4175

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AQ/OLR/2016/0381**
Property	:	**19 Queens Court, Kenton Lane, Harrow HA3 8RL**
Applicant	:	**Kanagalingam Mathyalagan**
Representative	:	**PEP Honke solicitors**
Respondent	:	**Daejan Properties Ltd**
Representative	:	**Wallace LLP**
Type of application	:	**Section 48 of the Leasehold Reform, Housing and Urban Development Act 1993**
Tribunal members	:	**Judge Nicol**
Date of decision	:	**20th April 2016**

DECISION

Decision

(1) The Tribunal lacks jurisdiction to determine the application due to the invalid nature of the notice of claim for an extended lease, admitted by the Applicant.

(2) The Applicant shall pay the Respondent's costs of £420.

Reasons

1. This case involves an application made by the Applicant leaseholder pursuant to section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") for a determination of the premium to be paid for the grant of a new lease of 19 Queens Court, Kenton Lane, Harrow HA3 8RL (the "property").

2. By a notice of a claim dated 17th August 2015, purportedly served pursuant to section 42 of the Act, the Applicant sought to exercise his right for the grant of a new lease in respect of the subject property. At the time, the Applicant held the existing lease granted on 29th February 1984 for a term of 99 years from 29th September 1980.

3. However, contrary to section 42(3)(f) and (5) of the Act, the date the notice gave by which the Respondent was required to give their counter-notice was said to be 15th October 2015, less than two months from the date of the notice.

4. On 14th October 2015, the Respondent freeholder served a counter-notice without prejudice to their contention that the original notice was invalid. By letter dated 21st October 2015 the Applicant's solicitors stated,

> ... we acknowledge that unfortunately notice was incorrectly dated and accept the same to be invalid.

5. On 2nd March 2016, the Applicant applied to the Tribunal for a determination of the premium to be paid for the extended lease. However, by letter dated 9th March 2016, the Respondent objected to the validity of the notice of claim. By letter dated 11th March 2016, the Tribunal suggested that the validity of the notice was a matter for the county court. By letter dated 14th March 2016, the Respondent accepted that, if they had wanted to challenge the validity of the notice, the county court would have been the appropriate venue but that, in this case, the Applicant had admitted its invalidity in their solicitor's letter of 21st October 2015.

6. The Applicant was invited to make submissions in response to those of the Respondent but did not take the opportunity. Instead, the Tribunal made directions on 22nd March 2016 for determination of the issue of jurisdiction as a preliminary issue. The determination was directed to be on the papers and neither party has requested a hearing.

7. Both parties submitted bundles of documents in accordance with the Tribunal's directions. Somewhat oddly, the Applicant did not include any submissions or statement of case – the directions did not expressly state that such should be included in the bundle but it is difficult to see how a solicitor would not have realised that it was necessary.

8. In the Tribunal's opinion, the Respondent's contentions are correct. The Applicant has clearly admitted that his notice of claim is invalid. This deprives the Tribunal of any jurisdiction to entertain the current application. It must be remembered that a lease extension involves a form of compulsory purchase and the Respondent is entitled to rely on strict compliance with the statutory requirements for the exercise of the Applicant's rights. Further, as the Respondent pointed out, the Applicant had been at liberty to serve a new notice straight away but has chosen not to.

9. In their submissions, the Respondent's solicitor sought costs of £420, presumably inclusive of VAT, for one hour's worth of a partner's time dealing with this preliminary issue. The argument is that the Respondent's solicitor was obliged to prepare the submissions and bundle in the absence of any submissions from the Applicant as to why they had made their application despite the admitted invalidity of their original notice.

10. The Tribunal has the power to award the claimed costs under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 if it is satisfied that the Applicant's conduct of the application has been unreasonable. The Tribunal is satisfied that the Applicant's failure to provide any explanation of their conduct is unreasonable and makes the order for costs.

Name: Judge Nicol **Date:** 20th April 2016