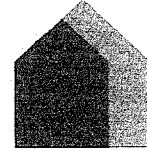


2414



Residential  
Property  
TRIBUNAL SERVICE

**HM COURTS AND TRIBUNALS SERVICE**

**LONDON RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL**

**Case Reference LON/00BE/OLR/20011/0936**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION  
UNDER LEASEHOLD REFORM HOUSING AND URBAN DEVELOPMENT ACT  
1993 SECTIONS 56 AND 57**

**Applicant:** Rodney Anthony Williams

**Respondent:** The Incorporated Trustees of the Dulwich Estate

**Premises:** 7 Raleigh Court Lymer Avenue London SE19 1LS  
and garage 189.

**Date of Application:** 5 September 2011

**Leasehold Valuation Tribunal:** Mrs F J Silverman Dip Fr LLM  
Mr L Jarero BSc FRICS

**Date of hearing :** 11 January 2012

**Applicant's Representative:** Mr G Crews Solicitor

**Respondent's Representative:** Mr N Robinson Solicitor

## Decision

1 The Tribunal determines that the repairing covenant to be contained in the new lease should remain in the same wording as that contained in the current lease as varied by the 1984 Deed of Variation.

2 The Tribunal determines that the new lease shall be varied to contain an insurance provision in the terms as set out on page 67/8 with the proviso that the word 'Premises' shall be substituted for the word 'Building' and that in line 12 of page 67 the words 'and the roads and common parts of the estate of which the premises form part' shall be inserted between the words 'the Building' and 'in respect of the act,'.

1 The Applicant made an application to the Tribunal on 5 September 2011 asking the Tribunal to determine the premium payable by the tenant for a new lease of the property and to determine the terms of the new lease of the property.

2 The hearing of this matter took place on 11 January 2012 at which the Applicant tenant was represented by Mr G Crews, solicitor and the Respondent by Mr N Robinson, solicitor.

3 A bundle of documents was placed before the Tribunal for its consideration. References below to page numbers are references to the respective pages in the bundle.

4 As at the date of the hearing the parties had agreed that the price to be paid for the new lease was to be £40,000 and the Tribunal was not therefore required to make a determination of this issue.

5 The issues which the Tribunal was asked to consider related to two clauses of the new lease on which the parties had failed to reach agreement. These related to the insurance and repair provisions in the existing lease, the latter of which had been amended by a deed of variation dated 6 August 1984 (page 51).

6 In relation to the changes, which were both proposed by the Applicant, it was argued by the Applicant that since the original lease had been granted two major changes in landlord and tenant law had come into effect. The first was s 35 Landlord and Tenant Act 1987 (page 70) which facilitated the variation of leases in certain circumstances, the second was the introduction of the Lenders' Handbook by the Council of Mortgage Lenders.

7 The Applicant argued in relation to the repairing covenant that the new lease should contain a clause in the terms of his suggested draft (page 69). He contended that the requirements of s35 were met in that the existing lease

(as varied) failed to make satisfactory provision for repairs and that it failed to comply with paragraph 5.13 of the Lenders' Handbook (page 73).

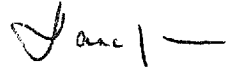
- 8 The Respondent however argued that the 1984 Deed of Variation had added provisions to the repairing covenant which made it workable and satisfactory and denied that the existing provisions failed to meet the requirements of the Lenders' Handbook. They said that the provisions of the Handbook did not state categorically that a lease which did not comply with paragraph 5.13 was unacceptable but merely required the acting solicitor to check certain matters. Leases on the Respondent's estate changed hands frequently and no problems relating to the clause under discussion had emerged. The Applicant's own flat was mortgaged (page 37) which suggested that his lender had not taken objection to the clause. No other tenant had requested an amendment to this particular clause. All the leases on the Respondent's estate were in common form and it was desirable to maintain them as such. The Respondent argued that the clause in question was not defective under s57 Leasehold Reform Housing and Urban Development Act 1993, and that it would be unreasonable to allow amendment of one lease where all the other leases on the Respondent's estate were in common form.
- 9 Having considered the existing and proposed clauses and the arguments put forward by both parties' representatives the Tribunal concludes that although the existing repairing covenant (as amended by the Deed of Variation) is not drafted in the manner in which a current draftsman might express the wording, and in particular does not make express provision for direct enforcement of the landlord's repairing covenant by an individual tenant, it is nevertheless satisfactory and workable and in view of the fact that all leases on the Respondent's estate contain this wording the Tribunal considers that it would not be reasonable to require them to alter one only of the leases in the manner requested by the Applicant.
- 10 Further, the Tribunal does not accept the Applicant's argument in relation to the Lender's Handbook. The latter contains a preferred method of conveyancing, including certain stipulations as to the content of leases with which solicitors who are acting for lenders are expected to comply. Where a lease does not comply with the lender's stipulations its marketability and mortgageability may be adversely affected. The Handbook does not however have the force of law and in that sense is merely advisory. The fact that the Applicant's own flat is currently mortgaged with a major lender suggests that the form of wording contained in the existing lease is compliant with the terms of the Handbook.
- 11 For the above reasons the Tribunal determines that the repairing covenant to be contained in the new lease should remain in the same wording as that contained in the current lease as varied by the 1984 Deed of Variation.
- 12 The Applicant also contended that the insurance provisions contained in the existing lease should be varied in the new lease, citing essentially the same arguments as were propounded in relation to the repairing provisions (above); namely that a variation to the existing clause could be justified under s35 Landlord and Tenant Act 1987 and that the current insurance provisions were incompatible with Lenders' Handbook.
- 13 Dealing firstly with the provisions of the Lenders' Handbook. While it is reiterated that the Handbook does not have the force of law, it nevertheless represents current good practice. In respect of insurance a lender's solicitor is

required to check (page 74) the lender's specific instructions ( contained in part 2 of the Handbook) to see whether the lender requires the insurance policy (not the insurance covenant in the lease) covering the property to insure against specific events listed in paragraph 6.14.2. This paragraph does not state that the lender will automatically decline to accept a policy which does not comply with its requirements. However, the events listed in that paragraph are those which one would normally expect a modern comprehensive policy to cover and include a number of matters (eg subsidence , public liability insurance, professional fees) which are omitted from the current insurance obligation as set out in clause 5(b) of the lease (page 69b). In this respect the Tribunal would consider that the existing insurance provision is unsatisfactory within s35.2(b) Landlord and Tenant Act 1987 (page 70).

- 14 While it is noted that the current insurance policy effected by the Respondent (page 85) does cover all the risks which are today considered usual or normal (and in that respect goes beyond the requirements of Clause 5(b) of the lease and would satisfy the provisions of the Lenders Handbook ), it remains the case that the Respondent is not obliged by the lease to provide such extensive cover and the Applicant could not force the Respondent to do so if for any reason the Respondent chose to revert to a policy which complied only with the current lease terms.
- 15 The Respondent said that the terms of the Lenders' Handbook did not require the insurance covenant in the lease to comply with paragraph 6.14.2 of the Handbook and that there was no evidence that the wording of the current clause had affected the marketability of other properties on the estate. However they did not deny that an amended insurance provision (as shown on page 67) was included in a number of new leases granted on the estate and indeed had been present in the original draft provided by them to the Applicant. They refuted the Applicant's suggestion that they should be estopped from objecting to the draft clause on page 67 merely because they had included it in their original draft.
- 16 Since on the Respondent's own evidence a clause in the terms of page 67 was present in a number of leases on the estate there can be no merit in any argument that an alteration of the clause in the present case would cause a problem to the Respondent , particularly as their existing insurance policy appears to comply with the terms of the clause on page 67.
- 17 While respecting the Respondent's request not to be estopped from their arguments against the suggested wording on page 67 the Tribunal, having considered the various clauses and the provisions of s35 Landlord and Tenant Act 1987 determines that the existing Clause 5b of the lease is unsatisfactory in a modern lease. It would be reasonable to vary it and , in the light of the contents of the Respondent's actual insurance policy and the fact that a number of similar leases on the Respondent's estate have already been modified in this respect, it would be unreasonable not to allow a variation of the clause.
- 18 In view of the fact that the Applicant would be content to accept the wording of Clause 5b as set out on page 67/8 and that the Respondent said that they would accept that wording if slightly modified the Tribunal determines that the new lease shall be varied to contain an insurance provision in the terms as set out on page 67/8 with the proviso that the word 'Premises' shall be

substituted for the word 'Building' and that in line 12 of page 67 the words 'and the roads and common parts of the estate of which the premises form part' shall be inserted between the words 'the Building' and 'in respect of the act,'.

19 It is noted that the parties agreed that an amendment was required to the Testatum clause (page 68) to correct a typographical error.



Frances Silverman

Chairman

19 January 2012