

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
RENT ASSESSMENT COMMITTEE

Reference: RAC/0033/02/23

In the matter of 8A Fern Place, Fairwater, Cardiff, CF5 3HG

In the matter of an application under Section 123 of the Renting Homes (Wales) Act 2016 and the Renting Homes (Rent Determination) (Converted Contracts) (Wales) Regulations 2022.

COMMITTEE: Richard Payne (Tribunal Judge)
Andrew Weeks (Surveyor)
Dean Morris (Lay Member)

APPLICANTS: Nicole Waite and Abeigh Down.

RESPONDENTS: Sara Green and Timothy Green.

REASONS FOR THE DECISION OF THE RENT ASSESSMENT COMMITTEE

The Decision in Summary

1. For the reasons given below, the Rent Assessment Committee hereby determine that the rent at which the dwelling might reasonably be expected to be let in the open market by a willing landlord under the same type of relevant converted contract in February 2023 is £550 per calendar month. In accordance with the law, the rent of £550 per calendar month is payable from 27th February 2023.

The Application

2. The Applicants are the joint tenants of 8A Fern Place, Fairwater, Cardiff, CF5 3HG, (“the dwelling”) and initially occupied the unfurnished dwelling under an assured shorthold tenancy under the Housing Act 1988 granted in July 2020, which was subsequently renewed. With effect from 1st December 2022, when the Renting Homes (Wales) Act 2016 (“the Act”), came into force, the previous tenancy became

a converted periodic standard occupation contract under the Act (see further under “The Law”, below).

3. By form RHW12, “Notice of Variation of Rent” under the Act, dated 19th December 2022, the Respondent landlords gave notice, via their agents Peter Alan Ltd, that the existing rent of £450 per month was to be varied and that the rent payable from 27th February 2023 was to be £600 per month.
4. The Applicants applied to the Rent Assessment Committee by form dated 30th January 2023, to challenge the proposed new rent. Directions were given to the parties to prepare the matter for hearing which was listed for 15th May 2023.

The Property and inspection.

5. The Committee inspected the property during the morning of 15th May 2023 when the weather was fine and dry. The Applicants were present throughout the inspection which was also attended by Mr Jordan Edwards of the landlord’s letting agents Peter Alan.
6. The property comprises a one bedroom, first floor flat within a 20th-Century semi-detached ex-local authority building. The building is of brick construction part finished in render beneath a pitched tiled roof. Windows are uPVC framed double glazed casements. The building provides a total of four flats with shared rear communal outside space laid to tarmac. The freehold is owned by Cardiff Council and on the same title as the surrounding estate which stretches from St Fagans Road approximately 0.5 miles north to Pentrebanne Road. We understand the direct landlord of 8a is a private leaseholder.
7. The subject flat is accessed via a doorway to the side of the building with buzzer entry and stairs leading to the first floor. The flat also has the benefit of a brick-built garden store within the communal outdoor space to the rear. Internally a hallway gives access to a double bedroom, kitchen, bathroom and lounge. The kitchen provides a range of fitted units, electric oven, gas hob, laminate worktops and tiled splashback. Heating and hot water are provided by way of a gas-fired combination boiler installed in the kitchen. The bathroom is tiled and provides WC, hand wash basin and bath with electric shower over.
8. Floor coverings are a mix of vinyl, carpet and laminate. Walls are painted skim plaster or papered, and ceilings are plastered or Artex.
9. We noted the following items of disrepair:
 - i) Toilet roll holder not affixed to wall.
 - ii) Door handle to bedroom does not move the latch bolt and needs replacing.
 - iii) Kitchen door handle not screwed to door plate.
 - iv) Carpet grippers at internal door thresholds exposed.
 - v) Damage to hall flooring.

- vi) Damage to wall to side of boiler.
- vii) Electrical mount to lounge ceiling pendant light exposed.

10. We also noted numerous areas of damp and some spots of black mould condensation. This is particularly noticeable in the kitchen and bathroom but was also noted in the lounge and bedroom. We noted that no windows within the flat have trickle vents, and there is no extractor fan to either the bathroom or kitchen. As a result, ventilation within the property is likely to be poor and reliant upon the occupier keeping windows open.
11. We noted that a battery-operated smoke alarm was installed to the hall. This requires replacing with a mains-connected smoke alarm in order to comply with current regulations for rented properties in Wales. We noted the presence of a carbon monoxide detector to the kitchen.
12. Despite the matters listed above, the general decorative condition of the property is reasonably good, and it appears to be kept clean and tidy by the tenants. The property provides a reasonable standard of rental accommodation commensurate with the market in this location. There are undoubtedly items which require addressing, and many of these are considered cosmetic 'easy fixes'. The more significant issue of the damp condensation may be improved by increasing ventilation through (a) installation of extractor fans/vents to wet areas and (b) replacement of windows by ones with trickle vents. Whilst this may effect some improvement, it is unlikely that the damp issue will be solved completely and will require ongoing proactive management.

The Law

13. As noted above, the Renting Homes (Wales) Act 2016 now governs the relations between landlords and tenants of domestic dwellings in Wales. Section 239 of the Act came into force on 1 December 2022 and abolished assured, secure and other tenancies in Wales. Existing tenancies under the Housing Act 1988, such as the tenancy in this case, were converted into occupation contracts by section 240 of the Act. Occupation contracts are either secure or standard occupation contracts. The Applicants have a standard periodic occupation contract. It follows that the Housing Act 1988, which remains in force in England, is no longer of application in Wales in relation to increases of rent of converted tenancies.
14. Section 123 of the Act relates to the variation of rent under a periodic standard contract. Section 123 states;
“Variation of rent
(1)The landlord may vary the rent payable under a periodic standard contract by giving the contract-holder a Notice setting out a new rent to take effect on the date specified in the Notice.

(2) The period between the day on which the Notice is given to the contract-holder and the specified date may not be less than two months.

(3) Subject to that—

(a) the first Notice may specify any date, and

(b) subsequent Notices must specify a date which is not less than one year after the last date on which a new rent took effect.

(4) This section is a fundamental provision which is incorporated as a term of all periodic standard contracts under which rent is payable." [Our emphasis].

15. Although section 13 Housing Act 1988 no longer applies in Wales, it should be noted that there are differences between the requirements of a notice to increase the rent under section 13 of the 1988 Act and the current position in Wales under the Act. Under section 13 of the Housing Act 1988 there was a minimum period of one month's notice, and the proposed new rent was to commence at the start date of a new period of the tenancy. Neither of these matters are requirements under the Act in Wales. There is no requirement for the new rent to take effect from the beginning of a new period of the tenancy, and as noted above, not less than two months' notice is to be given of the specified date when the new rent takes effect.

16. Paragraph 15(2) of Schedule 12 to the Act said that the Welsh Ministers were to make provision by regulations to enable contract holders following receipt of a notice of variation of rent under the Act, to be able to apply for a determination of the rent for the dwelling. Accordingly, the Renting Homes (Rent Determination) (Converted Contracts) (Wales) Regulations 2022 ("the Regulations") govern the determination of the rent on appeal to the Rent Assessment Committee. The salient parts of the Regulations are set out below;

"Application to a rent assessment committee

3.—(1) Following receipt of a Notice under section 104 or 123 of the Act, a relevant contract-holder may apply to a rent assessment committee for a determination of the rent for the dwelling.

(2) The application to a rent assessment committee must be made—

(a) in the prescribed form, and

(b) within 2 months following receipt of the Notice under section 104 or 123 of the Act.

(3) The prescribed form is as set out in the Schedule.

(4) An application in a form substantially to the same effect as the prescribed form is valid.

Determination of rent by a rent assessment committee

4. A rent assessment committee must determine all applications made under regulation 3 in accordance with the assumptions set out in regulation 6.

Variation of rent upon a determination by a rent assessment committee

5. A rent determined by a rent assessment committee, in accordance with the assumptions set out in regulation 6, **will be the rent for the dwelling under the relevant converted contract with effect from the date specified in the Notice under section 104 or 123 of the Act, unless the landlord and the relevant contract-holder otherwise agree.**

Assumptions in accordance with which a rent assessment committee must determine rent

6. When making a determination of rent for a dwelling under these Regulations, a rent assessment committee must determine the rent at which it considers the dwelling concerned might reasonably be expected to be let in the open market by a willing landlord under the same type of relevant converted contract as that to which the Notice under section 104 or 123 of the Act relates, assuming that—

(a) the relevant converted contract begins on the date specified in the Notice under section 104 or 123 of the Act,

(b) the granting of a contract to a sitting contract-holder has no effect on the rent,

(c) any increase in the value of the dwelling attributable to a relevant improvement carried out by a person who at the time it was carried out was the relevant tenant or licensee or relevant contract-holder **has no effect on the rent, if the improvement was carried out—**

(i) otherwise than in pursuance of an obligation to the immediate landlord, or

(ii) pursuant to an obligation to the 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,

(d) any reduction in the value of the dwelling attributable to a failure by the relevant tenant or licensee or relevant contract-holder to comply with any terms of the relevant preceding tenancy or licence or relevant converted contract has no effect on the rent,

(e) where the landlord or a superior landlord is liable to pay council tax in respect of a hereditament of which the dwelling forms part, under Part 1 of the Local Government Finance Act 1992, the amount of council tax which, as

at the date on which the Notice under section 104 or 123 was served, was set by the billing authority—

(i)for the financial year in which the Notice was served, and

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

has an effect on the rent, but any discount or other reduction affecting the amount of council tax payable has no effect on the rent, and

(f)neither the landlord nor a superior landlord is paying rates in respect of the dwelling.” [Our emphasis in bold].

Evidence and Representations

17. The parties provided written representations in accordance with the directions.
18. The Respondent landlords’ written submissions and evidence were provided by the agents Peter Alan. Ms Lilly Dawson, Renewals Coordinator of that firm provided details and evidence in a number of e mails including one to the tribunal dated 22nd March 2023 in which she drew attention to a report from an electrical contractor who had visited the dwelling and said that due to the filthy conditions in the property, that he would refuse to return to do any repair work until the flat was fully cleaned.
19. Ms Dawson also sent details of comparable rents including for one bedroom flats let in June 2019 for £592 per calendar month unfurnished in Fairwater, one bedroom flats let for £625 and £620 in Ely, Cardiff in February 2020, a one bedroom flat in Canton, Cardiff let for £650 per calendar month unfurnished in April 2019 and a one bedroom furnished house let for £700 per calendar month in November 2022.
20. Ms Dawson also provided a “Checkout Report” dated 17th July 2020 for the dwelling at 8A Fern Place prepared for them by Nash Property Solutions, a 25-page report illustrated with photographs, a 29 page “Property Inventory/Schedule of Condition” prepared by Peter Alan dated 10th January 2018, including photos.
21. A Mr Nathan Jones of Starlight Electrical Services had inspected and tested electrical installations at the dwelling and provided an Electrical Installation Condition Report (EICR) dated 6th March 2023 which included the comment that “All the circuits that could not be tested where due to the amount of animal and human feces in the bath and all over the property (sic)”. An e mail (undated) from a Mr James Phelps of Starlight Electrical Services to Peter Alan (which was forwarded to the Respondents by Kathryn Thompson of Peter Alan on 16th March 2023) said in block capitals “THE PROPERTY IS NOT HYGIENIC AND WE WOULD NOT BE ABLE TO COMPLETE ANY FURTHER WORKS UNTIL THE PROPERTY IS CLEAN TO ALLOW OUR ENGINEERS TO WORK IN.PICTURES WILL BE REQUIRED.”

22. The Applicants Ms Down and Ms Waite provided a joint witness statement by e mail to the tribunal dated 16th March 2023 in which they argued that the proposed rent increase was too much since they had been asking the landlord to fix maintenance problems in the flat for nearly three years now and nothing has been done. They referred to mould and damp, the cupboard door in the kitchen falling off, broken door handles and the carpet in the living room being frayed and coming up. The carpet in the passageway was so bad that they had to take it up themselves, but this has left sharp carpet grippers exposed. They said that they had tried to ventilate the property but because the windows lack the correct ventilation, the windows and windowsills are constantly full of water. The applicants said that when they have complained about damp and mould, they have been told to wipe it away which does not do any good.
23. Ms Down also provided e mails that she had sent to Ms Dawson on 20th March 2023 in which she stated that the dwelling had been in a poor state of cleanliness and repair, and they had to have it cleaned and were unable to move in for a week after obtaining the keys, for which they received compensation. The Applicants provided copies of e mails sent to Cody Byrne at Peter Alan with accompanying photographs of defects and items of disrepair and various responses from Cody Byrne in which it was made clear that the landlord was not going to take any action or be doing any works regarding the mould and condensation problems, and the landlord advised the use of mould sprays and wiping the condensation off.

Evidence at the hearing.

24. The hearing was originally scheduled to take place in person at the tribunal's offices at Oak House, Cleppa Park, Newport. The applicants had explained before the inspection that owing to an injury to their proposed driver, and given that Ms Waite was heavily pregnant, that they would be unable to attend at the hearing in person. The Committee agreed that in the circumstances a hybrid hearing could be arranged with the Committee sitting in person and the applicants joining by video link. It was explained to Mr Edwards of Peter Alan at the inspection that if his colleague who was going to be dealing with the hearing also wished to join by video then this would be possible. The link for the hearing on Microsoft Teams was sent to Peter Alan but in the event, there was no representative from Peter Alan present in person at the hearing or joining by video link. The Committee was satisfied that the Respondents' representatives Peter Alan were aware of the hearing date and time and that they could attend either remotely or in person.
25. Ms Waite and Ms Down both attended the hearing by video link. Ms Waite explained that they first occupied the property on 29th July 2020. Owing to the Covid pandemic and restrictions they had been unable to view it in person before their tenancy commenced. The property had maintenance issues from the outset, and they explained that they spent two and a half days cleaning and painting the flat with the assistance of their parents who were a professional cleaner and painter. It

initially was in a poor state with fleas as well and they could not move in because of this and they were given a week's compensation as a result. The landlord gave them permission to decorate the flat and they decorated the living room, the passageway and the flooring there.

26. Ms Waite said that they still do not know where their gas meter is, and every gas bill has been an estimate. They live in the only privately owned flat in the block, the rest remain Council owned. They were served with a section 21 notice dated 24th May 2021 (at page 11 of the hearing bundle of documents) indicating that the landlords required possession after the 26th May 2021. But they renewed their tenancy with a written tenancy agreement in May 2021, signed by e mail, for a further six months and this was the last written agreement that they had. The landlords did not proceed with steps to evict them after the section 21 notice expired.
27. Ms Waite said that contrary to the Respondents' assertions, that they had not refused access to the property to anybody apart from the electrician that wrote the EICR report. Both she and Ms Down strongly denied that the flat was dirty or that there were any animal or human faeces in the bath or the flat. Ms Waite said that they were shocked to read those allegations. Although they have a dog, she is old and disabled and physically could not jump into the bath. There is a cat litter tray in the bathroom, but they said that there was not anything in the bath and definitely not any human or animal faeces when the engineer visited. They stressed that since they did not accept those allegations, that they were not prepared to allow that individual back into the flat, but they would grant access to others, and had done so for the installation of a carbon monoxide alarm.
28. Ms Waite said that contractors had come out to price the work required just before they had received the section 21 notice in May 2021. The contractors said that the landlord needed to put in internal vents which would cost a few hundred pounds, and that the landlords were not prepared to do that.
29. The Applicants said that when they were given the section 21 notice, they looked for other private rented accommodation themselves and saw that the property was listed online for rent at £495 per month.
30. The Applicants commented on the comparables provided by the Respondent and noted that some were in Canton where rents are higher, but their main concern was the rent being asked when the property had unaddressed damp, mould and maintenance issues.
31. The tribunal's surveyor Mr Weeks had noted that the property was marketed to let on Rightmove in 2021 and so after the hearing this information was passed to the parties for comment. The Respondent Sara Green e mailed the tribunal on 23rd May 2023 and said that the listing referred to was not initiated or authorised by the Respondent landlords. Ms Down confirmed by e mail of 22nd May 2023 that the property was listed on two websites that she viewed, namely Peter Alan's own website and another website containing homes for sale and to rent.

Determination

32. In relation to the factual matter of the listing of the dwelling for rent at the time that the Applicants were still in residence and the section 21 notice had been served in May 2021, the tribunal are satisfied that it was so listed, but are also satisfied that the Respondent landlords did not initiate this and were unaware of it as per Sara Green's e mail. This does not materially affect the Committee's determination.
33. With regard to other factual disputes, the Committee had notified the Respondents' representatives about the hearing and are satisfied that they were aware of it and aware that they could attend in person or virtually. Indeed, this information was given orally to Mr Edwards of Peter Alan at the inspection, and was e mailed to Peter Alan by the Committee's clerk. There was no appearance before the Committee by or on behalf of the Respondents.
34. The Committee found the Applicants, on the basis of their evidence before the Committee, to be reliable and truthful witnesses. The Committee inspected the flat before the hearing and as noted above at paragraph 12, it was kept in a clean and tidy state by them. The Applicants were outraged by the allegation in the EICR report that the flat was so filthy that workmen could not attend and particularly offended by the allegation that there was human and animal faeces in the bath and in the flat. On the balance of probabilities, the Committee accept the evidence of the Applicants that these allegations were baseless and simply not true.

The Appropriate Rent

35. The starting point for the Committee is to consider the appropriate market rent for the property. The Committee note that the current rent is £450 per month and that this has not been increased for nearly three years. The proposed new rent is £600 per calendar month. The Committee considers that a rental of £600 per calendar months is reasonable as a starting point.
36. The Committee's expert surveyor member advised the Committee that there has been an annual rental increase of 10% in rents in Cardiff according to the Zoopla rental index, that the average rent of a one bedroom flat in Cardiff in July 2020 was £624 according to aggregated figures based on Rightmove data and in the fourth quarter of 2022 the median was £759 for a one bedroom property, which could be for a house as well as a flat. This equates to a 21.6% increase (from £624 to £759). Applying that 21.6% increase to the dwelling would bring the rent from £450 to £547.20, say £547 if it was to be increased in line with the average. The average aggregation is for both furnished and unfurnished dwellings and the subject dwelling was let unfurnished. The Committee also note that housing stock in Cardiff is limited, and the data suggests that people are finding it harder to find somewhere to live and so are tending to remain where they are.

37. With regard to the comparables supplied by the Respondents, the Committee note that they are in a range of locations and a mixture of furnished and unfurnished but are broadly in line with the median figures cited above. In this particular case, the Applicants took on their tenancy at £450 per month at a time when the figures suggest the average market rent was £624. It is important to proceed with due caution when considering average figures as they include both houses and flats, furnished and unfurnished, and across the city in different areas, and it is important for the Committee to consider the individual dwelling that is the subject of a rent variation notice and any facts particular to that dwelling.
38. As a matter of fact, the Applicants took on their tenancy at £450 per month and if this is increased in line with the median as noted above, the rental would come to £547. **The Committee consider that £550 per calendar month is the market rent** for this particular dwelling in the circumstances of this case and applying the assumptions in paragraph 6 of the Regulations. The Committee note the evidence on behalf of the Respondents (e mail from Lilly Dawson of 22nd March 2023) that works were undertaken in August 2020 at a cost of £1400, but there remain numerous issues at the property.
39. The Respondents own electrical report gave the dwelling an ‘unsatisfactory’ rating and this was for a number of reasons that included no surge protective devices, no smoke and CO2 detectors (at the time of the inspection), the living room light was hanging down with live conductors exposed, the bathroom light was not ingress protection (IP) rated, and there was a non-fire rated consumer unit. In addition, there do remain issues with damp and condensation. The evidence within the hearing bundle before the Committee contained clear indications in writing that the landlords were not prepared to undertake the appropriate work and had advised the use of mould sprays. The Committee find that the Respondent landlords could undertake work to improve the damp by for example, increasing the ventilation throughout the property and that the installation of extractor fans and windows with trickle vents could be installed.
40. The Committee also note that under the Act, section 91 imposes an obligation upon the landlord that the dwelling is fit for human habitation. The Renting Homes (Fitness for Human Habitation) (Wales) Regulations 2022 came into force on 1st December 2022. Regulation 3 says that in determining whether a dwelling is fit for human habitation, regard must be had to the presence or occurrence, or the likely presence or occurrence of the matters and circumstances listed in the schedule to the regulations, which include exposure to house dust mites, damp, mould or fungal growths. Regulation 5(1) requires a landlord to have a working smoke alarm connected to the dwelling’s electrical supply during each period of occupation, regulation 5(2) requires the landlord to have a carbon monoxide alarm in proper working order in each room of the dwelling which contains a gas appliance and regulation 6 requires the landlord to have a valid electrical condition report during each period of occupation.

41. Regulation 7(2)(a) of the Renting Homes (Fitness for Human Habitation) (Wales) Regulations 2022 says that “period of occupation” for a converted contract starts with the day twelve months after the conversion date of 1st December 2022 for compliance with regulation 5(1). Likewise, the contract holders (previously known as the tenants) must be given a copy of the most recent electrical condition report and written confirmation that any investigatory or remedial work to which the report relates has been carried out within 14 days of the occupation date, which again is twelve months after the date of conversion, namely by 1st December 2023.
42. The Committee take the view that under the standards imposed by the Act, the property is not currently fit for human habitation owing to the presence of damp and mould growth. The Committee consider that we are entitled to take into account the matters in paragraph 41 above even if at present, the lack of a wired smoke alarm and a compliant Electrical condition report do not themselves lead to a finding of unfitness for human habitation owing to the transitional period for compliance until 1st December 2023. The Committee have noted the reporting of defects to the landlords over many months and their consistent refusal to do anything about it. Some items, such as the bedroom door handle not moving the latch bolt, which could trap the Applicants in the bedroom, should be easily remediable. The Committee also consider it unacceptable that the applicants are being given estimated gas bills and have not been given access to their gas meter. This should be remedied as soon as possible so that they can give accurate readings to their gas supplier.
43. Taking into account the foregoing, the character and location of the property and the reductions for the current condition and the Respondents’ dilatory attitude to repairs and maintenance, the Committee determine that £550 per calendar month is the appropriate market rent, payable from 27th February 2023.

Determination

The Rent Assessment Committee hereby determines that:

1. The rent at which the dwelling might reasonably be expected to be let in the open market by a willing landlord under the same type of relevant converted contract in February 2023 is £550 per calendar month. **In accordance with paragraph 5 of the Regulations, the rent of £550 is payable with effect from 27th February 2023, namely the date specified in the notice under section 123 of the Act (unless the landlord and the contract holders otherwise agree a different date).**

DATED this 30th day of June 2023
Richard Payne
Tribunal Judge

CHALLENGING THE DETERMINATION

Under 65(A) of the Rent Act 1977 an appeal on any point of law from a decision of a Rent

Assessment committee may be made to the upper tribunal.

There is no appeal on the facts decided by the committee. However, if you think it has made a mistake in applying the law, you may be able to take the case to the Upper Tribunal (Lands Chamber). If you are thinking of going to the Upper Tribunal (Lands Chamber) you should take legal advice on the proper procedure. You should seek advice as quickly as possible as there is a time limit of 28 days for appealing. This runs from the date you are given the decision itself, or, if later, the date you are given the reasons for the decision.

Upper tribunal details:

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5th Floor Rolls Building
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