

TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
RENT ASSESSMENT COMMITTEE

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL

Reference: RAC/0031/01/23

In the Matter of No. 4 Quayside, Prince of Wales Road, Holyhead, Anglesey, LL65 1AX

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

APPLICANTS Kathy James

RESPONDENT Mrs M Sutherland

COMMITTEE: T Lloyd, Chairman
 T Daulby FRICS, Surveyor

DECISION

For the reasons as set out below, we have concerns as to the validity of the Section 13 Notice. In the circumstances by way of this decision we have stayed the application so that the Applicant can apply to the County Court for determination as to the validity or otherwise of the Section 13 Notice. The stay is conditional upon the Applicant applying and providing evidence to this Tribunal of such application within 28 days of the date of this judgment (by no later than 4pm 24th April 2023). Failure to do so within that time frame will result in the application being dismissed.

Reasons for the Decision

1. By way of an Application dated 5th January 2023 the Applicant applies to this Tribunal for the rent in respect of the property which she is occupying being 4 Quayside, Prince of Wales Road, Holyhead, Anglesey, LL65 1AX to be determined following a Section 13 Notice served by her Landlord to review the rent from £600.00 to £700.00 per calendar month.
2. The Applicant included with her application form a copy of the Section 13 Notice and tenancy agreement.

3. As a consequence of the Applicant raising an issue in relation to the validity of the section 13 notice the initial directions dated the 17th of January 2023 were suspended and the parties directed to file and serve submissions relating to the issue of validity. The Respondent chose not to and simply filed and served comparable evidence as to rent whereas the Applicant by way of an e-mail dated the 11th of January 2023 stated that:
 - i. The Landlord's name on the section 13 notice was incorrect and did not match the name on the tenancy agreement.
 - ii. The wrong format of notice had been served and that the correct format was Form RHW12. In this regard the Applicant also provided copies of email exchanges with Welsh Government.

The Law

4. At the time directions were made in relation to the preliminary issue of validity of the section 13 notice we were unaware of the Court of Appeal decision in **Mooney v Whitland [2023] EWCA Civ 67**.
5. Lord Justice Males handed down judgment which was approved by Lord Justice Snowden and Lord Justice Thirlwall without further comment.
6. The case dealt with an appeal from the decision of His Honour Judge Beard sitting in the County Court in Cardiff that the section 13 notice in that case was invalid. His honour Judge Beard's decision being upon appeal from the initial conclusion reached by deputy District Judge Evans sitting in the County Court in Swansea that the notice was valid.
7. Of significance and binding upon us in relation to this Application is the conclusion of the Court of Appeal in **Mooney v Whitland (Supra)** that only the County Court has jurisdiction to determine the issue of validity of a section 13 notice under the Housing Act 1988.
8. The detailed reasons for the Court of Appeals decision can be found at paragraphs 45 to 54 of the Judgment.
9. For the sake of completeness paragraph 46 and 47 of the Judgment are reproduced in their entirety below:
 46. *In my judgement, however, is clear that the rent assessment committee does not have jurisdiction to determine the validity of a section 13 notice. That is a matter for the court. Section 40(1) of the 1988 Act confers jurisdiction on the county court to determine any question arising under section 13 other than a question which falls within the jurisdiction of a rent assessment committee by virtue of a provision of Chapter I of the Act. Thus, the basic rule is that the county court has jurisdiction, unless there is a provision of the Act which provides otherwise.*

47. *Section 14 does not provide otherwise. As section 14 makes clear, the jurisdiction of the committee is to determine what is an appropriate rent, having regard to market conditions and disregarding the various matters specified in subsection (2). The section contemplates that the members of the committee will have expertise in determining the appropriate rent, which a county court judge cannot be expected to have. In contrast, a judge does have expertise in determining whether a notice complies with the various statutory requirements for a valid notice set out in section 13. In short, there is no provision in the 1988 Act which confers on the rent assessment committee jurisdiction to determine whether a section 13 notice is valid.*

10. As this Tribunal is bound by the decision of the Court of Appeal in **Mooney v Whiteland (Supra)** it is clear that we cannot deal conclusively with the issue of validity.

11. Having said that, the Court of Appeal at paragraph 48 of the Judgement provided guidance that in certain circumstances we may need to take a view as to the validity of the notice and if we consider the objections (as to validity) to be “*without substance*” we may proceed to determine the rent. For the sake of completeness the entirety of paragraph 48 is repeated below:

48. *That is not to say that a rent assessment committee may not sometimes need to take a view whether a notice is valid. If it considers that a notice is invalid, it may decline to proceed until the question has been determined by the court. Conversely, if it considers that a notice is valid and that objections are without substance, it may proceed to determine the appropriate rent, but its determination will not prevent a tenant from disputing the validity of the notice.*

12. We have considered this matter on the papers in accordance with the guidance of the Court of Appeal as aforesaid and have come to the following conclusions:

- i. The incorrect spelling of the Landlord’s name in type on the first page of the section 13 notice as “*Suthrland*” whereas the correct spelling is Sutherland could in no way could mislead the Tenant. This is especially so as in pen on the second page of the notice it is spelt correctly. As such in our view this objection is clearly without substance.
- ii. The argument that Form RWH12 should be used rather than the Section 13 form is without substance as at the time the section 13 notice was served (9th of November 2022) the provisions of Section 123 of the Renting Homes (Wales) Act 2016 did not apply. The latter only came into force on the 1st December 2022.

13. We would have no hesitation in, based upon the above objections to find they were entirely without substance and proceed to determine the rent. However, in

considering this matter on the papers we note that despite the tenancy agreement commencing on the 24th of April 2021 with rent payable monthly in advance the section 13 notice seeks to increase the rent with effect from the 25th of January 2023.

14. A Section 13 Notice has to comply with section 13(2) of the Housing Act 1988 which sets out three separate requirements. Of relevance to this matter is the third requirement that in all cases the new rent must start at the beginning of the period of the tenancy. This requirement is further highlighted within guidance note 17 of the notice served on the applicants.
14. Bearing in mind the above we have no alternative but to consider that the notice is invalid but given the guidance in **Mooney v White (Supra)** cannot determine the same.
15. That being the case in our view all that we can do is to stay the current application so that the Applicant may apply to the County Court to determine the issue of validity or otherwise of the section 13 notice. If the County Court determines the notice invalid that is an end to our jurisdiction as the same emanates from the existence of a valid section 13 notice. Conversely, if the County Court determines the notice to be valid the application may proceed before us to determine the rent.
16. The stay that we grant is conditional upon the applicant applying to the County Court and providing evidence of that application within 28 days of the date of this judgment. In the event that no application is made to the County Court within the aforementioned time frame the application will be dismissed.

Dated this 27th day of March 2023

Tribunal Judge
Trefor Lloyd