



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference: CHI/00HG/OLR/2014/0107
Property: Flat 1, 20 Allendale Road, Plymouth PL4 6JA

Applicant: Jai Popplewell
Representative: Thompson and Jackson, Solicitors

Respondent: Peter Anthony Lyne

Type of Application: Section 51 Leasehold Housing and Urban Development Act 1993
(Valuation and Terms: Missing Landlord)

Tribunal Members: Judge A Cresswell (Chairman)
Mr M Woodrow MRICS

Date and venue of Hearing: 25 July 2014 by Paper Determination
Date of Decision: 4 August 2014

DECISION

DETERMINATION

The price payable under Section 51 of the Leasehold Housing and Urban Development Act 1993 (“the 1993 Act”) for the extension of the leasehold interest in the property is £5,520 (Five thousand five hundred and twenty pounds). With the exception of the term and price payable and the ground rent, the lease will otherwise remain unaltered.

The Application

1. The Applicant is tenant of the property. The Respondent is the landlord and freeholder.
2. By written notice dated 17 January 2014, the Applicant claimed to exercise the right to acquire a new lease of the property, pursuant to Section 42 Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act"). He proposed a premium of £4,441.
3. At Plymouth County Court by Order of 2 May 2014, District Judge Griggs ordered that the property was to be vested in the Applicant pursuant to Section 50(1) of the 1993 Act. District Judge Griggs transferred the matter to this Tribunal under paragraph 3 of Schedule 12 of the 1993 Act for the approval of the lease and determination of the Appropriate Sum.

Inspection and Description of Property

4. The Tribunal inspected the property on 25 July 2014 at 0945. Present at that time were the Tribunal members and a representative of Bradleys Estate Agents who are marketing the flat. The property in question comprises a first and second floor maisonette which forms part of a 3 storey mid-terraced house that has been previously converted to provide two leasehold units. It was built in about 1900 of solid rendered masonry construction under a pitched and slated roof. The windows are uPVC double glazed.

The accommodation comprises:

Ground floor: shared entrance and hall with door to –

First floor: landing, living room, bedroom, bathroom with wc,

Second floor: bedroom.

Directions and Hearing

5. Directions were issued on 28 May 2014. These directions provided for the matter to be determined on the papers without an oral hearing.
6. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration including an updated Valuer's report.
7. This determination is made in the light of the documentation submitted in response to those directions, which included the additional valuation statement made by Mr David Hickman FRICS and dated 5 June 2014.

The Law

Leasehold Reform Act 1993

50 Applications where landlord cannot be found

(1) Where—

(a) a qualifying tenant of a flat desires to make a claim to exercise the right to acquire a new lease of his flat, but

(b) the landlord cannot be found or his identity cannot be ascertained,

the court may, on the application of the tenant, make a vesting order under this subsection.

51 Supplementary provisions relating to vesting orders under section 50(1)

(1) A vesting order under section 50(1) is an order providing for the surrender of the tenant's lease of his flat and for the granting to him of a new lease of it on such terms as may be determined by [the appropriate tribunal] to be appropriate with a view to the lease being granted to him in like manner (so far as the circumstances permit) as if he had, at the date of his application, given notice under section 42 of his claim to exercise the right to acquire a new lease of his flat.

(2) If [the appropriate tribunal] so determines in the case of a vesting order under section 50(1), the order shall have effect in relation to property which is less extensive than that specified in the application on which the order was made.

(3) Where any lease is to be granted to a tenant by virtue of a vesting order under section 50(1), then on his paying into court the appropriate sum there shall be executed by such person as the court may designate a lease which—

(a) is in a form approved by [the appropriate tribunal], and

(b) contains such provisions as may be so approved for the purpose of giving effect so far as possible to section 56(1) and section 57 (as that section applies in accordance with subsections (7) and (8) below);

and that lease shall be effective to vest in the person to whom it is granted the property expressed to be demised by it, subject to and in accordance with the terms of the lease.

(4) In connection with the determination by [the appropriate tribunal] of any question as to the property to be demised by any such lease, or as to the rights with

or subject to which it is to be demised, it shall be assumed (unless the contrary is shown) that the landlord has no interest in property other than the property to be demised and, for the purpose of excepting them from the lease, any minerals underlying that property.

(5) The appropriate sum to be paid into court in accordance with subsection (3) is the aggregate of—

(a) such amount as may be determined by [the appropriate tribunal] to be the premium which is payable under Schedule 13 in respect of the grant of the new lease;

(b) such other amount or amounts (if any) as may be determined by such a tribunal to be payable by virtue of that Schedule in connection with the grant of that lease; and

(c) any amounts or estimated amounts determined by such a tribunal as being, at the time of execution of that lease, due to the landlord from the tenant (whether due under or in respect of the tenant's lease of his flat or under or in respect of an agreement collateral thereto).

(6) Where any lease is granted to a person in accordance with this section, the payment into court of the appropriate sum shall be taken to have satisfied any claims against the tenant, his personal representatives or assigns in respect of the premium and any other amounts payable as mentioned in subsection (5)(a) and (b).

(7) Subject to subsection (8), the following provisions, namely—

(a) sections 57 to 59, and

(b) section 61 and Schedule 14,

shall, so far as capable of applying to a lease granted in accordance with this section, apply to such a lease as they apply to a lease granted under section 56; and subsections (6) and (7) of that section shall apply in relation to a lease granted in accordance with this section as they apply in relation to a lease granted under that section.

(8) In its application to a lease granted in accordance with this section—

(a) section 57 shall have effect as if—

(i) any reference to the relevant date were a reference to the date of the application under section 50(1) in pursuance of which the vesting order under that provision was made, and

(ii) in subsection (5) the reference to section 56(3)(a) were a reference to subsection (5)(c) above; and

(b) section 58 shall have effect as if—

(i) in subsection (3) the second reference to the landlord were a reference to the person designated under subsection (3) above, and

(ii) subsections (6)(a) and (7) were omitted.

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* [re-entry or otherwise (subject to section 85 of the Tribunals, Courts and Enforcement Act 2007)] 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 an 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) 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 land registration rules under the Land Registration Act 2002.

The Lease

8. The property is held under a long lease dated 10 August 1984 for a term of 99 years at a ground rent of £25 (increasing by £25 after 33 and then 66 years throughout the term). The leasehold interest was acquired by the Applicant by transfer on 21 September 2005.

The Valuation

9. The Tribunal reached its valuation by applying the requirements of the 1993 Act to the property.
10. The applicant's expert, Mr Hickman, provided a valuation report dated 12 March 2013 (and an additional report dated 5 June 2014) which the Tribunal noted. The Tribunal's valuation differs from that of Mr Hickman partly because he used £60 as the ground rent for the last 33 years of the term, where the lease provides for £75.
11. The Tribunal was aware of no reason why the terms of the new lease should differ save in relation to the extended term and price and the amendment of the ground rent to that of a peppercorn rent (there being no means of paying ground rent to the missing landlord) and so determines.

Conclusion

12. Using the above methodology, the Tribunal considers the correct premium to be £5,520 (Five thousand five hundred and twenty pounds) and determines that the terms of the new lease should not differ from the terms of the original lease save in relation to the premium and that the term be extended by 90 years in addition to the unexpired term and that the ground rent be a peppercorn. In accordance with Section 57(11) of the 1993 Act, 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 land registration rules under the Land Registration Act 2002.
13. The Tribunal's valuation schedule is annexed below this Determination. The valuation schedule is illustrative and should not be taken as a guide to other cases.

A Cresswell (Judge)

Valuation Schedule - Flat 1, 20 Allendale Road, Plymouth, PL4 6JACapital value: £120,000 with a long lease (as per Applicant's surveyors report).Ground rent: Commencing at £25 per annum increasing to £50 after 33 years and £75 after 66 years. (NB – Applic's surveyor uses £60 for last period in his calculation).Lease: 99 years from 1st Sept 1983 (lease is dated 10th Aug 1984).Unexpired term: 68 years.Assumptions: Relativity has been taken at 95%. Yield on term: 7%; Yield on Reversion: 5% (as per Applicant's surveyors report).VALUE OF INCOME

Ground rent £25.00 PA			
2 years @ 7% = 1.808	=	45.20	
 Ground rent £50.00 PA			
33 years @ 7% = 12.754 = £637.70			
Deferred 2 years = .8734387	=	556.99	
 Ground rent £75.00 PA			
33 years @ 7% = 12.754 = £765.24			
Deferred 35 years = .0936629	=	<u>89.59</u>	
			£691.78

REVERSIONARY VALUE

Value of flat £120,000		
Present value of £1 deferred		
68 years @ 5% = 0.0362349	=	<u>£4,348.19</u>
 FREEHOLDER'S INTEREST =		<u>£5,039.97</u>
		(Say) £5,040.00

MARRIAGE VALUE

Value of flat with long lease	£120,000	
Less Freeholders interest	<u>5,040</u>	
	£114,960	
Less Lessees interest (95%)	<u>£114,000</u>	
	£ 960	
 Freeholders share @ 50%		<u>£480.00</u>
 VALUE OF LEASE EXTENSION/PREMIUM TO PAY:		<u>£5,520.00</u>

A Cresswell (Judge)