



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

Case Reference		BG/LON/OOAC/OLR/2014/1747
Property	:	65B Sunny Gardens Road, London NW4 1SJ
Applicant	:	Mr S. Conway (leaseholder)
Representative	:	Kingsley Napley LLP, solicitors, with valuation evidence from Strettons, chartered surveyors
Respondents	:	Mr J. Clair and Mrs S. Claire (missing landlords)
Representative	:	Not applicable
Type of Application	:	Seeking a determination of the price payable and the terms of a new lease in a claim for a new lease under Part I of the Commonhold and Leasehold Reform Act 1993 following orders made by the Central London County Court
Tribunal Members	:	Judge James Driscoll and Mr Richard Shaw FRICS
Date and venue of Hearing	:	The tribunal considered the application on the basis of the papers filed by the applicant.
Date of Decision	:	22 January 2015

DECISION

The Decision summarised

1. The premium payable for the grant of a new lease is the sum of £16,000 .
2. From this total sum is to be deducted the sum of £2,349.17 representing the applicant's costs as assessed by the Central London County Court.
3. The terms of the proposed lease are approved.
4. On payment of the sum of £13,650.83 into the Court the applicant is entitled to execute the lease.

Background

5. The applicant became the registered owner of the subject premises (a flat) on 29 June 2004. He seeks a new lease under the provisions in Chapter 2 of Part I of the Act. The landlords who are named as the respondents cannot be traced.
6. Accordingly, those advising the applicant obtained an order from the Court on 11 September 2014 dispensing with service of a notice claiming a new lease. The Court directed that the sums payable for the new lease and the terms of the new lease should be transferred to this tribunal. Later on 6 October 2014 the Court assessed the applicant's costs in the sum of £2,349.17.

Our decision

7. The tribunal gave directions on 10 November 2014 and proposed that the application be dealt with on a consideration of the papers rather than by a hearing. No request for a hearing having been received the tribunal met on 16 December 2014 to consider the application. We had the benefit of a well-prepared bundle which was produced by the applicants solicitors. This included all papers relevant to the Court application, a copy of the existing lease, a copy of the terms of the new lease and a valuation report prepared by the applicant's valuer.

8. Having read and considered the papers we then turned our attention to the valuation report. This was prepared by Ms G. Mariner BSc, FRICS of Strettons, chartered surveyors. She correctly identifies the valuation date as 5 March 2014 the date on which the application was made to the Court. At the valuation date she states that the unexpired term of the lease was 69.8 years. She states that the annual ground rent is £505 per annum. However, from reading the terms of the existing lease it is clear that the ground rent is £50 per annum for the term of the lease. Ms Mariner submits that the appropriate relativity should be 92.5%, a deferment rate of 5% and a capitalisation rate of 7%.
9. In paragraph 2.7 of her report she states that she is familiar with the location of the subject property and with leasehold residential properties. She does not state whether she carried out an inspection of the subject property or, if she did, the date of her inspection. The property is described as a first floor flat with a shared front entrance hall and door. It is located in a two storey building which was constructed as a house and later converted into two flats with an internal floor area of 69.18 metres. The flat has 2 bedrooms, a reception room, a bathroom, a separate WC and an open plan kitchen.
10. As to market evidence she relies on three sales of properties which she says are relevant comparable evidence, two of them in the same road as the subject property. After adjusting these three sale prices for the dates of sale by comparison to the valuation date and adjustments for other factors such as the lack of a garden, a lack of parking she concludes on the basis of this evidence and of her knowledge of the local market, that the long leasehold vacant possession value of the subject property is £315,000 adjusted to a freehold value of £318,000.
11. As to relativity Ms Mariner relies on the research report published by the RICS ("Graphs of Relativity") where she points to five graphs for Greater London and the rest of the country from which she takes the average relativity for an unexpired lease of 69.8 years at 92.5%.
12. We agree with Ms Mariner that the appropriate deferment rate for this property is 5% and that the appropriate rate for capitalising the ground rent that will be lost on the grant of the new lease is 7%.
13. Accordingly we determine that the premium to be paid is the sum of £16,000 as proposed by Ms Mariner. We considered the fact that the leaseholder was unable to pay the ground rent as the landlords are missing. However, we reminded ourselves that under section 166 of the Commonhold and Leasehold Reform Act 2002 there is no liability to pay ground rent unless the landlord has made a demand for the rent. As the landlords are missing it is reasonable to assume that this requirement had not been complied with. As a result, the applicant cannot be required to pay

any arrears of ground rent. From the premium payable the applicant is entitled to deduct the sum of £2,349.17 in relation to the costs order made in this favour by the Court. The net payment, therefore, is the sum of £14,650.83.

14. Turning to the terms of the proposed lease, section 56 of the Act provides that a leaseholder is entitled to a new lease (in substitution for the existing lease) at a peppercorn rent for a term 90 years after the term date of the current lease. Under section 57 of the Act the terms of the new lease are usually those of the existing lease except for the term and the ground rent.
15. Having examined the terms of the proposed lease (tab 13 of the bundle) we are satisfied that they are appropriately drafted. (Our only suggestion is that attestation clause of the draft (page 128 of the bundle) is unnecessary.
16. We are happy to adopt the written valuation submitted by Ms Mariner (at page 76 of the bundle).

Signed: James Driscoll and Richard Shaw

Dated: 22 January 2015