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LONDON RENT ASSESSMENT PANEL

DECISION ON AN APPLICATION FOR A LEASE EXTENSION UNDER THE LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993

Case Reference:	LON/00BK/OLR/2012/1108
Premises:	Flat A, 21 Hormead Road, London W9 3NQ
Applicants:	Mr UH Shaikh Mrs S Shaikh
Representative:	Cramer Pelmont solicitors
Respondent:	Ms MM Casey
Representative:	WGS solicitors
Date of hearing:	15th January 2013
Appearance for Applicants:	Mr E Charnley, Cramer Pelmont
Appearance for Respondent:	Mr Gerber, WGS
Leasehold Valuation Tribunal:	Mr NK Nicol Mr N Martindale FRICS
Date of decision:	15th January 2013

1. This is an application for the Tribunal to determine the terms of acquisition for an extended lease on the subject property under section 48 of the Leasehold Reform, Housing and Urban Development Act 1993. Relevant statutory provisions are set out in the Appendix to this decision.

2. In fact, Mr Gerber for the Respondent stated to the Tribunal that the premium of £24,000 and the terms of the lease were agreed. He said that the issues in dispute were:-

a) The Respondent claimed that the Applicant owed £15,033.20 for service charges for the period 1999-June 2012 and refused to execute the new lease unless and until at least the majority were paid in full.

b) The costs incurred by the Respondent in connection with the new lease and to be paid by the Applicant under section 60 of the Act had been agreed in relation to the surveyor but not in relation to the solicitors.

3. However, neither issue is remotely ready for determination. The Tribunal had nothing at all in relation to the costs issue. Mr Gerber for the Respondent claimed that the Tribunal could determine the service charge dispute but the only material available was:-

a) One copy between the two Tribunal members of an unpaginated, unindexed and unbound bundle of documents which the Respondent said had been served on the Applicant by covering letter dated 3rd October 2012 and which was handed to the Tribunal on the morning of the hearing.

b) A letter dated 11th January 2013 from the Applicant's solicitor setting out some areas where the service charges were disputed.

4. The Tribunal aims to be more informal and flexible compared to a court but any solicitor of Mr Gerber's experience would be fully aware that this is not sufficient. The Applicant's solicitor had identified as early as 13th September 2012 that the service charge dispute should be separated from the lease extension itself but the Respondent made no efforts to issue an application under section 27A of the Landlord and Tenant Act 1985 or to take any step within the current application to set out his claim or obtain any suitable directions from the Tribunal. Mr Gerber pointed out that the Applicant had conduct of this application but the service charge claim was his client's and the fact that his client is the Respondent does not absolve him from all responsibility for progressing the proceedings.

5. By letter dated 12th November 2012 the Applicant's solicitor sought to offer security for any outstanding sums owing in accordance with section 56 of the Act so that the lease extension could go ahead pending resolution of the service charge dispute. The Respondent has never responded substantively to that. Instead, by letter dated 23rd November 2012 the Respondent's solicitor confirmed her position that she would not complete the lease extension until the majority of the alleged arrears were paid in full.

6. Although the Respondent's solicitor had received the application and the Tribunal's directions, and although the Tribunal sent out notice of the hearing date in the same way, Mr Gerber said the first he knew of the hearing was a phone call from his opposite number, Mr Charnley, on Wednesday 9th January 2013. This was too late to correct the

aforementioned lack of action but it did still afford him some time. He did nothing.

7. Mr Gerber sought to explain his lack of action by saying that the Applicant had not responded substantively to his request for details of which service charges were in dispute until the solicitor's letter of 11th January 2013 and that was too close to the hearing. This is not quite true since Mr Charnley had told him in a phone call in September or October that he thought the majority of charges were irrecoverable due to the passage of time. In any event, he had months to set out and progress the claim for service charge arrears, irrespective of any response from the Applicant, so the fact that the hearing loomed sooner than he expected is no excuse.

8. The fact is that the hearing on 15th January 2013 should never have taken place and was a waste of time. The only issues put at large by the application, namely the premium and the terms of the lease, had long ceased to be in dispute. Nothing else was ready for determination, even assuming that this application was the right vehicle for doing so.

9. Mr Gerber said he hoped that being able to meet Mr Charnley and his client face-to-face in the Tribunal building would be the forum for settling much, if not all, of the dispute. However, it is an abuse to use the Tribunal in that way. The Tribunal is here, at the public expense, to resolve disputes. If there are no issues which remain in dispute or are ready for the Tribunal to determine, the parties can arrange their own meetings, use the Tribunal's mediation service or at least make proposals for appropriate directions for a later determination. It is not appropriate to leave a case listed for the Tribunal, taking up time which could be used for another case, when there is nothing for the Tribunal to do.

10. In some circumstances, the Tribunal would consider making directions for the service charges and costs issues to be resolved. However, both parties indicated they wished to settle which would avoid the costs involved in further steps in the proceedings. More importantly, the disputes on both issues are essentially at scratch. They may each be subject to fresh applications without any prejudice to either party as no costs will have been wasted. The current application may be closed without further steps which may turn out not to be needed.

11. Mr Charnley applied at the hearing for an order for costs in the maximum amount of £500 against the Respondent under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 on the basis that today's hearing had been wasted. He submitted that the Respondent had only continued with the current proceedings to blackmail his client into conceding payment of the alleged service charge arrears. In relation to quantum, he estimated his costs of preparing for and attending the hearing as £1,200 plus VAT based on his hourly rate of £270.

12. Mr Gerber asserted that it would be very harsh to require the Respondent to pay any costs when the Applicant could be criticised for producing the hearing bundle late and not providing details of the objections to the service charges until 11th January 2013, whereas he had responded to each letter sent to him. He said that the Applicant and another lessee had, between them, "ruined" his client's life as she had chased them fruitlessly for service charges over 14 years.

13. The Tribunal is satisfied that the hearing had not been needed so that it was a waste of time and money for it to go ahead. The responsibility for its going ahead clearly lies with the Respondent. The fact that her solicitor had late and short notice of the hearing is irrelevant given that he had months to bring the current proceedings to an end. In any event, he still had time to call it off but failed to do so. It seems to the Tribunal that the only reason the Respondent continued with the proceedings was as a tactic in the fight to obtain the service charge arrears. It is extreme and over-emotive to call it blackmail, but it is an abuse to use proceedings in this way rather than to pursue the available remedies in the appropriate manner.

14. In the circumstances, the Tribunal orders the Respondent to pay the Applicant £500 in respect of the costs thrown away by her frivolous and vexatious behaviour in the proceedings.

15. There is nothing further to determine in these proceedings. If the Respondent wishes to pursue the service charge or costs issues, she may make separate applications.

Name: N.K. Nicol **Date:** 15th January 2013

Appendix of relevant legislation

Leasehold Reform, Housing and Urban Development Act 1993

Section 48

Applications where terms in dispute or failure to enter into new lease.

(1) Where the landlord has given the tenant—

(a) a counter-notice under section 45 which complies with the requirement set out in subsection (2)(a) of that section, or

(b) a further counter-notice required by or by virtue of section 46(4) or section 47(4) or (5),

but any of the terms of acquisition remain in dispute at the end of the period of two months beginning with the date when the counter-notice or further counter-notice was so given, a leasehold valuation tribunal may, on the application of either the tenant or the landlord, determine the matters in dispute.

(2) Any application under subsection (1) must be made not later than the end of the period of six months beginning with the date on which the counter-notice or further counter-notice was given to the tenant.

(3) Where—

(a) the landlord has given the tenant such a counter-notice or further counter-notice as is mentioned in subsection (1)(a) or (b), and

(b) all the terms of acquisition have been either agreed between those persons or determined by a leasehold valuation tribunal under subsection (1),

but a new lease has not been entered into in pursuance of the tenant's notice by the end of the appropriate period specified in subsection (6), the court may, on the application of either the tenant or the landlord, make such order as it thinks fit with respect to the performance or discharge of any obligations arising out of that notice.

(4) Any such order may provide for the tenant's notice to be deemed to have been withdrawn at the end of the appropriate period specified in subsection (6).

(5) Any application for an order under subsection (3) must be made not later than the end of the period of two months beginning immediately after the end of the appropriate period specified in subsection (6).

(6) For the purposes of this section the appropriate period is—

(a) where all of the terms of acquisition have been agreed between the tenant and the landlord, the period of two months beginning with the date when those terms were finally so agreed; or

(b) where all or any of those terms have been determined by a leasehold valuation tribunal under subsection (1)—

(i) the period of two months beginning with the date when the decision of the tribunal under subsection (1) becomes final, or

(ii) such other period as may have been fixed by the tribunal when making its determination.

(7) In this Chapter "the terms of acquisition", in relation to a claim by a tenant under this Chapter, means the terms on which the tenant is to acquire a new lease of his flat, whether they relate to the terms to be contained in the lease or to the premium or any other amount payable by virtue of Schedule 13 in connection with the grant of the lease, or otherwise.

Section 56

Obligation to grant new lease

(1) Where a qualifying tenant of a flat has under this Chapter a right to acquire a new lease of the flat and gives notice of his claim in accordance with section 42, then except as provided by this Chapter the landlord shall be bound to grant to the tenant, and the tenant shall be bound to accept—
    (a) in substitution for the existing lease, and
    (b) on payment of the premium payable under Schedule 13 in respect of the grant,

    a new lease of the flat at a peppercorn rent for a term expiring 90 years after the term date of the existing lease.

(2) In addition to any such premium there shall be payable by the tenant in connection with the grant of any such new lease such amounts to the owners of any intermediate leasehold interests (within the meaning of Schedule 13) as are so payable by virtue of that Schedule.

(3) A tenant shall not be entitled to require the execution of any such new lease otherwise than on tendering to the landlord, in addition to the amount of any such premium and any other amounts payable by virtue of Schedule 13, the amount so far as ascertained—
    (a) of any sums payable by him by way of rent or recoverable from him as rent in respect of the flat up to the date of tender;
    (b) of any sums for which at that date the tenant is liable under section 60 in respect of costs incurred by any relevant person (within the meaning of that section); and
    (c) of any other sums due and payable by him to any such person under or in respect of the existing lease;

    and, if the amount of any such sums is not or may not be fully ascertained, on offering reasonable security for the payment of such amount as may afterwards be found to be payable in respect of them.

(4) To the extent that any amount tendered to the landlord in accordance with subsection (3) is an amount due to a person other than the landlord, that amount shall be payable to that person by the landlord; and that subsection has effect subject to paragraph 7(2) of Schedule 11.

(5) No provision of any lease prohibiting, restricting or otherwise relating to a sub-demise by the tenant under the lease shall have effect with reference to the granting of any lease under this section.

(6) It is hereby declared that nothing in any of the provisions specified in paragraph 1(2) of Schedule 10 (which impose requirements as to consent or consultation or other restrictions in relation to disposals falling within those provisions) applies to the granting of any lease under this section.

(7) For the purposes of subsection (6), paragraph 1(2) of Schedule 10 has effect as if the reference to section 79(2) of the Housing Act 1988 (which is not relevant in the context of subsection (6)) were omitted.

Section 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.

Commonhold and Leasehold Reform Act 2002

Schedule 12, paragraph 10

(1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).

(2) The circumstances are where—

- (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
- (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

(3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—

- (a) £500, or
- (b) such other amount as may be specified in procedure regulations.

(4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.