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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AQ/OLR/2018/0708**
Property	:	**First Floor Maisonette, 23, Queens Court, Kenton Lane, Harrow, Middlesex, HA3 8RL**
Applicant	:	**Charulatta Bipin Ravani**
Representative	:	**Taylor Rose**
Respondent	:	**Daejan Properties Limited**
Representative	:	**Wallace LLP**
Type of Application	:	**S48 Leasehold Reform, Housing and Urban Development Act 1993 (the Act)**
Tribunal Member	:	**Mrs H C Bowers – Valuer Chair**
Date and venue of Determination	:	**4 September 2018 at 10, Alfred Place, London, WC1E 7LR**
Date of Reasons	:	**26 September 2018**

DECISION ON A PRELIMINARY ISSUE

The Tribunal exercises its discretion under rule 8(2)(a) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and waives the requirement that this application form should have been signed and that it should have been accompanied by a copy of the Notice of Claim. Therefore, the Tribunal has jurisdiction to deal with this application.

The Background:

1. The Applicant is the leaseholder of the First Floor Maisonette at 23 Queens Court, Kenton Lane, Harrow, HA3 8RL (the subject flat). The Respondent, who holds the freeholder interest of 19-42 Queens Court, Kenton Lane, Harrow, is Daejan Properties Limited. The lease of the subject flat is dated 27 March 1991 is for a term of 99 years from 29 September 1980.

2. On 22 September 2017 the Applicant served a Notice of Claim for a new lease on the Respondent, pursuant to section 42 of the Leasehold Reform, Housing and Urban Development Act 1993 (the 1993 Act). The proposed premium was £24,900.00.

3. On 1 December 2017, the Respondent served a Counter-Notice under section 45 of the 1993 Act. It admitted the Applicant's entitlement to a new lease of the Flat but proposed a higher premium of £60,000.00.

The Application:

4. On 29 May 2018 the Tribunal received an application from the Applicant for a determination of the terms that remained in dispute between the parties. Although the application form was undated and unsigned, it was accompanied by a letter from Taylor Rose that was signed and dated. That letter stated

> *"We enclose herewith an Application under Section 48(1) of the Leasehold Reform, Housing & Development Act 1993 in duplicate together with a cheque for £100.00 in relation to your fee."*

5. However, the Tribunal wrote to the Applicant on 31 May 2018 and identified that the statement of truth on the application form was not signed and dated and that the copy of the Notice of Claim provided with the application was not signed and dated. That letter specifically stated

> *"I refer to your application in respect of the above address. Some information was missing that we need in order to process it properly. Please could you supply the following information:*
>
> - *Statement of truth needs to be signed and dated*
> - *Initial Notice needs to be signed and dated".*

6. These deficiencies were corrected and the Tribunal received a revised application form that was dated 4 June 2018, on 5 June 2018.

7. In a letter dated 18 June 2018, Wallace LLP submitted that the Applicant had up until 1 June 2018 to make an application to the Tribunal. It was suggested that as that date had been missed, then the Tribunal did not have jurisdiction to deal with the application.

8. The preliminary issue as to whether the Tribunal had jurisdiction was set out in the Tribunal's letter of 25 June 2018 and this enquired whether the objection to jurisdiction was to be pursued. In a letter dated 29 June 2018, Wallace LLP indicated that they continued to object to the Tribunal having jurisdiction. Therefore, Directions were issued on 3 July 2018.

The Determination:

9. The Directions indicated that this case would be considered on the papers unless either party requested a hearing. There was no such request and therefore this matter has been determined upon consideration of the papers submitted by both parties.

The Law:

10. Section 48(2) of the 1993 Act states that an application must be made no later than the end of the period of six months beginning with the date on which the counter-notice was given to the tenant. Section 48 is reproduced in the annex to this decision.

Submissions:

11. The Applicant provided a bundle of papers for the determination. The bundle included the second application form; the relevant notices; the lease and Land Registry office copies; a valuation report from Willmotts; copies of correspondence with the Tribunal and copies of correspondence between the Taylor Rose, the Applicant's surveyor and Wallace LLP. The bundle included a letter dated 4 December 2017 from Taylor Rose acknowledging the letter from the Respondent dated 1 December 2017 that accompanied the section 45 Counter Notice.

12. The Respondent's submissions stated that the Counter Notice dated 1 December 2017 was sent by fax at 12:08 pm and by courier and was delivered at 1:22pm. It was therefore submitted that the Counter Notice was given on 1 December 2017. Following the decision in *R (on the application of Zaporozhchenko) v Westminster Magistrates Court [2011] EWHC 34 (Admin)* it was suggested that if the notice was given on 1 December 2017 then the application under section 48(1) of the 1993 Act must be made on or before 30 May 2018.

13. It was suggested that following *Salehabdy v Eyre Estates Trustees [2017] UKUT 60 (LC)* an application can be made by sending or delivering to the Tribunal a notice of application. According to Salehabdy, sending can include

the posting of an application and not just the receipt. Therefore, it is suggested that the first application was made on 25/28 May 2018 and that the second application was made on 4 June 2018. There was nothing in Salehabdy that suggested that the application was anything but properly constituted.

14. The commentary in Hague on Leasehold Enfranchisement 6th Edition states that applications to the Tribunal must comply with regulations. The relevant regulations are the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the 2013 Rules) and the relevant part of these rules are reproduced at the end of these reasons. Of particular note is that Rule 26(2)(j) requires that an application contains a statement of truth and Rule 26(2)(n) refers to the relevant Practice Directions. The Practice Directions were issued by the Senior President of Tribunals on 9 September 2013. The relevant part of the Practice Directions is Schedule 3 and again this is reproduced at the end of these reasons. It is submitted that the first application was defective as it did not comply with Rule 26(2)(j) and (n).

15. The Tribunal has no power to extend any statutory time limits unless such power is conferred on the Tribunal by statute. The Respondent poses that the issue for the Tribunal to decide is whether an application that does not comply with the rules was sufficient to comply with the time limits. Applying *Mucelli v Government of Albania [2009] UKHL 2* it was submitted that a rule that allows the waiver of an irregularity could not be used to extend a statutory time limit. As the first application did not comply with the requirements then as at the 30 May 2018, there was no valid application before the Tribunal.

16. As an alternative the Respondent then considers whether the Tribunal could use Rule 8 of the 2013 Rules to waive the requirements of Rule 26. It is suggested that there can be no order regularising the position as the position was regularised after the statutory time period had expired by the Applicant sending the second application. As the signed statement of truth is a fundamental part of the process, the Tribunal would not waive the need for the signature but would require the application to be signed. Likewise, the requirements of the Practice Directions cannot be waived but require compliance. Prejudice is not relevant and the Applicant is entitled to re-commence the process in due course.

The Tribunal's Decision and Reasons:

17. The Tribunal agrees with the submissions made by the Respondent that the Tribunal has no power to extend the time limits set down in statute unless there is specific statutory authority to do so and there is no such authority in this case.

18. However, it is clear that the first application form that was sent either on 25 or 28 May 2018 was within the statutory time limits of six months from 1 December 2017.; and it therefore complies with the requirements of section 48 of the Act. That application form was unsigned but was accompanied by a letter that was signed and together that is sufficient for the Tribunal's purposes. In any

event the application form is drafted by the Tribunal for its own convenience and that of the parties, it is not a prescribed from and it has no statutory force.

19. What is less clear is whether the application form was accompanied by a copy of the Notice of Claim. The Tribunal's letter of 31 May 2018 was not specific and it is not clear whether there was an unsigned Notice of Claim with the application form or whether there was no Notice of Claim at all.

20. However, in the Tribunal's opinion the fact that the first application form was incomplete is not fatal. Although Rule 26 provides the details about how an application can be made, it should be considered in the context of the rest of the 2013 Rules. In particular Rule 8(1) states that "*An irregularity resulting from a failure to comply with any provision of these rules, a practice direction or a direction does not of itself render void the proceedings or any step taken in proceedings*". Under Rule 8(2) there are various steps that a Tribunal can take to deal with any failure. The Tribunal can waive the failure and can require the provision of information or require the failure to be remedied. The letter of 31 May 2018 that was sent out to the parties, requiring the defects/failures to be remedied was sent out by a case officer without a reference to a Tribunal Judge or Chair. A case office has no delegated powers and was unable to waive any defect; there was simply a request for further information. The Respondent claims that a defect cannot be waived under Rule 8 if the defect has already been regularised. The Tribunal disagrees, in the opinion of the Tribunal the steps available under Rule 8 are not exclusive.

21. As the first application was accompanied by a letter that was signed in the opinion of the Tribunal this is sufficient for the application to be commenced. However, in so far as it is necessary the Tribunal exercises its powers under Rule 8(2)(a) of the 2013 Rules and waives the requirement for the application form itself to be signed. As for whether the application was accompanied by a Notice of Claim, whether signed or not; the Notice of Claim is useful information to understand the context of the application, but it is not essential to understand the application. For example, it is not as important of the Counter-Notice that helps to determine the relevant statutory time limits for receipt of the application. In the circumstances the Tribunal exercises its discretion under Rule 8(2)(a) and so far as is necessary waives the requirement for the Notice of Claim to accompany the application.

22. In these circumstances, the Tribunal determines that a valid application was received within the statutory time limits and therefore the Tribunal has jurisdiction to consider this case. The Tribunal's usual Directions will now be issued so that this case can proceed in the normal manner.

Chairman: *Helen C Bowers* **Date:** *26 September 2018*

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).

Annex:

Leasehold Reform, Housing and Urban Development Act 1993
Section 48.— Applications where terms in dispute or failure to enter into new lease.
(1) Where the landlord has given the tenant—
(a) a counter-notice under section 45 which complies with the requirement set out in subsection (2)(a) of that section, or
(b) a further counter-notice required by or by virtue of section 46(4) or section 47(4) or (5),
but any of the terms of acquisition remain in dispute at the end of the period of two months beginning with the date when the counter-notice or further counter-notice was so given, the appropriate tribunal may, on the application of either the tenant or the landlord, determine the matters in dispute.
(2) Any application under subsection (1) must be made not later than the end of the period of six months beginning with the date on which the counter-notice or further counter-notice was given to the tenant.
(3) Where—
(a) the landlord has given the tenant such a counter-notice or further counter-notice as is mentioned in subsection (1)(a) or (b), and
(b) all the terms of acquisition have been either agreed between those persons or determined by the appropriate tribunal under subsection (1),
but a new lease has not been entered into in pursuance of the tenant's notice by the end of the appropriate period specified in subsection (6), the court may, on the application of either the tenant or the landlord, make such order as it thinks fit with respect to the performance or discharge of any obligations arising out of that notice.

(4) Any such order may provide for the tenant's notice to be deemed to have been withdrawn at the end of the appropriate period specified in subsection (6).
(5) Any application for an order under subsection (3) must be made not later than the end of the period of two months beginning immediately after the end of the appropriate period specified in subsection (6).
(6) For the purposes of this section the appropriate period is—
(a) where all of the terms of acquisition have been agreed between the tenant and the landlord, the period of two months beginning with the date when those terms were finally so agreed; or
(b) where all or any of those terms have been determined by the appropriate tribunal under subsection (1)—
(i) the period of two months beginning with the date when the decision of the tribunal under subsection (1) becomes final, or
(ii) such other period as may have been fixed by the tribunal when making its determination.
(7) In this Chapter *"the terms of acquisition"*, in relation to a claim by a tenant under this Chapter, means the terms on which the tenant is to acquire a new lease of his flat, whether they relate to the terms to be contained in the lease or to the premium or any other amount payable by virtue of Schedule 13 in connection with the grant of the lease, or otherwise.

Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013/1169

Rule 8.— Failure to comply with rules, practice directions or Tribunal directions

(1) An irregularity resulting from a failure to comply with any provision of these Rules, a practice direction or a direction does not of itself render void the proceedings or any step taken in the proceedings.
(2) If a party has failed to comply with a requirement in these Rules, a practice direction or a direction, the Tribunal may take such action as the Tribunal considers just, which may include—
(a) waiving the requirement;
(b) requiring the failure to be remedied;
(c) exercising its power under rule 9 (striking out a party's case);
(d) exercising its power under paragraph (5); or
(e) barring or restricting a party's participation in the proceedings.
(3) In land registration cases, the action that the Tribunal may take includes—
(a) where the party who failed to comply was the person who made (or has been substituted for or added to the party who made) the original application, directing the registrar to cancel the original application in whole or in part;
(b) where the party who failed to comply was an objector to (or was substituted for or added as an objector to) the original application, directing the registrar to give effect to that application in whole or in part as if that objection had not been made.
(4) In land registration cases, the Tribunal must, if the action taken does not include either of the requirements referred to in paragraph (3), send written notice to the parties of the Tribunal's decision as to what action is taken (if any) and give any consequential directions.
(5) The Tribunal may refer to the Upper Tribunal, and ask the Upper Tribunal to exercise its power under section 25 of the 2007 Act in relation to, any failure by a person to comply with a requirement imposed by the Tribunal—
(a) to attend at any place for the purpose of giving evidence;
(b) otherwise to make themselves available to give evidence;

(c) to swear an oath in connection with the giving of evidence;
(d) to give evidence as a witness;
(e) to produce a document; or
(f) to facilitate the inspection of a document or any other thing (including any premises).

Rule 26.— Starting proceedings
(1) An applicant must start proceedings before the Tribunal by sending or delivering to the Tribunal a notice of application.
(2) Such an application must be signed and dated and, unless a practice direction makes different provision, include—
(a) the name and address of the applicant;
(b) the name and address of the applicant's representative (if any);
(c) an address where documents for the applicant may be sent or delivered;
(d) the name and address of each respondent;
(e) the address of the premises or property to which the application relates;
(f) the applicant's connection with the premises or property;
(g) the name and address of any landlord or tenant of the premises to which the application relates;
(h) the result the applicant is seeking;
(i) the applicant's reasons for making the application;
(j) a statement that the applicant believes that the facts stated in the application are true;
(k) the name and address of every person who appears to the applicant to be an interested person, with reasons for that person's interest;
(l) in agricultural land and drainage cases, a description of all the land or holding to which the application relates;
(m) in agricultural land and drainage cases relating to succession under section 39 , 41 or 53 of the 1986 Act—
(i) confirmation that the applicant has given prior written notice of the application to the landlord of the holding and has brought the application to the notice of other persons interested in the outcome of the application; and
(ii) the names and addresses of each person to whom the applicant has provided such notice;
(n) all further information or documents required by a practice direction.
(3) Where an application is made to which a paragraph in a practice direction relating to residential property cases or leasehold cases applies, it must be accompanied by the particulars and documents specified in the relevant paragraph.
(4) In proceedings to appeal a decision to the Tribunal, the application must be accompanied by a copy of any written record of that decision and any statement of reasons for that decision that the applicant has or can reasonably obtain.
(5) The applicant must provide with the notice of application any fee payable to the Tribunal.
(6) This rule does not apply to the extent that rule 28 applies.
(7) This rule does not apply where a form is prescribed for the purposes of starting proceedings in the Tribunal under Part V of the Rent Act 1977 (rents under restricted contracts) or Part 1 of the Housing Act 1988 (assured tenancies, shorthold and non-shorthold).

PRACTICE DIRECTIONS PROPERTY CHAMBER, FIRST-TIER TRIBUNAL RESIDENTIAL PROPERTY CASES

This Practice Direction is supplemental to rule 26 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Schedule 3 – Leasehold Reform Act 1967, Part 1 of the Landlord and Tenant Act 1987, Leasehold Reform Housing and Urban Development Act 1993 (other than an application under Chapter 4 of Part 1 to the 1993 Act)

1. (1) A copy of any notice served in relation to the enfranchisement.

(2) The name and address of the freeholder and any intermediate landlord.

(3) The name and address of any person having a mortgage or other charge over an interest in the premises the subject of the application held by the freeholder or other landlord.

(4) Where an application is made under section 21(2) of the Leasehold Reform Act 1967, the name and address of the sub-tenant, and a copy of any agreement for the sub-tenancy.

(5) Where an application is made under section 13 of the 1987 Act, the date on which the landlord acquired the property and the terms of acquisition including the sums paid.

(6) Except where an application is made under section 24, 25 or 27 of the 1993 Act, a copy of the lease.