

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
RENT ASSESSMENT COMMITTEE

Reference: RAC/0013/09/24

The Property: 5 Pen Rhys Road, Pen Rhys, Tylerstown, CF34 3BB

In the matter of an application under the Renting Homes (Wales) Act 2016 &

The Renting Homes (Rent Determination) (Converted Contracts) (Wales) Regulations 2022

APPLICANTS: Nathan Cooper

RESPONDENT: Gurnam Singh and Sukhninder Kaur

THE COMMITTEE: Kelly Byrne, Tribunal Judge
Andrew Lewis, Surveyor Member

DECISION

UPON the matter being considered by the Tribunal determines that the market rent payable for the property is £0.00 per calendar month payable from 12th September 2024.

Reasons for decision.

Background.

1. Nathan Cooper (“the Applicant”) is a Contract-Holders at 5 Pen Rhys Road, Pen Rhys, Tylerstown, CF34 3BB (“the property”) who originally occupied the property under a tenancy agreement, which commenced on 12th September 2016.
2. On 1st December 2022, section 239 of the Renting Homes (Wales) Act 2016 (“the Act”), abolished assured tenancies in Wales and accordingly the Applicant’s tenancy was converted to a standard occupation contract as a matter of law.
3. Gurnam Singh and Sukhninder Kaur (“the Respondents”) provided the Applicant with a Converted Periodic Standard Contract (“the contract”), which is undated and unsigned.
4. On 11th July 2024, the Respondents served on the Applicant Form RHW12- Notice of Variation of Rent, under Section 123 of the Act, proposing that the rent for the property increase from £400 per month to £700 per month, with a commencement date of 12th September 2024.
5. On 10th September 2024, the Applicant exercised their right to appeal the said Notice under Regulation 3 of The Renting Homes (Rent Determination) (Converted Contracts) (Wales) Regulations 2022, by making an application to the Rent Assessment Committee (“the Committee”).

6. On the 12th September 2024, the Committee gave written Directions to both parties for the preparation of the case and submission of their respective evidence.

The Inspection

7. The Surveyor member inspected the property on the morning of the 20th December 2024. Only the Applicant was in attendance.
8. The property is a mid-terraced two storey house flush with the pavement constructed circa 1890 in solid brick and stone walls under a pitched tile covered roof. A small single storey extension with a flat roof had been added the rear. The original window frames have been replaced with double glazed uPVC units, and there was gas central heating throughout. On the ground floor was an entrance hall, lounge, kitchen, bathroom/wc with three bedrooms on the first floor. To the rear was a small garden.
9. On inspecting the property it was noted that no smoke or carbon monoxide detectors were present
10. The Applicant informed the Surveyor member that he had not received a copy of the gas and electrical certificates for the property. Which he also sets out in his statement of facts.

The Law

11. The material provisions that govern this application are found in s.123 of the Act. For ease of reference, we recite the relevant extract below.

Section 123 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.

12. The Renting Homes (Rent Determination) (Converted Contracts) (Wales) Regulations 2022 (“the Regulations”) governs the determination of the rent on appeal to the Rent Committee. For ease of reference, we recite the relevant extracts 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.

Section 91 of the Act states:

The Landlord's obligation: fitness for human habitation

s. 91(1) *The landlord under a secure contract, a periodic standard contract or a fixed term standard contract made for a term of less than seven years must ensure that the dwelling is fit for human habitation—*

*(a) on the occupation date of the contract, and
(b) for the duration of the contract.*

(3) This section is a fundamental provision which is incorporated as a term of all secure contracts, all periodic standard contracts, and all fixed term standard contracts made for a term of less than seven years.

The Renting Homes (Fitness for Human Habitation) (Wales) Regulations 2022 (“the Fitness Regulations”) provide:

Regulation 3 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 circumstance listed in the Schedule”

Regulation 5 provides that:

Smoke alarms and carbon monoxide alarms

(1) The landlord must ensure that, during each period of occupation, on each storey of the dwelling there is a smoke alarm which is—

*(a) in repair and proper working order,
(b) connected to the dwelling's electrical supply, and
(c) linked to every other smoke alarm in the dwelling which is connected to the electrical supply*

(2) The landlord must ensure that, during each period of occupation, a carbon monoxide alarm which is in repair and proper working order is in each room of the dwelling which contains a gas appliance, an oil-fired combustion appliance or a solid fuel burning combustion appliance.

(3) A dwelling is to be treated as unfit for human habitation at a time when the landlord is not in compliance with a requirement imposed by paragraph (1) or (2).

(4) For the purposes of paragraph (3), a landlord who has not complied with—

(a) paragraph (1) is to be treated as in compliance with that paragraph from the time the landlord ensures that a smoke alarm is (or smoke alarms are) present in the dwelling as described in that paragraph;

(b) paragraph (2) is to be treated as in compliance with that paragraph from the time the landlord ensures that a carbon monoxide alarm is (or carbon monoxide alarms are) present in the dwelling as described in that paragraph

Regulation 6 provides that:

Electrical safety

6.—(1) *The landlord must ensure that there is a valid electrical condition report in respect of the dwelling during each period of occupation.*

(2) *An electrical condition report—*

(a) is a condition report setting out the results of an electrical safety inspection carried out by a qualified person;

(b) is valid—

(i) until the end of the period of 5 years beginning with the day on which the electrical safety inspection is carried out (“the inspection date”), or

(ii) if the electrical condition report states that the next electrical safety inspection should be carried out less than 5 years after the inspection date, until the end of the day by which, in accordance with the report, the next electrical safety inspection should be carried out.

(3) *The landlord must ensure that the contract-holder is, before the end of the period of 14 days starting with the occupation date, given—*

(a) a copy of the most recent electrical condition report, and

(b) where investigatory or remedial work has been carried out on or in relation to an electrical service installation in the dwelling after the electrical safety inspection to which that report relates (and before the occupation date), written confirmation of work.

(4) *Where an electrical safety inspection is carried out after the occupation date, the landlord must ensure that the contract-holder is given a copy of the electrical condition report relating to the inspection before the end of the period of 14 days starting with the day on which the inspection was completed.*

(5) *Where investigatory or remedial work is carried out on or in relation to an electrical service installation in the dwelling after the occupation date, the landlord must ensure that the contract-holder is given written confirmation of work before the end of the period of 14 days starting with the day on which the landlord received the confirmation.*

(6) *A dwelling is to be treated as unfit for human habitation at a time when the landlord is not in compliance with a requirement imposed by this regulation.*

(7) *For the purposes of paragraph (6), a landlord—*

(a) who has not complied with paragraph (1) is to be treated as in compliance with that paragraph at any time when—

(i) the landlord has obtained an electrical condition report, and

(ii) that report is valid.

(b) who has not complied with paragraph (3)(a) or (4) is to be treated as in compliance with the provision in question from the time the contract-holder is given a copy of the most recent valid electrical condition report;

(c) who has not complied with paragraph (3)(b) or (5) is to be treated as in compliance with the provision in question from the time the contract-holder is given written confirmation of work.

Regulation 7 provides:

Application to converted contracts

(1) This regulation applies in relation to a converted contract.

(2) In regulations 5(1) and 6(1), “period of occupation” means the period—

(a) starting with the day which is 12 months after the conversion date, and

(b) ending when the contract ends.

(3) In regulation 5(2), “period of occupation” means the period—

(a) starting with the conversion date, and

(b) ending when the contract ends.

13. The Renting Homes (Supplementary Provisions) (Wales) Regulations 2022 (“the Supplementary Regulations”), which came into force on 1 December 2022, set out the supplementary provisions which are incorporated into all occupation contracts.

Regulation 11 of the Supplementary Regulations provides:

Periods when the dwelling is unfit for human habitation

The contract-holder is not required to pay rent in respect of any day or part day during which the dwelling is unfit for human habitation.

14. The Tribunal notes that the supplementary provision as set out in Regulation 11 above, has been incorporated in the contract under term 2, page 23 of the bundle.

Regulation 36 of The Gas Safety (Installation and Use) Regulations 1998 states:

(2) Every landlord shall ensure that there is maintained in a safe condition—

(a) any relevant gas fitting; and

(b) any flue which serves any relevant gas fitting,

so as to prevent the risk of injury to any person in lawful occupation or relevant premises.

(3) Without prejudice to the generality of paragraph (2) above, a landlord shall—

(a) ensure that each appliance and flue to which that duty extends is checked for safety within 12 months of being installed and at intervals of not more than 12 months since it was last checked for safety (whether such check was made pursuant to these Regulations or not);

(b) in the case of a lease commencing after the coming into force of these Regulations, ensure that each appliance and flue to which the duty extends has been checked for safety within a period of 12 months before the lease commences or has been or is so checked within 12 months after the appliance or flue has been installed, whichever is later; and

(c) ensure that a record in respect of any appliance or flue so checked is made and retained for a period of 2 years from the date of that check, which record shall include the following information—

(i) the date on which the appliance or flue was checked;

(ii) the address of the premises at which the appliance or flue is installed;

(iii) the name and address of the landlord of the premises (or, where appropriate, his agent) at which the appliance or flue is installed;

(iv) a description of and the location of each appliance or flue checked;

(v) any defect identified;

(vi) any remedial action taken;

(vii) confirmation that the check undertaken complies with the requirements of paragraph (9) below;

(viii) the name and signature of the individual carrying out the check; and

(ix) the registration number with which that individual, or his employer, is registered with a body approved by the Executive for the purposes of regulation 3(3) of these Regulations.

(4) Every landlord shall ensure that any work in relation to a relevant gas fitting or any check of a gas appliance or flue carried out pursuant to paragraphs (2) or (3) above is carried out by, or by an employee of, a member of a class of persons approved for the time being by the Health and Safety Executive for the purposes of regulation 3(3) of these Regulations.

(5) The record referred to in paragraph (3)(c) above, or a copy thereof, shall be made available upon request and upon reasonable notice for the inspection of any person in lawful occupation of relevant premises who may be affected by the use or operation of any appliance to which the record relates.

(6) Notwithstanding paragraph (5) above, every landlord shall ensure that—

(a) a copy of the record made pursuant to the requirements of paragraph (3)(c) above is given to each existing tenant of premises to which the record relates within 28 days of the date of the check; and

(b) a copy of the last record made in respect of each appliance or flue is given to any new tenant of premises to which the record relates before that tenant occupies those premises save that, in respect of a tenant whose right to occupy those premises is for a period not exceeding 28 days, a copy of the record may instead be prominently displayed within those premises.

(7) Where there is no relevant gas appliance in any room occupied or to be occupied by the tenant in relevant premises, the landlord may, instead of ensuring that a copy of the record referred to in paragraph (6) above is given to the tenant, ensure that there is displayed in a prominent position in the premises (from such time as a copy would have been required to have been given to the tenant under that paragraph), a copy of the record with a statement endorsed on it that the tenant is entitled to have his own copy of the record on request to the landlord at an address specified in the statement; and on any such request being made, the landlord shall give to the tenant a copy of the record as soon as is practicable.

(8) A copy of the record given to a tenant pursuant to paragraph (6)(b) above need not contain a copy of the signature of the individual carrying out the check if the copy of the record contains a statement that another copy containing a copy of such signature is available for inspection by the tenant on request to the landlord at an address specified in the statement, and on any such request being made the landlord shall make such a copy available for inspection as soon as is practicable.

(9) A safety check carried out pursuant to paragraph (3) above shall include, but shall not be limited to, an examination of the matters referred to in sub-paragraphs (a) to (d) of regulation 26(9) of these Regulations.

(10) Nothing done or agreed to be done by a tenant of relevant premises or by any other person in lawful occupation of them in relation to the maintenance or checking of a relevant gas fitting or flue in the premises (other than one in part of premises occupied for non-residential purposes) shall be taken into account in determining whether a landlord has discharged his obligations under this regulation (except in so far as it relates to access to that gas fitting or flue for the purposes of such maintenance or checking).

(11) Every landlord shall ensure that in any room occupied or to be occupied as sleeping accommodation by a tenant in relevant premises there is not fitted a relevant gas fitting of a type the installation of which would contravene regulation 30(2) or (3) of these Regulations.

(12) Paragraph (11) above shall not apply in relation to a room which since before the coming into force of these Regulations has been occupied or intended to be occupied as sleeping accommodation.

Deliberations

15. The Tribunal had before it for consideration a 60-page bundle of documents from both parties. These documents were considered as part of the decision making.
16. As a matter of law, the Applicants occupation of the property was automatically converted to a periodic standard contract on 1st December 2022. As the Applicant is in occupation of the property under a converted contract, compliance with Regulation 5 of the Fitness Regulations, namely the requirement to have smoke and carbon monoxide alarms fitted and connect to the mains electrical supply in the property, started on the day which is 12 months from the date of the converted contract (Regulation 7). The Tribunal state that this date is 2nd December 2023.
17. To put it plainly, by 2nd December 2023, the property should have had smoke and carbon monoxide alarms fitted, in compliance with Regulation 5 of the Fitness Regulations. On the date of the inspection, no such detectors were seen.
18. In the statement of facts document provided by the Applicant (page 11), he asserted that he had not been provided with a gas safety, nor an electrical safety certificate for the property. The Tribunal have not seen copies of these certificates.
19. There is a statutory requirement under Regulation 6 of the Fitness Regulations to provide a copy of the electrical condition report (ECR) within 14 days of occupation. The Applicant stated that he had not been provided with an ECR. The Respondents have not dealt with this point, nor have they provided a copy of the ECR to the Tribunal. Failure to provide a ECR to the contract holder, would be a breach of Regulation 6 of the Fitness Regulations. The duty to provide an ECR started on or before the day which is 12 months from the date of the converted contract (Regulation 7). The Tribunal state that this date is 2nd December 2023.
20. By 2nd December 2023, the Respondents should have provided the Applicants with an ECR for the property.
21. The issue of the interpretation of the Act, regarding what is meant by unfit for human habitation and the wider interpretation was considered by the High Court in **Coastal Housing Group Ltd v Mitchell & Anor [2024] EWHC 2831.**
22. This case involved the issue of electrical certificates (ECR) not being provided to tenants and whether that fact meant that the registered social landlord had breached regulation 6 of the Fitness Regulations. The High Court stated *"We therefore find for the defendants... The landlords failed to provide them with the ECRs required by regulation 6(3) of the Fitness Regulations. Therefore, the landlords were "not in compliance with a requirement imposed by this regulation", i.e. regulation 6, within the meaning of regulation 6(6). Therefore, regulation 6(6) operated and the contract-holders' dwellings were "to be treated as unfit for human habitation" at the material times" (paragraph 121 of the judgment)*

23. Regulation 36 of The Gas Safety (Installation and Use) Regulations 1998, states that gas appliances should be checked every 12 months, and a copy of the safety inspection report is to be provided to the tenant within 28 days of inspection.
24. As stated above, when determining the rental value of the property, we must consider the assumptions as set out in Regulation 6 of The Renting Homes (Rent Determination) (Converted Contracts) (Wales) Regulations 2022. We 'must determine the rent at which we consider the dwelling concerned might reasonably be expected to be let in the open market'.
25. Based on the inspection carried out by the Surveyor member, the Tribunal is satisfied that the property does not have smoke and carbon monoxide detectors fitted as required by Regulation 5 of the Fitness Regulations.
26. It is for this reason, that the property is to be treated as unfit for human habitation under the Act. It cannot lawfully, in its current state, be let on the open market. It therefore follows that we are unable to assign a rental value to it.
27. The Tribunal note the evidence of the Applicant regarding the ECR and gas safety certificates, but without evidence from the Respondents on this specific point, as to whether they dispute the assertions put forward by the Applicant, that they have not been provided with the said certificates, the Tribunal base their findings of no rental value in respect of the breaches of Regulation 5 of the Fitness Regulations, only.
28. If no ECR and/or gas certificates have been provided, then it would also follow that the Tribunal cannot attribute a rental value to the property.
29. The Tribunal strongly suggest that as a matter of tenant safety, that the property be fitted with the required smoke and carbon monoxide alarms.
30. The Tribunal also strongly suggests the Respondents carefully consider the legislative framework in respect of the duties of a landlord, renting out a domestic property within Wales, to ensure that they are in compliance with the same.



Judge Kelly Byrne

Dated 3rd day of March 2025