



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

Case Reference	:	LON/OOBB/OCE/2015/0029
Property	:	329 Dersingham Avenue, London E12 6JX
Applicant	:	Mr H. Patel (nominee purchaser)
Representative	:	Mr J. Ollech of counsel instructed by Mr G. Bhudia (of Freemans solicitors)
Respondent	:	Lakehurst Properties Limited (landlords)
Representative	:	None, though Ms K. Gray of Child and Child LLP (solicitors) who used to act for the landlords attended the hearing.
Type of Application	:	Under section 24 of the Leasehold Reform, Housing and Urban Development Act 1993 ('the Act') seeking a determination of the disputed terms of the transfer of the freehold and the premium to be paid.
Tribunal Members	:	Professor James Driscoll (Judge) and Mr Ian Holdsworth MSc FRICS (Valuer member)
Date and venue of Hearing	:	The application was heard on 9 June 2015 Alfred Place, London
Date of Decision	:	10 June, 2015

DECISION

Summary of the decision

1. As the parties informed us that they have agreed the premium to be paid and the terms of the transfer of the freehold from the landlord to the nominee purchaser, there was no need for the tribunal to make determinations.
2. However, as those advising the nominee purchaser has applied for costs orders under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) we have given the following directions for the determination of these applications.

Background

3. The applicant is the owner of the leases of the two flats in the subject premises. There are no other units in the premises other than the two flats. As he owns both flats he is entitled to apply to acquire the freehold under the collective enfranchisement provisions in Part I of the Act. For the purposes of this application he is known as the 'nominee purchaser'. He has appointed his solicitors (and has obtained the services of a valuer) to make the application. The respondent to the application is the owner of the freehold of the premises and the landlord under the leases.
4. He purchased both flats in 2014 and as part of the conveyancing involved his solicitor dealt with Excel Legal Limited who were acting for the landlords. They dealt with the assignment of the two leases and related matters. On or about 3 June 2014 his solicitors gave a notice seeking the freehold under section 13 of the Act. This notice was given to Excel Legal Limited on behalf of the landlord ('Lakehurst Properties Limited').
5. On or about 7 August 2014 a counter-notice was given on behalf of the landlord admitting the claim but proposing a higher premium than the one proposed by the nominee purchaser. This notice was given by Child and Child LLP, solicitors who were then acting for the landlord. At the hearing on 9 June 2015, we were told by Ms Gray of that firm that they received their instructions from Hexagon as managing agents for the landlord.
6. There were some negotiations between the advisors for the parties but to safeguard the position of the nominee purchaser application was made to this tribunal on 19 January 2015 and a copy was sent to Child and Child LLP as

solicitors for the respondent landlord. It was made under section 24 of the Act. Directions were given on 9 February 2015.

7. It appears that those advising the parties reached agreement on the premium to be paid and on the terms of the transfer of the freehold. However, Child and Child LLP had difficulties in obtaining instructions though the parties had agreed terms and each party had signed a copy of the transfer.

8. As the tribunal notified them that the hearing had been arranged for 9 and 10 June 2015 the solicitors for the nominee purchaser began pressing Child and Child LLP to complete the matter. Although the parties asked the tribunal to postpone the hearing, they were informed that it had become too late for this and the parties were directed to attend the hearing which started and was completed on 9 June 2015.

The hearing

9. The nominee purchaser was represented by counsel and his solicitor. No-one was there to represent the landlord though Ms Gray of Child and Child LLP attended the hearing to keep, as she put it 'a watching brief'.

10. The reasons for this are as follows: in a letter sent to the tribunal dated 4 June 2015 Child and Child informed us that they had been without instructions for several months and that Mr Christopher Williams of Excel Legal Limited is now acting for the landlord. It had also emerged that the landlord should have been named Lakehurst Limited though a company called Lakehurst Property Limited is named on the Land Registry records as the freeholder.

11. On 8 June 2015 we also received a letter from a company called Lakehurst Limited arguing that they were the owners of the property. In this letter they also informed us that they had instructed Excel Law to represent them at the hearing. We were also told that Excel Law were seeking to have the Land Registry entries altered to make it clear that it is Lakehurst Limited (which is a Jersey incorporated Company) is the owner, not Lakehurst Property Limited.

12. The solicitors for the nominee purchaser prepared a large bundle of papers for the hearing which included copies of the notices, Land Registry entries, copies of the leases, a witness statement made by Mr Bhutia the solicitor for the nominee purchaser and copies of correspondence and emails passing between the representatives (which runs to 221 pages). An explanation for the wrong name being given for the landlords is contained in the copy email sent by Mr Williams to the landlord dated 26 May 2015.

13. As it emerged during the hearing that the parties reached agreement on the premium to be paid and on the terms of the transfer on 4 March 2015 (and that they had agreed the payment of the landlord's costs payable by the nominee purchaser under section 33 of the Act) there was no longer a dispute for us to determine. However, Mr Ollech, counsel for the nominee purchaser, told us that he wished to make an application for costs under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. This is likely to be in two parts. First, there may be a 'wasted costs' order under rule 13(1) in relation to the landlord's advisors, and second, an order that the landlord pay costs under rule 13(2). We made the following directions for the consideration of these applications.

Directions for the costs claims

14. First, the nominee purchaser's solicitors will draft a full statement of their application and the grounds on which they consider a costs order should be made. This must be sent to the landlord and its advisors Mr Christopher Williams of Excel Legal Limited by **7 July 2015**. In return the respondents to the application must send their detailed reply to the solicitors for the nominee purchaser by **4 August 2015**. The solicitors for the nominee purchaser may file a statement in reply by **18 August 2015**.

15. The solicitors for the nominee purchaser will prepare four copies of a bundle containing these statements and send them to the tribunal by **1 September 2015**.

16. The application will be considered by the tribunal during the week starting **7 September 2015**. It will be considered on the basis of the statements filed and without an oral hearing. However, if a party wishes to have an oral hearing they must notify the case officer by **14 July 2015**.

James Driscoll and Ian Holdsworth

Dated: 10, June 2015

APPENDIX

Leasehold Reform, Housing and Urban Development Act 1993

Section 57

Terms on which new lease is to be granted.

(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.

(2) Where during the continuance of the new lease the landlord will be under any obligation for the provision of services, or for repairs, maintenance or insurance—

(a) the new lease may require payments to be made by the tenant (whether as rent or otherwise) in consideration of those matters or in respect of the cost thereof to the landlord; and

(b) (if the terms of the existing lease do not include any provision for the making of any such payments by the tenant or include provision only for the payment of a fixed amount) the terms of the new lease shall make, as from the term date of the existing lease, such provision as may be just—

(i) for the making by the tenant of payments related to the cost from time to time to the landlord, and

(ii) for the tenant's liability to make those payments to be enforceable by distress, re-entry or otherwise in like manner as if it were a liability for payment of rent.

(3) Subject to subsection (4), provision shall be made by the terms of the new lease or by an agreement collateral thereto for the continuance, with any suitable adaptations, of any agreement collateral to the existing lease.

(4) For the purposes of subsections (1) and (3) there shall be excluded from the new lease any term of the existing lease or of any agreement collateral thereto in so far as that term—

(a) provides for or relates to the renewal of the lease,

(b) confers any option to purchase or right of pre-emption in relation to the flat demised by the existing lease, or

(c) provides for the termination of the existing lease before its term date otherwise than in the event of a breach of its terms;

and there shall be made in the terms of the new lease or any agreement collateral thereto such modifications as may be required or appropriate to take account of the exclusion of any such term.

(5) Where the new lease is granted after the term date of the existing lease, then on the grant of the new lease there shall be payable by the tenant to the landlord, as an addition to the rent payable under the existing lease, any amount by which, for the period since the term date or the relevant date (whichever is the later), the sums payable to the landlord in respect of the flat (after making any necessary apportionment) for the matters referred to in subsection (2) fall short in total of the sums that would have been payable for such matters under the new lease if it had been granted on that date; and section 56(3)(a) shall apply accordingly.

(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.

(7) The terms of the new lease shall—

(a) make provision in accordance with section 59(3); and

(b) reserve to the person who is for the time being the tenant's immediate landlord the right to obtain possession of the flat in question in accordance with section 61.

(8) In granting the new lease the landlord shall not be bound to enter into any covenant for title beyond—

(a) those implied from the grant, and

(b) those implied under Part I of the Law of Property (Miscellaneous Provisions) Act 1994 in a case where a disposition is expressed to be made with limited title guarantee, but not including (in the case of an underlease) the covenant in section 4(1)(b) of that Act (compliance with terms of lease);

and in the absence of agreement to the contrary the landlord shall be entitled to be indemnified by the tenant in respect of any costs incurred by him in complying with the covenant implied by virtue of section 2(1)(b) of that Act (covenant for further assurance).

(8A) A person entering into any covenant required of him as landlord (under subsection (8) or otherwise) shall be entitled to limit his personal liability to breaches of that covenant for which he is responsible.

(9) Where any person—

(a) is a third party to the existing lease, or

(b) (not being the landlord or tenant) is a party to any agreement collateral thereto, then (subject to any agreement between him and the landlord and the tenant) he shall be made a party to the new lease or (as the case may be) to an agreement collateral thereto, and shall accordingly join in its execution; but nothing in this section has effect so as to require the new lease or (as the case may be) any such collateral agreement to provide for him to discharge any function at any time after the term date of the existing lease.

(10) Where—

(a) any such person ("the third party") is in accordance with subsection (9) to discharge any function down to the term date of the existing lease, but

(b) it is necessary or expedient in connection with the proper enjoyment by the tenant of the property demised by the new lease for provision to be made for the continued discharge of that function after that date, the new lease or an agreement collateral

thereto shall make provision for that function to be discharged after that date (whether by the third party or by some other person).

(11)The new lease shall contain a statement that it is a lease granted under section 56; and any such statement shall comply with such requirements as may be prescribed by rules made in pursuance of section 144 of the Land Registration Act 1925 (power to make general rules).