact that the Committee has to disregard the fact that a boiler and additional radiators have been installed. The absence of the boiler and radiators in the bedrooms would make the Property less desirable to prospective tenants, most of whom would expect to have a modern central heating system in place in the Property, as well as radiators in all bedrooms.

Section 14(7) and Undue Hardship

29. We were not provided with any specific evidence regarding undue hardship but, in any event, the Committee's determination does not change the rent payable under the tenancy and, therefore, there is no need to consider the application of section 14(7) of the Act to this matter.

Determination

30. The Rent Assessment Committee hereby determines that the rent at which the Property might reasonably be expected to be let in the open market by a willing landlord under an assured or assured shorthold tenancy in March 2022 is £650 per calendar month. This is unchanged from the previous rent.

DATED this 23rd day of August 2022

S. Westby
(Chairperson)
Rent Assessment Committee