



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

Case Reference : **MAN/00CG/OLR/2014/0011**

Property : **Flat 3, Kimberley Court,
5 Walkley Lane, Sheffield S6 2NX**

Applicant : **Mr Ben Cook**

Representative : **In person**

Respondent : **P.A.S. Property Service Limited**

Representative : **Taylor & Emmet LLP**

Type of Application : **Leasehold Reform, Housing and Urban
Development Act 1993-Section 48(1)-
Application for determination of
premium other terms in dispute**

Tribunal Members : **Judge J. Oliver
Mrs S. Kendall MRICS**

Date of Determination : **12th November 2014**

Date of Decision : **13th November 2014**

DECISION

Decision

1. The premium payable for the new Lease is £4291.00.
2. The amounts payable by the Applicant for legal fees and valuation fees pursuant to section 60 of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act) are in the sums of £500 plus VAT and £300 plus VAT respectively.
3. The Lease be amended to reflect the amount payable pursuant to Clause 16 of the Sixth Schedule of the Lease (as referred to below) upon giving notice shall be £40 plus VAT.
4. The terms required by sections 57(7) and (11) of the Act are included within the Lease.

Application

5. On 14th April 2014 Mr Ben Cook (the Applicant) made an application for the determination of the premium payable and the resolution of other matters at issue arising from an application to extend the Lease relating to Flat 3 Kimberley Court, 5 Walkley Lane Sheffield (the Property).
6. The Property is held under a Lease dated 6th October 1987 for a term of 99 years from 1st January 1987 and made between Frankley Builders Limited (1) and Karen Lesley Henser (2) (the Lease).
7. The Applicant acquired the good leasehold title of the Property on 9th July 2003 for the remaining term.
8. The Respondent to the application is P.A.S Property Services Limited (the Respondent) who acquired the leasehold interest in the Property on 24th January 1997.
9. The freeholder of the Property is not known.
10. An issue arose between the parties as to whether the Respondent's counter-notice to the application was valid given it was not served by the freeholder.
11. The Respondent accepted that, for the purposes of the application, the Respondent was the Landlord and that the Tribunal had jurisdiction to make a determination as asked.
12. Directions were issued on 17th July 2014 providing for the filing of statements and valuations and thereafter for the matter to be listed for a paper determination on 30th September 2014 unless either party requested a hearing.

13. An application was made by the Respondent for the opportunity to seek further advice from their valuer and the determination scheduled for the 30th September was adjourned to 12th November 2014.
14. On 13th November 2014 the Respondents filed a further response from their valuer. Upon the basis this was after the filing date and the determination date the Tribunal did not consider it.
15. The Tribunal undertook an inspection of the Property on 12th November 2014.
16. Neither party requested a hearing.

Issues

17. The issues for determination by the Tribunal are:
 - The premium payable for an extension of the Lease.
 - The amount payable by the Respondent for legal and valuation fees. The Respondent sought a payment of £750 plus VAT for legal fees and £400 plus Vat for valuer's fees. The Applicant proposed that his liability for costs be limited to £100 plus VAT.
 - The Respondent sought an amendment to Clause 16 of the Sixth Schedule to provide for an increase of the fee payable for any notice to be increased from £10 to £40 plus Vat "other such greater registration fee as the Landlord shall reasonably require." The Applicant objected to any such increase.
 - The Respondent proposed that the terms required by sections 57(7) and (11) of the Act be included in the new lease.

The Property

18. The Property is a second floor flat within a purpose built development containing 4 flats, built around 1987.
19. It comprises a living room, kitchen, bathroom and two bedrooms. The hallway has a store cupboard that has been converted to a small utility cupboard by the Respondent, housing a washing machine.
20. The Property has an integral garage and storage room at ground level.
21. Access to the flat is by an internal concrete staircase.
22. The Respondent has undertaken work to the flat including the installation of a new kitchen, new central heating boiler and new double glazed windows.

The Law

23. Section 48(1) of the Act enables an application to be made to the First-tier Tribunal for a determination in respect of any disputed terms relating to the granting of a new lease.

24. Section 56 (1) of the Act provides as follows:

“Where a qualifying tenant of a flat has under this Chapter a right to acquire a new lease of the flat and gives the landlord 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 if 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 after the term date of the existing lease.”

25. Section 57 (7) and (11) of the Act state as follows:

(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.

(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]

Submissions

Valuation

26. The parties agreed that the valuation date, for the purpose of the application is the date of the Applicant’s notice, namely 18th December 2013.
27. The Applicant stated he had been unable to obtain professional advice regarding the valuation of the flat and his application due to a paucity of experienced advisors within the Sheffield area. He therefore produced a number of comparables by way of evidence relying upon the areas of the flats and their location.
28. The Applicant stated the floor area of the Property to be 47 sq m.
29. The comparable properties are all in the Walkley area, being 23 Chapel Bank that sold in May 2013 for £105,000, 29 Walkley Lane that sold for £122,950 in August 2013 and two properties at Regent Court. The former was

marketed in November 2013 at £60,000 and the latter being sold in November 2013 at £63000.

30. The Applicant submitted that from any valuation there should be deducted the cost of improvements undertaken at the Property. These amounted to £11,269, not only being the costs of the works mentioned above, but also the costs of redecoration in the sum of £1,200.
31. The Applicant therefore proposed that the flat should be valued at £69,101.
32. The Respondent submitted a report from Mr John Francis, Chartered Surveyor, from Crapper & Haigh.
33. Mr Francis stated that the Applicant's valuation methodology was flawed. Any valuation based upon a Property's area was not appropriate. Further the properties in Regent Court were not directly comparable with the Property, the Regent Court development being in a market on its own. In addition, those properties were on short leases with rising ground rents.
34. Mr Francis suggested the floor area of the flat, excluding the garage and store is 54.44 sq m.
35. Mr Francis did not accept that the work undertaken to the Property amounted to improvements and were no more than usual maintenance. Those works should therefore be excluded from any valuation. Furthermore, it was not appropriate for the cost of the works to be used to reflect their value (if any).
36. Mr Francis stated that other comparable properties were available including flats within the same complex, namely Flat 4 Kimberley Court . This had been sold, subject to contract, for £111,950. This had the benefit of a lease extension. Flat 2 Kimberley Court was also on the market for sale. This also has the benefit of a lease extension and is on sale for £108,950. A flat in the adjoining block at Salisbury Court was sold in August 2013 for £122,950. An identical flat, also at Salisbury Court is on the market for £110,000. Another flat, again in an adjoining block on the same road is sold, subject to contract for £114,950.
37. Mr Francis did not accept the cost of the works at the Property should be brought into reducing its value and submitted that the value should be £112,000.
38. The Applicant responded to the report with further submissions challenging the floor area and the comparable evidence. In respect of the latter it was said the Respondent had not provided the dates relating to any of the given values and all their comparable evidence was after the relevant date in December 2013.
39. It was further submitted that any valuation should reflect evidence of poor management and disrepair at the Property. In particular there was evidence of poorly maintained windows in the communal areas and that the staircase

had been poorly painted, such that it was showing wear shortly after being painted. There was evidence of a supporting wall, to the rear of Salisbury Court, bowing and a wooden structure attempting to support it.

40. The Applicant stated that if the valuation of 2 Kimberley Court was to be used then it should be noted that this was originally on the market for sale at £111,950, the value suggested by the Respondent for the Property, but that it has since been reduced to the current asking price. This figure should be discounted to the relevant date in 2013 and taking into account movements in the property market since that time, would give a reduction to £98,595. There should then be deducted from this figure the cost of works at the flat, giving a revised value of £87,326.

Remainder of term

41. 72.04 years, this being taken from the Lease, namely 1st January 1987 to the date of the Notice. This should be rounded up to 73 years for the purpose of calculating the premium.
42. Mr Francis agreed the remaining term but stated that, in accordance with established practice, this should be rounded down to 72 years.

Relativity

43. The Applicant submitted that the rate for relativity should be 95% based upon the Austin Grey curve that proposes 95.4% for properties outside Greater London. The RICS publishes all applicable curves that “give a mean relativity of 94.6% for properties in Greater London and England (combined). I therefore propose a 95% relativity value as a fair compromise, and use this figure in my calculations.”
44. Mr Francis referred to a decision of the Upper Tribunal [Coolrace Limited (LRA/39/2011)] that indicated a preference for the use of the Leasehold Advisory Service Graph and which produced a relativity of 94.1%

Deferment

45. The Applicant referred to the *Sportelli* guidance and that for a flat the appropriate rate was 5%. Subsequent cases have shown that this figure is capable of being varied to reflect the lower prospect of growth for properties outside London. Upon this basis the Applicant argued that the deferment rate should be 6.5%. This is based on an additional 0.75% to risk premium and 0.75% in relation to management risk. The Applicant stated that the Landlord poorly managed the Property.
46. Mr Francis stated that following the decision in *Alexander Voyvoda* (1) *Grosvenor West End Properties*, (2) *32 Grosvenor Square Limited* [2013] UKUT 0334 (LC), there should now be no addition for management risk, as claimed at 0.75%.

47. He further stated that no substantive evidence has been produced by the Applicant to justify a further 0.75% claimed for risk. A further 0.25% was conceded. Mr Francis suggested a deferment rate of 5.25%.

Capitalisation.

48. Both parties agreed a capitalisation rate of 7%.

Calculations

49. The Applicant initially proposed a premium of £2,008 for the new lease. This was subsequently varied to either £2,552.24 or £1,330.26 dependent upon the valuation of the Property.
50. Mr Francis proposed a premium payable of £4,909.27.

Fees

51. The Respondent proposed the fees payable by the Applicant, as required by section 60 of the Act, should be £400 plus VAT for the valuer's fee and £750 plus VAT legal fees for the grant of a new lease.
52. The Applicant submitted that his contribution to all fees should be no greater than £100. He stated that the valuer had "spent only 9 minutes inspecting the property, missing critical matters relating to the communal areas and site" The Applicant further argued that he was not liable for the Surveyor's costs, relying on section 60(5) of the Act. The Applicant submitted that the valuer's costs had only been incurred when preparing for the Tribunal.
53. The Applicant stated that the fees for legal fees were unreasonable. The Respondent's counter-notice was defective and there were delays. Further the Respondents and agents have experience in dealing with lease extensions and so the "completion of another should be a basic administrative task".

Determination

54. The Tribunal considered the evidence produced by both parties and thereafter made the following determinations.

Valuation

55. The Tribunal noted the detailed arguments put forward by the Applicant in support of his valuation and considered credit should be given to him for the information provided, especially given it had been done without professional advice. However, the reliance upon the area of the Property to base a valuation was not a method normally adopted.
56. The Tribunal also considered the submissions made in respect of poor management and disrepair. It did not consider the defective wall behind Salisbury Court would have any impact upon the value of the Property,

Further, whilst it noted the Applicant's concerns relating to the management of the Property and the poorly maintained windows, again it did not consider those items would have any impact upon the valuation. They were not of great significance.

57. The Tribunal noted the comparable evidence produced by both parties. It considered that the use of those properties either within the same block or those near to it to be of most relevance. In this, it preferred the evidence of the Respondent.
58. The Tribunal considered that the value of the flat at the relevant date to be £110,000. This is taking into account the asking price for 2 Kimberley Court at £108,950 and the sale of 11 Kimberley Court for £111,950. Whilst the comparable evidence was after the relevant date, the Tribunal did not consider those values to be significantly different from what would have been achievable in December 2013.
59. The Tribunal did not, however, accept the arguments put forward by Mr Francis in respect of the works undertaken to the Property by the Applicant. Within his bundle the Applicant included photographs of the kitchen both before and after the work had been done. The work had included the replacement and re-siting of the boiler, new units appliances and flooring. The new double -glazing was of a higher specification than the original. Clearly these two items of works amount to improvements and not just general maintenance. The Tribunal did however accept that the redecoration was general maintenance rather than an improvement.
60. The Tribunal did not agree that the appropriate method to value the improvements was by their cost. It was the effect those improvements had upon the value of the Property. The Tribunal considered the value of those improvements to be £5,000. Thus, the value of the unimproved Property at the relevant date is £105,000.

Remainder of the term

61. The Tribunal agreed with the Respondent and that the remainder of the term should be rounded down from the actual, namely to 72.

Relativity

62. The Tribunal noted the submissions made by both parties upon the issue of relativity. In *Coolrace Limited (LRA/39/2011)* it was confirmed that the use of relativity graphs was necessary when no other evidence was available to it. However, in this case there is evidence of recent transactions of comparable properties, namely Flats 2 & 4 Kimberley Court. In those circumstances the Tribunal did not consider it necessary to rely upon the graphs and instead considered the value to be used at £110,000.

Deferment

63. The Tribunal noted the decision made in *Sportelli v Cadogan* [2007] EWCA Civ 104 that determined the generic deferment rate for a flat is 5% and that should only be varied upon if there is compelling evidence to do so.
64. The Applicant submitted a deferment rate of 6.25% whilst the Respondent proposed 5.25%.
65. The Tribunal did not consider the arguments put forward by the Applicant to be compelling. The Tribunal accepted the submission made by the Respondent that the decision in *Zuckerman and Others v Trustees of Calthorpe Estate LRA/97/2008* no longer applied and there should be no addition for management risk.
66. The Tribunal further considered whether there should be any addition to the rate for Risk Premium as suggested by both parties. It noted the concession by the Respondent of 5.25% and considered this to be reasonable given the absentee freeholder. Accordingly this is the deferment rate to be applied to the Property.

Capitalisation

67. The rate for capitalisation is to be 7%, this being the rate agreed by both parties.

Calculation

68. The calculation showing the premium payable for the Property, in the sum of £4,291 is annexed.

Fees

69. The Tribunal determined the sum to be paid for legal fees is £500 plus VAT. Whilst the Tribunal noted the Applicant's comments it was noted that the fees payable under section 60(1) of the Act relate to the granting of a new lease and any investigation relating to it. It does not relate to any costs of the proceedings before the Tribunal (Section 60(4)). Consequently the Respondent's conduct within the proceedings is not a relevant factor when determining the reasonableness of any charges. The Respondent has made no application for those costs.
70. The Tribunal considered that a reasonable rate for any legal work was £200 per hour, allowing for a combination of partner and assistant working on the new lease. The costs to be paid are in the sum of £500 plus VAT, allowing for 2.5 hours.
71. The Tribunal further considered the fees to be paid to Mr Francis for the work undertaken by him on behalf of the Respondent. Those are payable by the Applicant pursuant to section 60(1) of the Act. The Tribunal considered a suitable rate for the work should again be £200 per hour but limited to 1.5 hours giving a charge of £300 plus VAT.

Calculation of Premium

Value of Tenants existing interest excluding improvements £105,000

Value of Tenants proposed interest £110,000

Value of Landlords Interest (Term and Reversion)

Term

Existing Ground Rent £30
YP for 72 years @ 7% 14.1763 £425.29

Reversion

Quasi freehold value £110,000
Deferred 72 years @5% 0.0251194 2,763.13

Value of Landlords proposed interest

Aggregating the diminution in Landlords Interest

PV £1 deferred 162 years @5% 0.000369
£110,000 x 0.000369 £40.59

Diminution of Landlord's Interest

Original term £425.29
Reversion £2,763.13
Less £40.59
£3,147.83

Marriage Value

Leaseholders present interest £105,000
Plus
Landlords present interest £2,763.13 £107,763.13

Leaseholders new interest £110,000
Plus
Landlords new interest £40.59 £110,049.59
£2286.46

Marriage value @ 50% £1,143.23

Premium

Diminution in Landlords interest £3,147.83
Plus
Marriage Value £1,143.23 £4,291.06