

10248



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

Case Reference : **LON/00BA/LVL/2014/0004**

Property : **4C Pelham Road, Wimbledon,
London SW19 1SX**

Applicant : **Judith Katherine Willing**

Representative : **In person**

Respondent : **Thomas Day**

Representative : **In person**

Type of Application : **Application for the variation of a
fixed administration charge
pursuant to schedule 11 paragraph
3of the Commonhold and
Leasehold Reform Act 2002**

Tribunal Members : **Tribunal Judge Dutton**

**Date and venue of
Determination** : **14th October 2014 at 10 Alfred
Place, London WC1E 7LR**

Date of Decision : **14th October 2014**

DECISION

DECISION

Subject to the Applicant completing the extended lease following the application to extend made by Mr Day I am prepared to grant an amendment to the existing lease which should be incorporated into the extended lease. The amendment is set out in full in the findings section of this decision.

BACKGROUND

1. What should have been a straight forward application by Mr Day to extend his lease following a Tribunal decision dated 2nd May 2013 has turned into something of a legal marathon as a result of Mrs Willing's failure to execute the extended lease and her applications seeking amendments to the lease pursuant to the Landlord and Tenant Act 1987 and the Commonhold and Leasehold Reform Act 2002. On 27th March 2014 I struck out Mrs Willing's application under the 1987 Act, although she has sought review/ appeal of that decision. This decision relates solely to the application under the 2002 Act.
2. In that application she sought two amendments, one to allow interest to be charged, which I struck out and the other in respect of a variation of a fixed administration charge. This charge related to the sum payable by a new lessee for giving notice of assignment. The wording of clause 2(22) is as follows:
"Within one calendar month next after making thereof without any demand from the Lessor to produce for registration by the Lessor's solicitors all assignments mortgages legal charges underleases for term exceeding twenty one years Probate of Wills Letters of Administration assents and other dispositions which during the term hereby granted shall be made of the demised premises of any part thereof and leave the same with the Lessor's Solicitors for that purpose and shall pay to them for the registration of every such documents the sum of SEVEN POUNDS (£7.00)"
3. Mrs Willing suggested an amendment which inserted wording towards the end of the clause as follows *"leave same with the Lessor or if required by the Lessor the Lessor's solicitor for that purpose and shall pay to them for the registration of every such document the Lessor's or the Lessor's Solicitors' reasonable fee and VAT"*
4. These amendments were sought in the enfranchisement application and were dealt with us in a decision dated 2nd May 2013. Under the provisions of section 57 of the Leasehold Reform, Housing and Urban Development Act 1993 we did not consider that these amendments should be made.
5. Mr Day sent in written submissions, to which Mrs Willing responded on 20th March 2014. There have been a number of letters sent by Mrs Willing, these include submissions dated 17th February 2014 and 20th March 2014, both responding to Mr Day and to the proposed application to strike out her claim. They have been

considered in making this decision. In addition notice has been had of the decision relating to the enfranchisement and to the strike out.

THE LAW

Schedule 11 paragraph 3 reads as follows:

3(1) Any party to a lease of a dwelling may apply to a leasehold valuation tribunal for an order varying the lease in such manner as is specified in the application on the grounds that—

(a) any administration charge specified in the lease is unreasonable, or

(b) any formula specified in the lease in accordance with which any administration charge is calculated is unreasonable.

(2) If the grounds on which the application was made are established to the satisfaction of the tribunal, it may make an order varying the lease in such manner as is specified in the order.

(3) The variation specified in the order may be—

(a) the variation specified in the application, or

(b) such other variation as the tribunal thinks fit.

(4) The tribunal may, instead of making an order varying the lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified.

(5) The tribunal may by order direct that a memorandum of any variation of a lease effected by virtue of this paragraph be endorsed on such documents as are specified in the order.

(6) Any such variation of a lease shall be binding not only on the parties to the lease for the time being but also on other persons (including any predecessors in title), whether or not they were parties to the proceedings in which the order was made.

FINDINGS

6. Mrs Willing continues to adopt a controlling attitude to the subject property. No application is made to vary the other leases in the building, one of which is held by her. She appears to be willing to take every opportunity of litigating. She has sought support in the Upper Tribunal and it would appear the Divisional Court, without

success. It appears that there are appeals pending following the County Courts involvement in the completion of lease. Her application to the County Court at Croyden for a money claim against Mr Day was struck out as an abuse of process and as having no reasonable grounds for bringing the claim. She seeks to appeal the strike out decision of this Tribunal in March 2014.

7. In the hope that this decision might see a partial end to matters I am prepared, subject to Mrs Willing completing the extended lease, to allow a minor amendment to clause 2(22), which should be incorporated into the extended lease. I can see that it is unlikely that a solicitor would be prepared to deal with the registration process for only £7.00. Mrs Willing in her suggested amendments appears to put forward the possibility of her dealing with the registration process. This would seem to be the way forward. Accordingly in accordance with paragraph 3 (4) of the 11th Schedule to the 2002 Act I make an order that the clause may be varied to remove reference to the "Lessor's Solicitors" and instead substitute the Lessor as the person to deal with the registration process. The wording is as follows:

"Within one calendar month next after making thereof without any demand from the Lessor to produce for registration by the Lessor all assignments mortgages legal charges underleases for term exceeding twenty one years Probate of Wills Letters of Administration assents and other dispositions which during the term hereby granted shall be made of the demised premises of any part thereof and leave the same with the Lessor for that purpose and shall pay to the Lessor for the registration of every such documents the sum of SEVEN POUNDS (£7.00)"

Andrew Dutton
Tribunal Judge

14th October 2014