

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL (WALES)
RENT ASSESSMENT COMMITTEE

Reference: RAC/0001/04/22

In the matter of Flat 3 103 Connaught Road Cardiff

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

APPLICANT: Slavakia Davidova

RESPONDENT: Jonathan Sims c/o 67 Beulah Road Cardiff CF14 6LW

TRIBUNAL: R Price – Tribunal Judge
A Weeks - Surveyor

ORDER AND REASONS FOR THE DECISION OF TRIBUNAL

The Committee confirms the increase of rent in respect of Flat 3 103 Connaught Road from 14 June 2023. The new rent liability will be £785.

BACKGROUND

1. We convened as a Rent Assessment Committee, under the provisions of the Renting Homes (Wales) Act 2016 (“the Act”). The Respondent, through their agents, had served a Notice on the Applicant, dated 11/04/2023 pursuant to section 104(1)/123(1) of the Act proposing a new rent from 14th June 2023 of £900.
2. No party had elected an oral hearing in respect of the application. The Committee considered that the issues could be fairly resolved without an oral hearing. The Committee inspected the property and had regard to the written documents within the hearing bundle.

CHRONOLOGY

were provided and who was responsible for repairs and decoration in respect of those properties.

4. Both the Applicant and Respondent responded to this Directions Notice.
5. The Applicant has supplied a copy of a chart taken from the ONS Index of Private Housing to May 2023, and letting particulars of four 2-bedroom comparable properties at rents of £760, £795, £880 and £895 per calendar month.
6. The Respondent has supplied three comparable rents of £900 and two at £925, and states, in written evidence, that a total of 19 Rightmove listings and 10 Zoopla listings in the Roath area were asking for rents ranging from £925-£1500 per calendar month and that these were typically of similar design and standard to 103 Connaught Road.

LAW

7. The Renting Homes (Wales) Act 2016 now governs landlord and tenant agreements of residential 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.
8. Section 123 of the Act relates to the variation of rent under a periodic standard contract. Section 123 states:

“Variation of rent

- (1) *The Respondent 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].*

9. It is worth noting that under the new provisions, that apply to residential lettings in Wales, the period of notice that has to be provided by a Respondent, when seeking to increase a rent liability has been extended to, not less than two months' notice (previously not less than one month's notice under Section 13 of the Housing Act 1988). Further, there is no requirement under the Renting Homes (Wales) Act 2016 for the proposed new rent to commence at the start date of the new period of a tenancy, which remains a requirement under the Housing Act 1988 applicable in England only.
10. Paragraph 15(2) of Schedule 12 to the Act allows the Welsh Ministers 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 relevant 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.

- a *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.*
- b *The prescribed form is as set out in the Schedule.*
- c *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 Respondent 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 Respondent 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 applicant 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 Respondent, or

(ii) pursuant to an obligation to the immediate Respondent 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 applicant 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 Respondent or a superior Respondent 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 Respondent nor a superior Respondent is paying rates in respect of the dwelling.”

THE TENANCY AGREEMENT

11. The Applicant entered into an Assured Tenancy Agreement with the Respondent on 14 March 2016 in respect of Flat 3, 103 Connaught Road Roath Cardiff CF24 3PY, at a rent of £550 per calendar month. The terms are set out in the agreement contained in the hearing bundle.
12. The tenancy agreement contains a rent review clause. This has not been implemented by the Respondent as the applicant's rent has not increased since the commencement of the tenancy. The review clause provides that rent may be increased in line with the retail price index and was considered by the Committee when setting the market rent, as outlined below.
13. The tenancy contains standard provisions. In summary, it provides that the applicant is responsible for internal decoration and that the Respondent is responsible to keep in good repair the structure and the outside of the home, to include the supply of utilities and installations that maybe inside or outside the home. It also requires applicants not to cause any nuisance or antisocial behaviour.

THE INSPECTION

14. The Committee Chair and Surveyor attended a site inspection on the morning of 27th October 2023. There was no attendance by or on behalf of the Respondent, who was aware of the inspection. The Applicant was present as was her partner and daughter.

Location

15. The property is located approximately 1.2 miles from Cardiff city centre. There are good local amenities within easy walking distance of Wellfield Road and Albany Road, as well as Roath Park. More amenities including Sainsbury's, Lidl, Aldi and Morrisons food stores are located on Newport Road/Colchester Avenue approximately 1 mile to the east.
16. Connaught Road is a tree-lined street of similar style properties and is a popular rental location for young professionals, students, and families on a budget. However, along with other streets south of Albany Road it is less sought-after than those to the north, which have better proximity to green spaces of Roath Park and Waterloo Gardens.

Description

17. The property comprises of a 1st and 2nd floor duplex flat within a Victorian, mid-terrace, 3-storey building typical of the area.
18. Internally the flat provides two double bedrooms, open plan kitchen/lounge and bathroom. The 2nd floor is partially impacted by low headroom.

19. Windows are uPVC framed double glazed casements and timber frame Velux roof windows.
20. Heating and hot water are provided by way of a gas-fired combination boiler to the hall cupboard. Smoke detectors and a carbon monoxide alarm were present.

Condition

21. The façade of the building is poorly maintained. We observed peeling paintwork, damaged stonework and vegetation growth. It appears that guttering to the first-floor bay window has overflowed and allowed water to cascade down the front elevation, leaving visible traces.
22. Entrance to the property is via a shared front door. Upon entry to the building, there is a strong smell of damp and visible black mould around the interior of the front door. The shared hallway and stairwell carpet is in poor condition and in need of replacement. Overall, the general impression on entry is of a poorly maintained building, which may be off-putting to prospective tenants both in terms of the quality of their home environment and the attitude of their potential landlord to maintenance and repairs.
23. Internally, the subject flat is generally poor, albeit the applicant is maintaining it to a fair decorative standard.
24. The kitchen units and worktop are functional and appear to have been installed recently; the applicant confirmed it was done a week prior to our inspection. The bathroom is impacted by low headroom and provides bath with shower over, WC and basin. The bath panel is loose, and the bathroom would benefit from redecoration generally.
25. Floor coverings in the flat need replacing.
26. There were signs of minor black mould caused by condensation around window frames, which are not fitted with trickle vents. A window in the rear bedroom is poorly installed with daylight visible between the frame and the wall.
27. There are plaster cracks throughout the property and signs of previous water ingress, albeit this does not appear to be ongoing.
28. The applicant informed the Committee that mice are present within the flat and the common areas. The Committee did not observe any live mice during our inspection.

ISSUES

29. Does the fact that the Applicant used the wrong form when applying to the Rent Assessment Committee, impact upon the Committee's ability to determine the application?

30. Should the rent be increased to the level proposed having regard to the matters raised in the Regulations.

THE DECISION

31. The first issue invokes Paragraph 3 of the Regulations which states that a form substantially to the same effect as the prescribed form is valid. The Committee are satisfied that the form is valid.
32. In respect of the second issue, the Committee reviewed the comparable evidence supplied and using the expertise of the panel, undertook a Rightmove+ search of 2-bedroom rental properties marketed within a 0.25-mile radius of the property between July-October 2023. The range of rents revealed by this search was £900 - £1,300 per calendar month. The Tribunal accept, the Respondent's position, that the requested rent of £900 per calendar month is generally at the bottom end of the range of comparable evidence.
33. The Committee acknowledge that the applicant has provided four comparable properties, below £900 per calendar month, however two are only fractionally lower, and the cheapest comparable provided at £760 per calendar month is a flat above a student pub located approximately 1 mile away, and not considered a close comparable.
34. However, we do not agree with the Respondent that the comparable properties are of a "similar standard" to 103 Connaught Road. We consider the condition of the flat and the building in which it is located is inferior to the comparable evidence and, despite the competitive rental market, the property would command a rent below this range.
35. The ONS chart, provided by the Applicant, shows that UK rents have experienced growth since the start of the tenancy in 2016. It shows particularly strong growth since 2021 and states annual growth to May 2023 was 5.0%.
36. The Committee placed very limited weight on the ONS chart evidence provided by the applicant, this being a general index for the whole of the UK, which does not show how rents have changed in particular locations or how different types of rental properties have performed. The Committee prefer to reference other rental indices such as Rightmove and Zoopla that provide more compelling data.
37. The Committee accessed Rightmove rental data collated by Savills (using the expertise of the panel), which shows the median asking rent of a 2-bedroom property in Cardiff in Quarter 1 of 2016 (the start of the Applicant's tenancy), was £692 per calendar month and in Quarter 1 2023 (the most recent data available) the median rent was £985. This represents an increase of 42.3% which would indicate a rental value for the subject property in Quarter 1 2023 of circa £782 per calendar month (i.e 42,3% of £550). Given the continued demand/supply imbalance in the private rental sector we consider it likely that rents have continued to grow since Quarter 1. We place more weight on the

Rightmove data than the ONS index due to the more granular nature of the Rightmove data, which is broken down to city-level and by number of bedrooms.

38. The Committee calculated that increasing the rent in line with the retail price index (RPI) as per the review clause would result in a current rent of £804 per calendar month.
39. Overall, we consider that there has clearly been significant growth in the local rental market since the start of the tenancy. Connaught Road remains a secondary location and based on the comparable evidence we consider that, if it were in good condition, the property could command a rent of £900 per calendar month at the lower end of the range of evidence, but that the condition of the property is inferior to the comparable properties and therefore will command a lower rent.
40. Analysis of rental indices and the rent review clause within the lease also indicates that rental value of the subject property is likely to fall within in a range of £782-£804 per calendar month.

Determination

The Rent Assessment Committee hereby determines that:

In accordance with paragraph 5 of the Regulations, the rent of £785 is payable with effect from 14 June 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 12th day of December 2023

R. Price

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:

The Upper Tribunal (Lands Chamber)
5th Floor Rolls Building
7 Rolls Buildings
Fetter Lane
LONDON
EC4A 1NL
TELEPHONE NUMBER: 0207 612 9710
WEBSITE ADDRESS
www.justice.gov.uk/tribunals/lands