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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL
PROPERTY)

Case reference : LON/00BB/OLR/2016/1363

Property : Flat 2, 85 Clova Road, London E7 9AG

Applicant : Mr David Aviram (the tenant)

Representative : Mr Alan Cohen FRICS
Talbots Surveyors

Respondent : Mr Farhad Raja (the landlord)

Representative : Mr Saab Raja

Type of application : Application to determine the premium payable on a flat lease renewal under section 48(1) of the Leasehold Reform Housing and Urban Development Act 1993

Tribunal member(s) : Judge Pittaway
Miss M Krisko

Date and venue of hearing : 15 February 2017 at 10 Alfred Place,
London WC1E 7LR

Date of decision : 5 April 2017

DECISION

Decisions of the tribunal

Existing Lease value	£252,420.00
Extended lease value	£284,000.00
Freehold value	£286,840.00
Premium	Twenty three thousand four hundred and sixty three pounds (£23,463.00)

The tribunal's valuation is attached as an Appendix

Background

1. The Application

By an application dated 17 August 2016 the applicant sought a determination pursuant to section 48(1) of the Leasehold Reform Housing and Urban Development Act 1993 (as amended) (the "Act") as to the premium payable for the extension of the lease of the Property

2. The Property

The Property the subject of this application is a first floor flat conversion in a two storey building. The valuation report of Simon Matthew & Co Ltd states that it consists of 1 bedroom, living room, study, kitchen and bathroom, that the windows are double-glazed UPVC and that it has gas central heating. The tenant's surveyor in the Statement of Agreed Facts refers to it as being a converted two bed flat, which is confirmed in the valuation of Simon Matthew & Co Limited of 15 December 2016. It has a private garden.

3. Background

3.1	Date of tenant's notice:	18 December 2015
3.2	Date of landlord's counter-notice:	26 February 2016
3.3	Date of application to Tribunal:	17 August 2016

4. Details of tenant's leasehold interest

4.1	Term of lease:	99 years from 18 December 1978
4.2	Ground rent:	£100 p.a. (increased from £15 p.a. by a deed of variation dated 21 October 1988).

5. Matters agreed

5.1 There was a statement of facts agreed which identified that the following were agreed

(a)	Valuation Date:	18 December 2016
(b)	Term:	99 years from 18 December 1978
(c)	Remaining term	62 years
(d)	Ground rent:	£15 p.a. fixed (see below)
(e)	The Capitalisation rate:	7%
(f)	The Deferment rate:	5%
(g)	Relativity:	88%

5.2 The tribunal noted and drew to the parties' attention that the correct ground rent (by reason of the deed of variation) was £100 p.a.

6. Matters in Dispute

6.1 The Matters in dispute were

- (a) The long leasehold unimproved value
- (b) The freehold value; and
- (c) The existing leasehold value unimproved.

6.2 The parties' respective positions were at the time of the Agreed Statement of Facts and Matters in Dispute were

	A	R
The long leasehold unimproved value	£195,000	£270,000
The freehold value	£196,950	£270,000
The existing leasehold value	£171,600	£237,600

6.3 At the time the Agreed Statement of Facts and Matters in Dispute was signed the then landlord's surveyor did not make any distinction between the long leasehold and freehold value. The tenant's surveyor had proposed a leasehold/freehold differential of 1% which was repeated by Mr Cohen, acting for the applicant tenant at the hearing.

6.4 At the hearing Mr Cohen, for the applicant, informed the tribunal that in his opinion the long leasehold unimproved value was £280,000. Mr Raja informed the tribunal that in his opinion the long leasehold unimproved value was worth more than that and on further questioning by the tribunal expressed his opinion that the long leasehold unimproved value was worth £284,000.

6.5 The tribunal noted that in the Statement of Agreed Facts the then surveyor for the applicant had stated the floor area to be 64m².

7. Evidence

- 7.1 The tribunal had before it the Agreed Statement of Facts and Matters in Dispute which had been signed by Stephen Barrable FRICS of Hull & Company for the applicant and Darren Ratour BSc of McDowalls Surveyors for the respondent. This was undated but the tribunal had on its file a copy which had been sent to it by the applicant's solicitors WGS solicitors on 1st November 2016. Neither of these surveyors was still acting for the respective party but neither party suggested that they had not been acting for them at the time the statement was signed, although the respondent questioned what Mr Ratour had agreed to on his behalf in that statement.
- 7.2 The tribunal adjourned the hearing to consider the status of the statement and the extent to which the parties were bound by the matters stated to be agreed in that statement. Following the adjournment they advised the parties that they considered that they were bound by the matters stated to be agreed (save as to the ground rent which was manifestly incorrect) and to the extent the statement said that matters had been agreed the tribunal had no jurisdiction to re open and consider these matters.
- 7.3 Accordingly the only issue in dispute was the long leasehold unimproved value of the property, and the differential between the freehold and extended lease values.
- 7.4 The Tribunal had before it an undated valuation report of Mr Cohen FRICS, acting for the applicant. The Tribunal also had before it a valuation report of Mr W.J Hartnell FRICS of Simon Matthew & Co Ltd for the respondent, dated 21 December 2016.
- 7.5 Mr Cohen gave evidence on behalf of the applicant and Mr Saab Raja gave evidence on behalf of his brother the respondent. Both were cross-examined.
- 7.6 The tribunal have had regard to the evidence, the cross examination and the other papers before them in reaching their determination and comment on specific aspects of these in their reasons below. The tribunal explained to the respondent's representative that he could not be considered an expert witness but had regard to his evidence as a witness of fact.

8. Inspection

Neither party suggested to the tribunal that an inspection was necessary and the tribunal did not consider it necessary to inspect the property.

9. **The Law**

- 9.1 Schedule 13 to the Leasehold Reform, Housing and Urban Development Act 1993 (The Act) provides that the premium to be paid by the tenant for the grant of a new lease shall be the aggregate of the diminution in the value of the landlord's interest in the tenant's flat, the landlord's share of the marriage value, and the amount of any compensation payable for other loss.
- 9.2 The value of the landlord's interests before and after the grant of the new lease is the amount which at the valuation date that interest might be expected to realise if sold on the open market by a willing seller (with neither the tenant nor any owner of an intermediate leasehold interest buying or seeking to buy) on the assumption that the tenant has no rights under the Act to acquire any interest in any premises containing the tenant's flat or to acquire any new lease.
- 9.3 Para 4 of the Schedule, as amended, provides that the landlord's share of the marriage value is to be 50%, and that where the unexpired term of the lease exceeds eighty years at the valuation date the marriage shall be taken to be nil.
- 9.4 Para 5 provides for the payment of compensation for loss arising out of the grant of a new lease.
- 9.5 Schedule 13 also provides for the valuation of any intermediate leasehold interests, and for the apportionment of the marriage value.

Reasons for the Tribunal's decisions.

10. **Extended lease value**

- 10.1 Mr Cohen for the applicant referred the tribunal to various comparables to ascertain the extended lease value. Where necessary he adjusted the sale prices with reference to the Index for flats and maisonettes published by the land registry.
- (a) His preferred comparable was 80B Clova Road which sold in October 2015 for £245,000. He described it as a similar size two bedroom first floor conversion in a similar two-storey semi-detached house with its own section of rear garden, sold with the benefit of an extended lease. It had been refurbished and resold in December 2015 for £280,000.
- (b) He also referred the tribunal to 2 sales of flats with extended leases in Neville Road E7. 84 Neville Road had sold with an extended lease for £325,000 in February 2016. While two bedroomed it was significantly larger than the property. It only had a communal garden but Mr Cohen considered its location superior to the property. 116a Neville Road had sold for £345,000 in April 2015. It was a refurbished three-bedroom maisonette, slightly larger than the property at 69 m², with an

additional ensuite shower room, a 999 year lease and share of the freehold. He considered the building and the location superior to the Property.

- (c) Mr Cohen referred the tribunal to 141 Upton Lane E7 which sold in March 2016 for £300,000. This was a two bedroom ground floor flat in a Victorian conversion. It had a slightly smaller GIA of 55 m2 but this excluded the cellar which was part of the demise. It had a communal rear garden. Mr Cohen considered its location superior to the Property. He time adjusted this sale price to an adjusted value of £285,243.
- (d) The last comparable in his report was 41a Ramsay Road E7 which sold in June 2016 for £340,000. This again was a two bedroom ground floor flat in a Victorian two-storey terraced house with a rear garden. He time adjusted this sale price to £302,114.

On the basis of these comparables Mr Cohen proposed an extended lease value of £280,000

- 10.2 Mr Raja submitted that the extended long leasehold value of the property was £284,000 but provided no evidence to substantiate this.

He provided the tribunal with the valuation undertaken by Simon Mathew & Co Ltd which the tribunal noted did not contain the usual Statement of Truth contained in expert statements prepared for expert witnesses appearing before the tribunal. It was simply headed "Valuation for Lease Extension (also to be used for Rent Tribunal)" and in its introduction stated it was written for Mr Raja to use, its object being to "negotiate an extension to 99 years for the Head Lease" It stated that "the value for purchase of long leasehold without extension" (sic) was £240,000, and that "value for renewal" was £25,000. It referred to two comparables (without any supporting evidence to substantiate the figures used);

- (a) A first bedroom flat in Maryland Point E15 where £20,000 was paid for a lease extension in 2014 (no further information provided); and
- (b) 227a Neville Road E7 sold in April 2014 for £220,000 without a lease extension and resold in November 2016 with a new 99 year lease for £360,000

- 10.3 In the circumstances the tribunal is not able to place much weight on the evidence of Mr Raja or the report of Simon Mathew & Co Ltd.

- 10.4 The tribunal accepts that flats sold after the valuation date may also be used as comparables where time adjusted in the same way as comparables sold before the valuation date.

- 10.5 The tribunal considers that on the basis of the evidence before it that 8ob Clova Road had certain disadvantages when compared to the Property; namely the service road at its rear and its smaller size. The

tribunal considers that Mr Cohen may have placed too much evidential weight on 8ob Clova Road, and therefore it had regard to the other comparables he had offered. It noted that 141 Upton Road, in a poorer location, had achieved a time adjusted price of £285,243, and that 41a Ramsay Road E7 had a time adjusted sale price of £302,114.

- 10.6 The tribunal therefore considers an extended leasehold value of £284,000 to be more appropriate than the £280,000 proposed by Mr Cohen.

Freehold vacant possession value

11. The respondent did not address the freehold/extended leasehold differential in his evidence. Mr Cohen and the previous surveyor for the applicant both suggested 1%, which the tribunal accepts.

Existing leasehold value

12. As the parties had agreed a relativity of 88% the tribunal has had regard to this agreement in determining the existing leasehold value.

Name: Judge Pittaway

Date: 5 April 2017

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

APPENDIX
TRIBUNAL VALUATION
FLAT 2, 85 CLOVA ROAD, LONDON, E7 9AG

Matters Agreed

Date of valuation	18.12.2015.
Unexpired term	62 years
Capitalisation rate	7%
Deferment rate	5%
Relativity	88%

Matters Determined

Extended lease value	£284,000
Freehold value	£286,840
Existing lease value	£252,420

Ground Rent

£100 pa 62 years 7% 14.0704	£ 1,407
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Reversion

£286,840 62 years 5% 0.0486	<u>£13,940</u>
Freeholder's interest	£15,347

Marriage Value

Extended lease	£284,000
Less:	
Existing lease	£252,420
Freeholder's interest	<u>£ 15,347</u>
	£ 16,233
50%	<u>£ 8,116</u>
<u>Premium</u>	<u>£23,463</u>