

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
RENT ASSESSMENT COMMITTEE

Reference: RAC/0021/09/22

In the matter of Room 6, Llanccayo House, Usk, Monmouthshire, NP15 1JF

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

APPLICANT: Sarah Franklin

In Person

RESPONDENT: Llanccayo House Partnership, represented by Sarah Tagg

In Person

Committee: Mr. M Hunt (Chairman)

Mr. A Lewis (Surveyor)

Mrs. C Thomas

Date of determination: 3 February 2023

DECISION

The rent is set at £640 per month with effect from 1 October 2022.

REASONS FOR DECISION

The Facts and Issue

1. There was a significant amount of background information provided to the Rent Assessment Committee (the "Committee") about the nature of Llanccayo House, its history, and the relationship between the parties. As explained by the Chairman at the hearing, much of this was irrelevant to the issue for the Committee to decide. The most relevant facts appear to the Committee to be as follows.
2. On 1 May 2020, the Applicant entered into an agreement with the Respondent to occupy Room 6, Llanccayo House, Usk, Monmouthshire, NP15 1JF (the "Property"). The Property consisted of one room in a large Georgian manor house in a rural setting, with an *en suite* toilet and shower. The Applicant had access to a shared kitchen and dining room, and an individual parking space. There were several other rooms available to let on a similar basis, on the first and second floors.

3. The Committee's Surveyor inspected Llancayo House on the day of the hearing, and shared photos with the Committee. The Committee also had sight of photos presented by the Respondent and others available on airbnb.co.uk. Llancayo House is an old building with heritage value (Grade II-listed), set within expansive grounds with several outbuildings. It appeared to the Committee to be in generally good repair and to have been refurbished internally with care to a good standard, although it considered certain elements both inside and out might benefit from additional work.
4. The Respondent originally intended for the applicant to occupy the Property as a long-stay hotel guest. It now accepts she was a tenant occupying the Property under an assured periodic tenancy in accordance with the provisions of the Housing Act 1988 (the "Act"). The applicant shares this view and this Committee found no reason to disagree. £490 was the originally agreed rent, payable monthly, inclusive of all utilities and council tax.
5. In 2021, the Respondent sought to change the mode of occupation, seeking to rent out rooms for shorter stays, and to allow the whole property to be let to interested groups. Many of the existing occupiers left voluntarily by January 2022, but the applicant and two others did not. The applicant remained in the Property during this shift towards shorter-stay occupation of the remainder of the building. The Committee was informed that the applicant had decided to vacate the Property towards the end of 2022, subsequent to being sent a notice that the Respondent was seeking possession under s.21 of the Act on 14 September 2022.
6. By notice dated 1 September 2022, the Respondent sought to increase the rent from £490 to £693.33 per month with effect from 1 October 2022 in accordance with s.13 of the Act (the "Notice"). The applicant did not contend the Notice was invalid, and this Committee was satisfied it was valid.
7. On 13 September 2022, the applicant referred the Notice to the Committee in accordance with s.13(4) of the Act. Accordingly, the only issue for the Committee was to determine the correct level of rent in accordance with s.14 of the Act.
8. On 23 September 2022, the Committee made directions for the preparation of the case and the submission of arguments and evidence. The applicant sent in written submissions and evidence by email on 1 November 2022. The Respondent sent in its written submissions and evidence by email on 10 November 2022.
9. The matter was heard on 9 January 2023 when the Committee convened remotely through the Cloud Video Platform (CVP). The applicant was not present at the allotted time so the Chairman telephoned her to see if she wished to attend or for the Committee to determine the application in her absence on the basis of the documents provided. He received no answer, so the Committee proceeded to hear Ms Tagg's submissions on behalf of the Respondent. Shortly after the hearing commenced, the applicant Ms Franklin returned the Chairman's call. She expressed a desire to attend the hearing and the Chairman explained how to access the remote hearing. Initially the applicant attempted to do so through the web platform, but with limited success. Subsequently she joined by telephone and the Committee was satisfied that she had the opportunity to fully participate in the hearing. The Chairman summarised the respondents oral submissions to that point, and the hearing re-commenced.

The Law

10. S.13 of the Act provides as follows (excerpt).

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
[omitted].

(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.

...

(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. S.14 of the Act provides as follows (excerpt).

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 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) [omitted].

(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; [omitted].

(3A) In making a determination under this section in any case where under Part I of the Local Government Finance Act 1992 the landlord or a superior landlord is liable to pay council tax in respect of a hereditament (“the relevant hereditament”) of which the dwelling-house forms part, the appropriate tribunal shall have regard to the amount of council tax which, as at the date on which the notice under section 13(2) above was served, was set by the billing authority—

(a) for the financial year in which the notice was served; and

(b) for the category of dwellings within which the relevant hereditament fell on that date,

but any discount or other reduction affecting the amount of council tax payable shall be disregarded.

...

(7) Where a notice under section 13(2) above has been referred to the appropriate tribunal, then, unless the landlord and tenant otherwise agree, the rent determined by the appropriate tribunal ... 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.

...

12. The rules regulating the performance of the Committee’s functions are laid down in the Rent Assessment Committees (England and Wales) Regulations 1971. Regulation 4 provides as follows:

At the hearing—

(a) the parties shall be heard in such order, and, subject to the provisions of these regulations, the procedure shall be such as the committee shall determine;

(b) a party may call witnesses, give evidence on his own behalf and cross-examine any witnesses called by the other party.

13. In accordance with Regulation 10 of the Renting Homes (Wales) Act 2016 (Saving and Transitional Provisions) Regulations 2022, the coming into force of the Renting Homes (Wales) Act 2016 has had no effect on the law or procedure applicable to this application or the Committee’s functions as outlined above.

The Determination

14. The sole issue for this Committee to determine is the open market rent for the Property. It had regard to all of the submissions and evidence provided in writing and orally at the hearing, but this brief decision document focuses on what the Committee believed to be the most relevant issues.

15. The applicant submitted that the proposed rent represented an increase of 42%, far out-stripping inflation, and was principally designed to encourage her to vacate the Property. She submitted evidence of rooms to let in the vicinity for £450 and £495 per month. She submitted the correct market rent was between £500-£600 per month.

16. The respondent submitted that the original rent was deliberately set at a relatively low level, and was set at a time when running costs were considerably lower than they were in September 2022. By way of example, heating oil costs had increased from roughly 60 pence per litre to closer to 90 pence.

Mortgage payments relating to the premises were also increasing due to a tripling of the interest rate. The Respondent's annual council tax liability for Llancayo House stands at around £5,028. The respondent referred to the view of the manager of Llancayo House, a local estate agent, who estimated in January 2022 that rent of £160 per week could be charged for the Property without difficulty (which was the main basis for the precise rent increase sought). The respondent highlighted that they had given this a "sense check" by looking briefly at other rents in the area, and that this estimate dated from January 2022 in what was a rising market. The applicant invited the Committee to view this estimate with caution in light of the close business relationship between the respondent and the estate agent as he was also the property manager. To further support the rent sought, the respondent had provided evidence of other rooms available in the vicinity for values between £700 and £800 per month.

17. The Committee found that the Property was rather unique both in terms of the character of the building of which it formed part and its mode of occupation being, at the time of the renewal, a single long-term occupancy room amongst short-stay holiday accommodation. The landlord was not resident on site, which was another important distinction with all of the comparable accommodation presented by both parties. Consequently, the Committee did not consider any of the comparables to be particularly useful or persuasive and applied little weight to them, save to the extent that they provided a broad guide of rental value for a room in the area being between £450 and £800 per month.
18. The Committee considered the original rent agreed of £490 per month was a more useful starting point, as it was the only actual rental evidence for the Property or anything similar. However, it had been agreed over 2 years prior, in a different context. The applicant had accepted that the open market rent would be higher and the Committee agreed.
19. As to the respondents evidence of the informal valuation given by the property manager, the Committee found no particular reason to doubt that evidence, but noted that there was no independent record of his statement or any reasoning in support. The Committee accepted that there may have been an element of "hope" value or a desire to retain the respondents confidence, but this could only be speculation. The Committee placed moderate weight on this valuation. As to the increased costs of running Llancayo House, it was reasonable for this to be reflected in the rent in light of all bills being included. However, these increased costs would depend on the season and be apportioned between several occupiers, so it was difficult to establish any precise monthly figure attributable to this consideration.
20. On the evidence, the Committee found that the rent had not been raised to a disproportionately high level in order to encourage the applicant to vacate. A much greater increase could have been sought if that had been the genuine intention, and in any event the Respondent could have, and did, seek possession under s.21 of the Act. The Committee found that, on the balance of probabilities, the Respondent relied on the informal valuation she said she had been given, which explains how she decided upon the precise rental figure sought.
21. Taking all matters into account, the Committee found that the rent sought (£693.33) was a little excessive. It relied in large part on an informal valuation, about which the Committee had little information. Although attracting moderate weight, it appeared to the Committee too far removed from the original rent. The applicant had accepted that rental values had increased since the commencement of the term, potentially towards £600 per month, which the Committee found to be

fairly realistic. The Committee found the open market rent likely fell between the two figures, and determined the rent to be £640 per month.

22. In relation to undue hardship, the applicant indicated this rise would cause undue hardship in light of significant debts she has to settle by monthly instalment. However, she was unwilling to share details of her income. In light of the fact that the applicant vacated the Property shortly after the increase was notified to her, the balance outstanding would not be considerable. The Committee also has to bear in mind the interests of the Respondent who served the Notice in accordance with statute and would anticipate the rental increase applying without delay. There is some onus on an Applicant to make out its case when seeking to establish undue hardship, and the Committee found the applicant had not done so. The Committee therefore found the increase would apply from 1 October 2022, as specified in the Notice.
23. Accordingly, this Committee finds that the rent for Room 6, Llancayo House, is £640 per month with effect from 1 October 2022.

Dated this 7th day of February 2023

Tribunal Judge
M Hunt