

Y TRIBIWNLYS EIDDO PRESWYL CYMRU
RESIDENTIAL PROPERTY TRIBUNAL WALES
RENT ASSESSMENT COMMITTEE

Reference: RAC/0004/04/22

In the matter of: Flat 4, 64-65 The Kingsway, Swansea, SA1 5HW ('the Property').

In the matter of an application under Section 13(4) of the Housing Act 1988 (as amended) ('the Act').

Applicant: Mr Rohan Chaggar

Respondent: Principality Building Society

Committee: Ms Claire Jones (Chairman)

Ms Carole Thomas (Lay Member)

Mr Peter Tompkinson (Surveyor Member)

DECISION AND REASONS OF THE RENT ASSESSMENT COMMITTEE

The Decision in Summary

1. For the reasons given below, this Tribunal, sitting as a 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 shorthold tenancy in April 2022 is £500.00 per month. In the circumstances, the rent of £500.00 per month is payable from 30th June 2022.

The Application

2. The Applicant is the tenant of Flat 4, 64-65 The Kingsway, Swansea, SA1 5HW ('the Property') which he occupies under an assured periodic tenancy. The Applicant initially occupied the Property under an assured shorthold tenancy agreement between the Applicant and the Respondent, dated 23rd July 2020 and commencing on 31st July 2020. The agreement was for an initial fixed six-month period ending on 30th January 2021, at a rent of £460 per calendar month to be paid monthly in advance. By letter dated 18th December 2020, the

Respondent confirmed that on expiry of this period, the tenancy would subsequently become a monthly periodic tenancy and would continue on a monthly basis, until notice was received from either party.

3. The Respondent Building Society is the freehold owner and landlord of the Property and is represented by Peter Alan Ltd ('the Respondent's Agent'). By notice dated 25th March 2022 ('the Notice'), the Respondent's Agent served notice under section 13(2) of the Housing Act 1988 (as amended) ('the Act') on behalf of the Respondent, proposing an increase in the rent from £460.00 per calendar month to a new rent of £525.00 per calendar month. The starting date for the proposed new rent was stated to be 30th April 2022.

5. By an application dated 19th April 2022, the Applicant's father, Mr Chaggar senior, applied on behalf of the Applicant to the Tribunal under section 13(4) of the Act to challenge the proposed increase in rent. The Notice was therefore referred to this Committee for it to address the question of the proposed rent increase by an additional £65.00 per calendar month as sought by the Respondent.

6. On 21st April 2022, a procedural Chairman of the Residential Property Tribunal made a Directions Order for the preparation of the case and for the submission of statements and evidence, the statements to include a statement of truth. The Order stated as follows; - *"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."* The Order also stated that if no hearing was requested by either party, the Tribunal could nevertheless require an oral hearing and the parties were subsequently notified that the Tribunal had listed the matter for an inspection and oral hearing on 13th July 2022.

7. The matter duly proceeded with an inspection by the Surveyor Member and an oral hearing on 13th July 2022, the Committee being convened remotely through the Cloud Video Platform. The Applicant's father was in attendance and represented the Applicant. Neither the Respondent nor the Respondent's Agent attended the oral hearing. The Committee was satisfied that the Tribunal had duly notified the parties by the e-mail addresses previously used by each of the parties, of the time and date of the inspection and oral hearing. In all the circumstances, it considered that it was appropriate to proceed with the hearing in the absence of the Respondent or the Respondent's Agent.

The Property

8. The Committee's Surveyor Member attended to inspect the Property on the morning of 13th July 2022. The Applicant was also in attendance during the inspection. There was no attendance at the inspection by the Respondent or the Respondent's Agent.

9. The Property comprises of a one-bedroom flat on the third and top floor of a relatively new mixed commercial and residential building. The flat has one bedroom, a living room/kitchen-diner and a bathroom which has a toilet and shower. The windows are double-glazed and the flat is served by a shared entrance at the side of the building, a hallway, stairway and lift.

10. The Surveyor Member noted that the Property was very small, but well-decorated, however the communal areas were scruffy and he also viewed areas of past dampness to the bedroom ceiling which he considered may have been caused through a combination of condensation and/or damp penetration from the flat roof above. Significant construction works were also taking place at an adjacent building site. Finally, he noted that a section of newly erected rainwater guttering was defective as it had not been properly fixed to the fascia board.

11. The Surveyor Member also noted from his inspection of the Property that the passenger lift was not working properly, that is, it would not serve the top floor of the building.

Evidence and Representations

12. The parties each provided written representations in addition to the relevant tenancy documentation. Firstly, the Respondent's Agent provided evidence in the form of an e-mail dated 9th May 2022 which comprised of details of five one-bedroom apartments or flats which they had recently let in Swansea, at rents ranging from £500 to £625. The e-mail referred to the Property as being unfurnished. The representation did not contain a statement of truth in accordance with the Tribunal's Directions.

13. The Applicant submitted a letter to the Tribunal dated 8th May 2022 albeit addressed to the Respondent, which included a statement of truth in accordance with the Tribunal's Directions. He said that the proposed increase in rent was excessive, being over 14.1%. He said that the Respondent had promised but failed to clean carpets and windows and to paint the bedroom ceiling and that he had to clean the ceiling every fortnight. He also said there had been numerous issues including leaking boilers, consistent damp and shower issues, that scaffolding had been present on the property for over a year and there was no longer a parking facility due to construction work on an adjacent site. He supplied images including images showing areas of damp and dirty windows. Finally, the Applicant supplied details of what he considered to be comparable properties in Swansea advertised at £500 or below.

14. The oral submissions by the Applicant's father at the hearing expanded upon the contents of the witness statement. He referred to the areas of damp which he thought may be due to the presence of a flat roof, as it would appear after heavy rain. He said that the incorrect guttering brackets had been used and the guttering dipped as it was unsupported, and it therefore over-flowed and water would bounce onto the windows during rain events. This in turn, caused noise, nuisance and additional stress. He said that the communal entrance hall and stairs were dirty, and that lighting was not working so that there was a security risk. It had also taken many months to change a light bulb and on several occasions, neither the lift nor the heating had worked. On occasions, the electricity supply would also trip. He said that the Applicant had to clean the ceiling every two to three weeks although not as often recently. Some repairs had been carried out and he was not sure whether the damp was now residual damp and whether the problem had been resolved. He said he'd had to send e-mail after e-mail to chase the Respondent's Agent. Finally, he provided photographic evidence to illustrate some of the issues of concern.

15. The Applicant's father produced a transcript of certain e-mail exchanges between the Applicant and the Respondent's Agent in relation to arrears. He said that the Respondent's Agent had chased the Applicant for the rent which was the subject of this Application. He considered this to be harassment as the Applicant was a good tenant, always paid rent on time and all he asked was that the Property be maintained to an appropriate standard. A letter from the Respondent dated July 2022 included a sincere apology however for the automated letters that had been sent. The Applicant's father said that the original rent of £460 had been negotiated due to a number of issues with the flat. Finally, he said that the flat was partially furnished.

The Law and the Committee's Determination

16. The material provisions that govern this application are to be found in Sections 13 and 14 of the Act. For ease of reference, relevant extracts are included below. The Committee has highlighted in bold any wording which is of particular note. There are three key issues that require determination in an application to increase the rent under these Sections. Firstly, was the Section 13 Notice valid? Secondly, if so, what is the market rent having regard to the matters in Section 14 of the Act? Thirdly, are there any grounds for determining that the Applicant would suffer undue hardship if the new rent were to commence from 30th April 2022, and should the Committee therefore fix a later date for the commencement of a new rent under section 14(7) of the Act?

The Validity of the Notice

17. The relevant extracts from Section 13 of the Act state as follows with regard to increases of rent for assured periodic tenancies: -

'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—

(ii)...on the date that falls 52 weeks after the date on which the first period of the tenancy began; and

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

(c)... a period equal to the period of the tenancy.

(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;

18. Under these provisions, where the tenancy does not include a term allowing rent increases, as in this case, then to secure a rent increase in respect of a periodic assured tenancy, the Respondent needed to serve a notice under Section 13(2) of the Act in the prescribed form. Since the fixed term of the initial tenancy agreement ended on 30th January 2021, the tenancy then became a periodic monthly tenancy from the last day of that month, being 31st January 2021.

19. Under Section 13 there are three requirements specified. The proposed new rent must take effect at the beginning of a new period of the tenancy. In this case, the Notice proposed that the new rent of £525 per month take effect from 30th April 2022. For a monthly tenancy, the minimum period of notice that can be given before the proposed new rent can take effect is one month. The Notice was dated 25th March 2022 under cover of a letter also dated 25th March 2022. The Committee was satisfied on the evidence that the Notice complied with the Act in this respect.

20. Secondly, 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 the Committee was also satisfied that the notice complied with the Act in this respect.

21. Thirdly, as to whether the Notice was in the prescribed form, the Applicant's representative did not make any representations with regard to the form of the Notice. Nevertheless, the Committee was mindful that the prescribed form as set out in the Assured Tenancies and Agricultural Occupancies (Forms) (Amendment) (Wales) Regulations 2003 had since been amended by the Assured Tenancies and Agricultural Occupancies (Forms) (Amendment) (Wales) Regulations 2014 ('the 2014 Regulations') to include slightly different wording in the guidance notes to the prescribed form as a consequence of the Welfare Reform Act 2012. This amended wording had not been included in the Respondent's Section 13(2) Notice dated 25th March 2022.

22. The Tribunal noted that the Respondent would need to update the forms used in future for the purpose of Section 13(2) of the Act. On balance however, the Tribunal determined

that the error did not invalidate the Notice. It considered that the Notice substantially complied with the prescribed form requirements. It noted that the incorrect wording was contained in the guidance note rather than the prescribed form itself. The missing wording did not go to the heart of the form or the Act's purpose in the Committee's view. It noted that the context of the prescribed form was to ensure that a tenant received clear information about his rights and obligations as to the opportunity to challenge proposed new rent before a relevant date. The Committee considered that the Notice fulfilled this statutory purpose in accordance with the Act and in the circumstances, it considered that the error did not prejudice the Applicant's right to challenge the Respondent's Notice.

The Market Rent

23. The relevant extracts from Section 14 of the Act state as follows with regard to the determination of rent: -

'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...

24. The Committee carefully considered the appropriate level of rent in accordance with these provisions of the Act. The Committee was assisted by the evidence supplied by both the Applicant and the Respondent regarding rent at which one bed apartments, studios and flats were being advertised and let. More weight would ordinarily be given to evidence supported by a statement of truth, nevertheless, the Committee noted that the rental figures produced

by the respective parties of comparable rental properties were broadly similar. Both parties referred to one particular property which was recently let for £500 per calendar month.

25. The Committee noted that the comparable properties provided by the Respondent demonstrated rents achieved whilst the comparable properties provided by the Applicant were rents advertised. It also noted that SA1 was a desirable area and that there was a student-led and more general demand for rental properties and in particular one bed properties in the area. Despite the fact that the Respondent's Agent referred in its letter dated 9th May to the flat being unfurnished, the Committee accepted the Applicant's evidence that it was in fact partially furnished. The Committee noted that the first property listed by the Respondent's Agent as let for £550 was described as a studio apartment. The second let for £500 was described as a small studio apartment. The Committee noted that the Property in question was small and affected by long-running adjacent building works.

26. The Committee went on to consider the condition of the Property. It accepted that there was the defective guttering at the Property which caused water to overflow onto the windows and that there were recurring problems both with the boiler and lift. It noted that there had been historical water ingress and signs of damp although it noted that this issue may have been resolved. It also noted that there were large scale and on-going construction works taking place on the site immediately adjacent to the Property. Nevertheless, the Committee didn't consider that these factors would affect the ability to let the Property. Nor did it consider that they would significantly affect the rent at which the Property might reasonably be expected to be let in the open market. It considered the current rental market to be strong and that the guttering was a matter that could and should be easily remedied by the Respondent.

27. Having carefully considered the oral evidence and submissions on behalf of the Applicant and the written evidence of both parties, together with the associated documentation, the Committee also used its own judgment and knowledge of the relevant rental market. The Committee was satisfied that in its current condition and location, the market rent at which the Property might reasonably be expected to be let in the open market by a willing landlord under an assured shorthold tenancy, having taken into account all of the factors specified in Sub-sections 14(1) and (2) of the Act, would be £500 per calendar month.

Undue Hardship

28. Section 14(7) of the Act states as follows with regard to claims of undue hardship: -

(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.

29. In the Applicant's written submission dated 8th May 2022, he stated: - *"If the tribunal were to confirm the increase of rent from the 30th April 2022, then this would cause undue hardship to myself as I am a student who is concentrating on his studies and not working so therefore have no source of income."*

30. The Applicant's father provided further information at the oral hearing and clarified that the Applicant originally had a part-time job in order to pay for his rent. He was also using his savings to pay rent. If the rent was increased as proposed by the Respondent from 30th April 2022, then he would need to take on another job. Reference was also made to the impact which this would have on the Applicant's health and that he was finding the situation stressful.

31. The Committee noted that it could not determine that rent should take effect from a date later than the date of its determination and that it would be appropriate for any new rent to be payable from the beginning of a relevant period. The Committee considered that a requirement to pay the new rent with effect from 30th April 2022 would cause undue hardship for the Applicant in all the circumstances and it therefore directed that the new rent of £500 per calendar month should be payable with effect from 30th June 2022.

DATED this 4th day of August 2022

C Jones

CHAIRMAN