



**HM Courts
& Tribunals
Service**

**Leasehold Valuation Tribunal
Case Number: CAM/38UE/OLR/2012/0030**

Premises : **Flat 17,
Foster Road,
Abingdon,
Oxfordshire,
OX14 1YN**

Applicant : **Travers Alfred Sydney Garland**

Respondent : **Freehold Portfolios**

Date of Application : **16th April 2012**

Type of Application : **To determine the terms of acquisition
and costs of the new lease of the
properties pursuant to sections 51(3)
and 60 Leasehold Reform, Housing, and
Urban Development Act 1993**

**Date of Paper
Determination** : **31st July 2012**

Tribunal :

Mrs. J. Oxlade
Mr. R. Thomas MRICS

Lawyer Chairman
Valuer Member

DECISION

For the reasons given below, the Tribunal finds that:

- (a) the terms of the lease shall be in accordance with the draft at pages 3 to 10 of the trial bundle, as per the Applicant's amendments,
- (b) the Respondent's statutory costs are assessed as £1342.85.

REASONS

Background

1. The Applicant is the Lessee of premises known as Flat 17 Foster Road, Abingdon, Oxfordshire, OX14 1YN, which premises include a parking space. The Respondent is the Lessor.
2. The Applicant served a notice pursuant to section 42 of the Leasehold Reform Housing and Development Act 1993 to extend his lease, in response to which the Lessor served a counter notice.
3. The Applicant issued an application pursuant to section 48 of the Act for determination of the terms of acquisition, and accordingly Directions were issued.
4. The parties resolved all issues, save two (i) the terms of the new lease and (ii) the Respondent's costs arising from the application. Both parties were content to have these remaining issues determined by the Tribunal on the basis of the papers filed.

The Issues

Terms of the Lease

5. Under cover of letter dated 25th January 2012, received on 26th January 2012, the Respondent's Solicitors submitted to the Applicant's Solicitors a draft lease, which included the following disputed provision:

"6.1 Clause 2(1) of the existing lease is to be amended to read "Within one month of every transfer assignment assent underlease mortgage or other devolution of the Lessee's interest in the Maisonette or any part thereof hereunder to give notice in writing with the particulars of the relevant documents to the Solicitors or agents for the time being of the Lessor and produce such assignment assent transfer underlease or mortgage or in the case of a devolution the Probate of the Will letters of Administration or other proper evidence of such devolution and to pay to the Lessor's solicitors or agents a registration fee of not less than £60 plus VAT for the registration of each notice".
6. Under cover of letter dated 14th February 2012 the Applicant's Solicitors said that they were not prepared to accept the above proposed amendment, and were quite sure that the Tribunal would not agree it. They would however agree the following:

"Rider 6.1 "Clause 2(1) of the existing lease shall be amended by subsisting for the words "a registration fee of £10.00" the words "a reasonable registration fee currently agreed to be £60.00 plus VAT".

7. The Respondent's position is that as a result of paragraphs 7(2) and 7(3) of the Leasehold Reform (Collective Enfranchisement and Lease Renewal) Regulations 1993 the Applicant was deemed to have accepted the Respondent's draft, having failed to reply within the 14 day time limit.
8. The Applicant's position is that time did not run in relation to the draft leases until such time as all the terms have been either agreed or determined by the LVT; that by sending the draft under cover of letter dated 25th January 2012, the Respondent was seeking to introduce a new term which had not been agreed; that it remained open to the Tribunal to determine whether it should be included, bearing in mind that by virtue of section 57(6) of the 1993 Act, only limited modifications were permitted, in circumstances which did not apply here.
9. The Respondent relies on the timetable set by the Regulations, and included an extract from Hague, paragraph 30-21.

Costs

10. The Respondent claims statutory costs of £1439.45, which comprise legal costs of £700 (plus VAT of £140), valuer's costs of £495 (plus VAT of £99), and disbursements of £5.45.
11. The Applicant takes issue with the legal costs only, as to (i) the hourly rate of £200, (ii) time taken of 3 hours 30 minutes, and (iii) recoverability of VAT. The following reasons were given:
 - the fee earner is in Norfolk, where the guideline hourly rates are £177 for a grade B lawyer and £146 for grade C lawyer; that the Respondent's fee earner is a licensed conveyancer, whose appropriate hourly rate should be £146 per hour,
 - the fee earner had taken (i) 48 minutes to prepare a report for the valuer explaining instructions, with reference to the clients wishes and the Act and (ii) 48 minutes to prepare a detailed report to the client after receipt of the valuer's report, checking the legal information, then clarifying matters with the valuer; the Applicant's position was that 18 minutes would be reasonable for each, as the client was an experienced freeholder,
 - the Applicant should not pay VAT, as the sum would be recoverable by the Respondent freeholder, who does not pay VAT.

12. The Respondent's position is that:
- the fee earner had been qualified as a licensed conveyancer for 7 years, and should have the same status as a Solicitor or Legal Executive qualified for that time; she should be treated as though she was almost a Grade A fee earner (8 years relevant experience) which in Norfolk that would be £217 per hour + VAT; the work is specialist, as noted in the foreword to Hague
 - the fee earner was right to comprehensively consider the O.C.E'S (freehold and leasehold), to give detailed instructions to the valuer, and advise the client; then to give the freeholder a comprehensive report on the valuation, in accordance with due diligence, and provide advice as to what should go in and stay out of the counter-notice.

The Jurisdiction of the Tribunal

13. The Tribunal has jurisdiction by virtue of section 91(1) of the Act to determine the terms of the lease which is to be granted to the tenant pursuant to Chapter II, including any particular matter which needs to be determined by reference to Schedule 6 and 13, and the amount of any costs payable by reference to sections 33(1) and 60(1).

Findings

Terms of the Lease

14. Section 57(1) of the Act (set out fully in Appendix A) requires that the new lease shall be on the same terms as the old, save for modifications as required or appropriate in the circumstances set out in sections 57(1) to (11). The Respondent did not argue that the proposed change fell within any of those provisions, and the Tribunal finds that it does not.
15. Accordingly, the only issue is whether paragraphs the Leasehold Reform (Collective Enfranchisement and Lease Renewal) Regulations 1993 (set out fully in Appendix A), operate in this case in light of the exchange of correspondence set out in paragraphs 5 and 6 above.
16. For the following reasons the Tribunal finds that they do not.
17. The Regulations provide for a timetable within which the new draft lease will be prepared. The Regulations envisages that the parties will have agreed the terms of acquisition (or that the LVT has made a decision), in pursuance of which the Lessor will serve on the Lessee a draft lease within 21 days of that agreement or LVT decision. The operative words are "beginning with the date on which the terms of acquisition are agreed or determined by the LVT".

18. In this case the Lessor has sought to roll into one this process, by serving on the Lessee draft terms which we find had not hitherto been agreed, and then asserting that the fact of doing so meant that the timetable had begun. The Tribunal finds that the timetable starts once the terms have been agreed and determined.
19. Accordingly, the Tribunal finds that Regulation 7(1) does not apply, that section 57 limits the terms of acquisition, and so find that the terms are those contained at pages 3-10 of the bundle, referred to at paragraph 6 above.

Costs

20. Section 60 limits the costs recoverable, as set out in Appendix A.
21. In this case there is a dispute as to hourly rate: £200 as opposed to £146. The Tribunal did not consider that one could artificially turn 7 years qualification into 8 years, and whilst the work is specialist in nature, there was nothing to suggest that any unusual issues arose in this case to conclude that the case was one of great complexity. In light of local Solicitor rates, and the experience of the licensed conveyancer we find that a reasonable hourly rate is £177 for a licensed conveyance of 7 years experience.
22. There was a dispute as to the hours claimed, and that a total of 1 hour was excessively claimed. The Tribunal has the benefit of considering many costs bills which could be claimed and are claimed, and do not consider that the totality claimed in this case is unreasonable. Whilst 48 minutes is at the very the top end for the description of two pieces of works done, it was within reasonable limits.
23. In respect of VAT, as the Respondent says that it is not VAT registered, there is no valid argument for saying that the Applicant should not pay VAT on the cost recoverable.
24. Accordingly, the Tribunal finds that the Respondent's reasonable costs to be met by the Applicant are £1342.85, which comprise legal costs of £619.50 (plus VAT of £123.90), valuer's costs of £495 (plus VAT of £99), and disbursements of £5.45.

Joanne Oxlade
Lawyer Chairman

31st July 2012

APPENDIX A

Leasehold Reform, Housing, and Urban Development Act 1993

57 Terms on which new lease is to be granted.

"(1) Subject to the provisions of this Chapter (and in particular to the provisions as to rent and duration contained in section 56(1)), the new lease to be granted to a tenant under section 56 shall be a lease on the same terms as those of the existing lease, as they apply on the relevant date, but with such modifications as may be required or appropriate to take account—

(a) of the omission from the new lease of property included in the existing lease but not comprised in the flat;

(b) of alterations made to the property demised since the grant of the existing lease; or

(c) in a case where the existing lease derives (in accordance with section 7(6) as it applies in accordance with section 39(3)) from more than one separate leases, of their combined effect and of the differences (if any) in their terms.

(2) Where during the continuance of the new lease the landlord will be under any obligation for the provision of services, or for repairs, maintenance or insurance—

(a) the new lease may require payments to be made by the tenant (whether as rent or otherwise) in consideration of those matters or in respect of the cost thereof to the landlord; and

(b) (if the terms of the existing lease do not include any provision for the making of any such payments by the tenant or include provision only for the payment of a fixed amount) the terms of the new lease shall make, as from the term date of the existing lease, such provision as may be just—

(i) for the making by the tenant of payments related to the cost from time to time to the landlord, and

(ii) for the tenant's liability to make those payments to be enforceable by distress, re-entry or otherwise in like manner as if it were a liability for payment of rent.

(3) Subject to subsection (4), provision shall be made by the terms of the new lease or by an agreement collateral thereto for the continuance, with any suitable adaptations, of any agreement collateral to the existing lease.

(4) For the purposes of subsections (1) and (3) there shall be excluded from the new lease any term of the existing lease or of any agreement collateral thereto in so far as that term—

(a) provides for or relates to the renewal of the lease,

(b) confers any option to purchase or right of pre-emption in relation to the flat demised by the existing lease, or

(c) provides for the termination of the existing lease before its term date otherwise than in the event of a breach of its terms;

and there shall be made in the terms of the new lease or any agreement collateral thereto such modifications as may be required or appropriate to take account of the exclusion of any such term.

(5) Where the new lease is granted after the term date of the existing lease, then on the grant of the new lease there shall be payable by the tenant to the landlord, as an addition to the rent payable under the existing lease, any amount by which, for the period since the term date or the relevant date (whichever is the later), the sums payable to the landlord in respect of the flat (after making any necessary apportionment) for the matters referred to in subsection (2) fall short in total of the sums that would have been payable for such matters under the new lease if it had been granted on that date; and section 56(3)(a) shall apply accordingly.

(6) Subsections (1) to (5) shall have effect subject to any agreement between the landlord and tenant as to the terms of the new lease or any agreement collateral thereto; and either of

them may require that for the purposes of the new lease any term of the existing lease shall be excluded or modified in so far as—

- (a) it is necessary to do so in order to remedy a defect in the existing lease; or
- (b) it would be unreasonable in the circumstances to include, or include without modification, the term in question in view of changes occurring since the date of commencement of the existing lease which affect the suitability on the relevant date of the provisions of that lease.

(7) The terms of the new lease shall—

- (a) make provision in accordance with section 59(3); and
- (b) reserve to the person who is for the time being the tenant's immediate landlord the right to obtain possession of the flat in question in accordance with section 61.

(8)(1) In granting the new lease the landlord shall not be bound to enter into any covenant for title beyond—

- (a) those implied from the grant, and
- (b) those implied under Part I of the Law of Property (Miscellaneous Provisions) Act 1994 in a case where a disposition is expressed to be made with limited title guarantee, but not including (in the case of an underlease) the covenant in section 4(1)(b) of that Act (compliance with terms of lease);

and in the absence of agreement to the contrary the landlord shall be entitled to be indemnified by the tenant in respect of any costs incurred by him in complying with the covenant implied by virtue of section 2(1)(b) of that Act (covenant for further assurance).

(8A) A person entering into any covenant required of him as landlord (under subsection (8) or otherwise) shall be entitled to limit his personal liability to breaches of that covenant for which he is responsible.

(9) Where any person—

- (a) is a third party to the existing lease, or
 - (b) (not being the landlord or tenant) is a party to any agreement collateral thereto,
- then (subject to any agreement between him and the landlord and the tenant) he shall be made a party to the new lease or (as the case may be) to an agreement collateral thereto, and shall accordingly join in its execution; but nothing in this section has effect so as to require the new lease or (as the case may be) any such collateral agreement to provide for him to discharge any function at any time after the term date of the existing lease.

(10) Where—

- (a) any such person ("the third party") is in accordance with subsection (9) to discharge any function down to the term date of the existing lease, but
 - (b) it is necessary or expedient in connection with the proper enjoyment by the tenant of the property demised by the new lease for provision to be made for the continued discharge of that function after that date,
- the new lease or an agreement collateral thereto shall make provision for that function to be discharged after that date (whether by the third party or by some other person).

(11) The new lease shall contain a statement that it is a lease granted under section 56; and any such statement shall comply with such requirements as may be prescribed by rules made in pursuance of section 144 of the Land Registration Act 1925 (power to make general rules)".

60 Costs incurred in connection with new lease to be paid by tenant

(1) Where a notice is given under section 42, then (subject to the provisions of this section) the tenant by whom it is given shall be liable, to the extent that they have been incurred by any relevant person in pursuance of the notice, for the reasonable costs of and incidental to any of the following matters, namely—

- (a) any investigation reasonably undertaken of the tenant's right to a new lease;

(b) any valuation of the tenant's flat obtained for the purpose of fixing the premium or any other amount payable by virtue of Schedule 13 in connection with the grant of a new lease under section 56;

(c) the grant of a new lease under that section;

but this subsection shall not apply to any costs if on a sale made voluntarily a stipulation that they were to be borne by the purchaser would be void.

(2) For the purposes of subsection (1) any costs incurred by a relevant person in respect of professional services rendered by any person shall only be regarded as reasonable if and to the extent that costs in respect of such services might reasonably be expected to have been incurred by him if the circumstances had been such that he was personally liable for all such costs.

(3) Where by virtue of any provision of this Chapter the tenant's notice ceases to have effect, or is deemed to have been withdrawn, at any time, then (subject to subsection (4)) the tenant's liability under this section for costs incurred by any person shall be a liability for costs incurred by him down to that time.

(4) A tenant shall not be liable for any costs under this section if the tenant's notice ceases to have effect by virtue of section 47(1) or 55(2).

(5) A tenant shall not be liable under this section for any costs which a party to any proceedings under this Chapter before a leasehold valuation tribunal incurs in connection with the proceedings.

(6) In this section "relevant person" in relation to a claim by a tenant under this Chapter, means the landlord for the purposes of this Chapter, any other landlord (as defined by section 40(4)) or any third party to the tenant's lease".

Schedule 2 of the Leasehold Reform (Collective Enfranchisement) Regulations 1993

Preparation of contract

"7.—(1) The landlord shall prepare a draft lease and give it to the tenant within the period of fourteen days beginning with the date the terms of acquisition are agreed or determined by a leasehold valuation tribunal.

(2) The tenant shall give to the landlord a statement of any proposals for amending the draft lease within the period of fourteen days beginning with the date the draft lease is given.

(3) If no statement is given by the tenant within the time specified in sub-paragraph (2), he shall be deemed to have approved the draft lease.

(4) The landlord shall give to the tenant an answer giving any objections to or comments on the proposals in the statement within the period of fourteen days beginning with the date the statement is given.

(5) If no answer is given by the landlord within the time specified in sub-paragraph (4), he shall be deemed to have approved the amendments to the draft lease proposed by the tenant.

(6) The landlord shall prepare the lease and as many counterparts as he may reasonably require and shall give the counterpart or counterparts to the tenant for execution a reasonable time before the completion date.

(7) The tenant shall give the counterpart or counterparts of the lease, duly executed, to the landlord and the landlord shall give the lease, duly executed, to the tenant, on the completion date or as soon as possible afterwards".