



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

Case Reference : CHI/00HD/OLR/2021/0137

Property : 68 Chiltern Close, Warmley, Bristol,
BS30 8UL

Applicant : Sarah Joy Newman

Representative : Barcan & Kirby LLP

Respondent : Ronald William George Maidman
John Peter William Maidman
David Macaree

Representative : Bishop & Sewell LLP

Type of Application : S.48(1) Leasehold Reform Housing and Urban
Development Act 1993

Tribunal members : Judge D Whitney
Regional Surveyor Gater FRICS

Date of Decision : 10th January 2022

DECISION

BACKGROUND

1. The application is for the terms of acquisition which remain in dispute to be determined by the Tribunal and was made on 27 September 2021.
2. Directions were issued on 12th November 2021 including for a hearing. Subsequently it was ordered that the application would be determined on the basis of written representations.

THE LAW

3. The relevant law is found in Section 57 of the Leasehold Reform Housing and Urban Development Act 1993 (“the Act”):

Section 57 “Terms on which new lease is to be granted”, provides:-

“(1) Subject to the provisions of this Chapter (and in particular to the provisions as to rent and duration contained in section 56(1)), the new lease to be granted to a tenant under section 56 shall be a lease on the same terms as those of the existing lease, as they apply on the relevant date, but with such modifications as may be required or appropriate to take account –

(a) of the omission from the new lease of property included in the existing lease but not comprised in the flat;

(b) of alterations made to the property demised since the grant of the existing lease; or

(c) in a case where the existing lease derives (in accordance with section 7(6) as it applies in accordance with section 39(3)) from more than one separate leases, of their combined effect and of the differences (if any) in their terms.

...

(6) Subsections (1) to (5) shall have effect subject to any agreement between the

landlord and tenant as to the terms of the new lease or any agreement collateral

thereto; and either of them may require that for the purposes of the new lease any term

of the existing lease shall be excluded or modified in so far as –

(a) it is necessary to do so in order to remedy a defect in the existing lease; or

(b) it would be unreasonable in the circumstances to include, or include without modification, the term in question in view of changes occurring

since the date of commencement of the existing lease which affect the suitability on the relevant date of the provisions of that lease.”

THE DECISION

4. In reaching our determination we have had regard to the written representations lodged by both parties together with the attachments to the same and the original lease dated 6 December 1972, between Federated Homes Limited (lessor) and Peter Robert Cameron and Ms. Chapman (lessees) for a term of 99 years from 24 June 1972.
5. The issue for determination related to two proposed clauses within the proposed draft lease:

“5. The Tenant FURTHER COVENANTS with the Landlord that the Tenant is to pay to the Landlord on demand the costs and expenses (including any solicitors' surveyors' or other professionals' fees, costs and expenses and any VAT on them) (properly assessed on a full indemnity basis) incurred by the Landlord (both during and after the end of the Term) in connection with or in contemplation of any of the following:-

(a) the enforcement of any of the Tenant Covenants;

(b) preparing and serving any notice in connection with this Lease under section 146 or 147 of the Law of Property Act 1925 or taking proceedings under either of those sections notwithstanding that forfeiture is avoided otherwise than by relief granted by the court;

(c) any consent applied for under this Lease whether or not it is granted (except to the extent that the consent is unreasonably withheld or delayed by the Landlord in circumstances where the Landlord is not entitled to unreasonably withhold or delay consent)

AND

9. It is further agreed that the Lease shall be varied in the following manner:-

a. in Clause 2(1) of the Lease at the end thereof the following words shall be added:-

"And if the said rents or other sums of money hereby reserved are not paid on the due date to pay interest thereon at the rate of Four Per Cent (4%) per annum above base rate for lending of the Barclays Bank Plc from the due date until payment is made

b. in Clause 2 (18) of the Lease the registration fee shall be increased from Five pounds to SIXTY POUNDS (£60.00) or such greater fee as shall be reasonable plus Value Added Tax

c. all payments of rent service charge or otherwise reserved by the Lease shall in addition where appropriate require payment of Value Added Tax at the appropriate rate

6. Both parties agreed the statutory requirements were included within Section 57 of the Act which we have set out below.
7. In short the Respondent freeholder suggests all of the clauses are required to correct omissions within the existing lease and for good estate management. They suggest that other leases have been granted with such terms (and produce Land Registry entries confirming the same) and so such terms should be incorporated. It is suggested that certain of the changes simply reflect developments over time which necessitate the inclusion of such clauses.
8. The Applicant objects to any such changes. The Applicant suggests there is no deficiency within the existing lease and such clauses improve the Respondent freeholders title to the detriment of the leaseholder.
9. Turning now to the clauses. In respect of disputed Clause 5 we do not accept that this is a modification which the Respondent landlord is entitled to require.
10. The current lease includes certain costs recovery at Clause 2(19). We do not accept the Applicant's submissions that Clauses 2(2) and (20) are relevant. We

do however accept the Applicant's submission that a clause such as that proposed in Clause 5 amounts to an improvement.

11. We accept that the courts and tribunals look carefully at clauses freeholders rely upon to recover their costs of bringing proceedings. We have considered paragraphs 52 and 53 of No. 1 West India Quay (Residential) Ltd v East Tower Apartments Ltd [2021] EWCA Civ 1119 but do not find these of assistance to us. In our determination the current lease is not defective. Further whilst we accept a freeholder may see such clauses as beneficial, we do not accept that such modifications are required to take account of any changes since the lease was first granted. We do not accept that such a clause is required or may be ordered under Section 57 of the Act. We would not allow clause 5 in its entirety.
12. In respect of proposed Clause 9(a) it is common ground that the current lease does not provide for interest on arrears. The Tribunal is aware that typically in court proceedings a party pursuing a claim for a debt may seek interest. The Respondent suggests a failure to include a provision for contractual interest is a defect. No authority is referred to.
13. We are not satisfied that this is a defect. We prefer the Applicants argument that to now include such a clause would be an improvement for the benefit of the freeholder. We would not allow the inclusion of Clause 9(a).
14. Clause 9(b) seeks to increase the fee which the freeholder may charge for receipting certain notices. The Tribunal observes that this is an administrative matter. We accept the Respondent's submission that if the fee was fixed then it may be appropriate to increase the fixed fee for the increased term. However, as the Applicant sets out in their representations clause 2(18) of the original lease already includes a mechanism for increase whereby the fee increases by £1 every 5 years. We are not satisfied that the lease is defective. Further a mechanism is in place to take account of the need for the fee to increase. In our judgment we prefer the Applicant's submission and we would not allow proposed Clause 9(b).
15. The final proposed Clause 9(c) provides for the recovery of VAT. The Applicant appears to suggest VAT is recoverable under the existing lease. The Respondent suggests it is required given the introduction of VAT legislation happened after the lease was granted and is a necessary modification clarifying the position.
16. In this regard we prefer the Respondent's arguments. We agree that to avoid any dispute it is appropriate for the inclusion of the proposed Clause 9(c) and we agree this should be determined.

Conclusion

17. We determine that of the disputed terms only Clause 9(c) should be incorporated within the final lease and confirm the rest of the document is now agreed.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case by email at rpsouthern@justice.gov.uk
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.
5. A person who did not attend the hearing may apply in writing to the Tribunal at rpsouthern@justice.gov.uk for the decision to be set aside within 28 days from the date of the decision . If such an application is made the person must state the reasons why s/he did not attend and why it is in the interests of justice to set aside the decision. It will be a matter for the Tribunal whether the decision is set aside.