

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL

Reference: RAC/0037/02/23

In the Matter of Graigina Farmhouse, Llanybydder, SA40 9RP

**In the matter of an application under the Renting Homes (Wales) Act 2016 &
The Renting Homes (Rent Determination) (Converted Contracts) (Wales) Regulations 2022**

APPLICANTS Karen Victoria Whiteland

RESPONDENT Christopher Mooney

DECISION ON JURISDICTION.

UPON the matter being considered by a Tribunal Judge, it is ordered that;

The tribunal lacks the jurisdiction to deal with the purported rent increase as no valid or effective notice has been given in accordance with the Renting Homes (Wales) Act 2016 and there is accordingly no valid application before the tribunal.

Reasons for decision.

Background.

1. By letter dated the 20 February 2023, Messrs Llys Cennen, the solicitors for the applicant Victoria Whiteland, wrote to the tribunal enclosing form RAC1, which is the application form to be used by a tenant referring to the tribunal a notice proposing a new rent under section 13(4) Housing Act 1988. Included with the solicitor's letter was form number 4D, a form prescribed for the purposes of section 13(2) of the 1988 Act headed "Landlord's notice proposing a new rent under an assured periodic tenancy of premises situated in Wales." This notice was dated 28 January 2023 and was signed by the respondent landlord Mr Mooney. It proposed a new rent of £250 per week in place of the existing weekly rent of £25, to start on 27 February 2023.
2. The applicant's solicitors also provided a copy of a judgement in the Court of Appeal dated 1 February 2023 between the same parties, later reported under the reference [2023] EWCA Civ 67. The Court of Appeal dealt with an earlier attempt by Mr Mooney to increase the rent when he served a notice under the Housing Act 1988 on 29 October 2018 proposing an increase of rent from £25 per week to £100 per week. The validity of that notice was challenged and the Court of Appeal, Males LJ at paragraph 46, held that the rent assessment committee does not have jurisdiction to determine

the validity of a section 13 notice. That is a matter for the county court to determine under section 40 (1) of the 1988 Act. The Court of Appeal held, for reasons fully explained in their decision, that the notice of 29 October 2018 was invalid. The hearing before the Court of Appeal took place on 24 January 2023.

3. The applicant's solicitors, in their letter of 20 February 2023 argue that it is evident that Mr Mooney's notice of 28 January 2023 is not valid and is in the incorrect form following the introduction in Wales of the Renting Homes (Wales) Act 2016 ("the Act"). The tribunal, on 30 March 2023 indicated that it intended to decide upon the validity of the notice served by Mr Mooney and ordered that submissions upon the jurisdiction of the tribunal were to be provided by 14 April 2023.
4. The tribunal received submissions from the applicant's solicitors drafted by Counsel Catherine Collins dated 14th of April 2023, and submissions from the respondent Mr Mooney dated 31 March 2023.

The Renting Homes (Wales) Act 2016.

5. Section 257 (2) of the Act referred to the remaining provisions of the Act coming into force on a day appointed by the Welsh Ministers in an order made by statutory instrument. The Renting Homes (Wales) Act 2016 (Commencement No. 2 and Consequential Amendments Order 2022, (Statutory Instrument 2022/906, W.197) confirmed that section 239 of the Act came into force on 1 December 2022. Section 239 abolished assured, secure and other tenancies in Wales. Existing tenancies were converted into occupation contracts by section 240, which were either secure or standard occupation contracts.

The Applicant's submissions.

6. The applicant submits that the purported section 13 notice served by the Respondent on 28 January is invalid and of no effect because the applicant's tenancy is no longer an assured tenancy within the meaning of the Housing Act 1988, but is now a converted standard occupation contract under the Act and the Respondent has failed to serve any adequate notice under section 123 of the Act. Alternatively, the applicant submits that the purported section 13 notice does not comply with the requirements of section 13 (3) in terms of the minimum period, and that the tribunal has no jurisdiction to determine a fair market rent in the absence of a valid notice or to determine the validity of the notice.
7. The applicant referred to the coming into force of the Act on 1 December 2022 and that accordingly a standard contract exists between the parties. The applicant cites section 124 of the Act in relation to the landlord's ability to 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. The period between the day on which the notice is given to the contract holder and the specified date may not be less than 2 months, (Section 124 (2)).

8. The applicant refers to section 236 of the Act which confirms that a notice must be in writing and where the Welsh ministers have prescribed the form of the notice, then unless regulations provide otherwise, a notice not in the prescribed form is of no effect. Under Regulation 15 of the Renting Homes (Prescribed Forms) (Wales) Regulations 2022 the prescribed form under section 123 (1) of the Act is form RHW 12. Regulation 3(2) provides that a notice or other document in a form substantially to the same effect as the prescribed form is valid.
9. The applicant submits that the purported notice does not provide the minimum period of two months and it refers to the Housing Act 1988 and its provisions. It makes no reference to the Act. The landlords purported notice also inaccurately refers to the section 13 Housing Act 1988 minimum period of one month's notice, and it includes information about the rent needing to commence at the start date of a new period of a tenancy, which is no longer the case under the Act in Wales. The landlord's purported notice refers to the applicant having until 27 February 2023 to apply to the rent assessment committee, whereas pursuant to the Renting Homes (Rent Determination) (Converted Contracts) (Wales) Regulations 2022, the applicant has a period of two months from receipt of the notice to make the application to the committee. The applicant submits that the landlord's purported notice is not substantially to the same effect as form RHW 12 and is therefore of no effect in accordance with section 236 of the Act.
10. The applicant's position is that section 13 of the Housing Act 1988 no longer applies in Wales but nevertheless the applicant makes submissions as to reasons why the purported notice served by the Respondent would be invalid under section 13 of the 1988 Act. The applicant submits that the jurisdiction of the rent assessment committee is not engaged because there is no valid notice.

Respondent's submissions.

11. The respondent Mr Mooney by inference criticised the decision of the Court of Appeal saying that the Lord Justices made their decision based upon limited information from earlier preliminary possession hearings. He sought to rely upon the wording of the RAC – G2 guidance document on the RPT's website and what it said about jurisdiction.
12. The respondent confirms that he served form 4D by hand on the applicant on 28 January 2023 and also a copy by email to her and her solicitor. He submits that the form 4D and the new form RHW 12 are substantially to the same effect. He says that the RHW 12 form is headed "Notice of variation of rent for Occupation Contract" but that the applicant had not yet been served with an occupation contract and he had until 31 May 2023 to do this in order to comply with his Rent Smart Wales license. He argued that he could not use the new RHW 12 form and had no choice but to use the section 13 Housing Act 1988 form. The respondent notes that the Residential Property Tribunal guidance RAC – G2 still refers to the use of the section 13 form. He refers to section 14 of the Housing Act 1988 and submits that the rent assessment committee have jurisdiction to deal with the matter under that section.

Decision.

13. As stated above, the Act came into force with effect from 1 December 2022. Section 239 abolished assured tenancies in Wales and accordingly the applicant's tenancy was converted to a standard occupation contract as a matter of law. The Housing Act 1988 has been of no application to the tenancy or contract between the parties since 1 December 2022.
14. As is clear from Schedule 12 to the Act, a converted contract means a tenancy or licence which existed immediately before 1 December 2022 and became an occupation contract on that day, and a converted standard contract means a converted contract which became a standard contract on the appointed day. Schedule 12 paragraph 11 (1) says "*the landlord must give the contract holder under a converted contract a written statement of the contract before the end of the period of 6 months starting with the appointed day [1st of December 2022] ('the information provision')*".
15. Paragraph 14 (1) of Schedule 12 says that a converted contract may not be varied before the landlord has given the contract holder a written statement of the contract. But paragraph 14(2)(a) makes it clear that 14(1) does not apply to variation of rent under section 123. In other words, a notice of variation of rent can be given before the contract holder has been given a written statement of the contract.
16. Therefore, the Respondent was able to serve a notice of variation of rent before he had provided the written statement of the contract terms, but had he wished to do that he should have used form RHW 12. The respondent argued that in effect the tenancy remained an assured tenancy governed by the Housing Act 1988 until he had served his written statement of the contract, as he said that the applicant Miss Whiteland had not yet been served with an occupation contract. The Respondent is confusing a written statement of the contract terms with the legal status of the occupation contract itself. The Act, as set out above, converted the pre-existing assured periodic tenancy between the parties to a periodic standard contract with effect from 1 December 2022. Therefore the legal relationship between the parties was that of a periodic standard contract from 1st December 2022, irrespective of whether the respondent had served his written statement of the terms of that periodic standard contract.
17. The Respondent argues that he could not use the new RHW 12 form and "had no choice other than to issue the section 13 form 4D which is still in effect on the government website GOV.UK". Form 4D related to notices of increase of assured tenancies in Wales, but the fact that it remained upon the UK government website, and indeed the fact that upon the Residential Property Tribunal for Wales's website the RAC – G2 guidance still refers to Housing Act 1988 matters, does not and cannot override the statute. The respondent's contention that he could not use the new form is rejected. This tribunal has had numerous applications made to it since 1 December 2022 in relation to rent increases where landlords have used the correct form RHW 12.

18. I do not accept that the form 4D and RHW12 are substantially to the same effect. I agree with and accept the submissions made on behalf of the applicant, summarised at paragraphs 6 – 10 above. The Respondent's notice is simply of no effect in Wales, refers to a law that is no longer applicable in Wales and has the faults pointed out by the applicant's submissions, including as to the notice period. Whilst the Respondent makes various references to Rent Smart Wales, from my own perusal of their website, and indeed the links to the Welsh Government website and information upon the Act, there is nothing to suggest anywhere at all that the Housing Act 1988 and the forms previously used under that, Act remain in force in Wales, indeed quite the contrary. There was and is plenty of information available to licensed landlords about the Act.
19. This is not a case that is all square with the Court of Appeal case between the same parties where the ability of the rent assessment committee to decide upon the validity of a section 13 notice was determined. I agree with the submissions made on behalf of the applicant, that the purported notice dated 28 January 2023 is simply not a valid notice to increase the rent of this occupation contract and is of no legal effect. That being the case, there is no valid application before this tribunal and therefore the tribunal's jurisdiction is not engaged.
20. The tribunal is unable to take any other action on this matter other than to close its file.

DATED this 20th day of June 2023

AMENDED this 28th day of June 2023

Tribunal Judge R. Payne
President, RPT for Wales.