4269

First-tier Tribunal
Property Chamber
(Residential Property)

Case Reference		**CAM/22UC/OLR/2015/0145**
Property	:	**36B Braintree Road, Witham, Essex CM8 2DB**
Applicant **Represented by**	:	**Kirsty Louise Brzeczek** **Oliver-James Toppling, solicitor**
Respondent	:	**Jeanette Ann Hart**
Date of Application	:	**22nd December 2015**
Type of Application	:	**To determine the 'appropriate sum' to be paid into court following a county court vesting order for a lease extension where landlord cannot be found (Section 51 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act"))**
Tribunal	:	**Bruce Edgington (lawyer chair)** **Stephen E Moll FRICS** **Derek Barnden MRICS**
Date and place of hearing	:	**29th February 2016 at the Best Western Marks Tey Hotel, Colchester, Essex CO6 1DU**

DECISION

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1. The appropriate sum to be paid into court in accordance with Section 51(5) of the Act is £9,380.00 as calculated below.

Reasons

Introduction

2. The Applicant is the owner of a leasehold interest in the property being the residue of a term of 99 years from the 7th October 1987 which is registered at the Land Registry under title number EX372376.

3. She wishes to extend her leasehold interest by using the enfranchisement provisions but unfortunately she has been unable to find Ian Denis Hart, one of the landlords, and serve an Initial Notice under Section 42 of the Act. An Initial Notice was served on the other landlord and Respondent to this application on or about the 10th December 2014. It purports to be addressed to both but it seems that it was not served on Ian Denis Hart.

4. The Applicant applied to the County Court for a vesting order which was duly granted to her on the 4th December 2015 by District Judge Shanks in the county court sitting at Chelmsford. Whilst the Tribunal will do as asked by the Applicant, and determine the appropriate amount to be paid into court, it should be said that there are a number of oddities in this case which can be summarised as follows:

    - Section 51(3) of the Act says that it is for this Tribunal to 'approve' the form of the deed of surrender and new lease. No draft of such a deed was supplied in the hearing bundle
    - It seems from the Applicant's evidence to support her application to the court that, according to counsel, this matter could have proceeded under section 49 of the Act which would not have involved this Tribunal. No further mention of this will be made but if that is correct, the valuation date will be different to that used in this decision.
    - The court has approved a deduction from the appropriate sum to cover legal costs incurred by the Applicant. This Tribunal obviously has no power over the court, but one wonders whether this is possible. The appropriate sum 'to be paid into court' is the amount described in section 51(5) of the Act. There does not seem to be any power to make deductions in this way.

5. The method of calculating the amount to be paid into court is set out in Section 51(5) of the Act and is "*the aggregate of-*

    (a) such amount as may be determined by a leasehold valuation tribunal to be the premium which is payable under Schedule 13 in respect of the grant of the new lease
    (b) such other amount or amounts (if any) as may be determined by such a tribunal to be payable by virtue of that Schedule in connection with the grant of that lease; and
    (c) any amounts or estimated amounts determined by such a tribunal as being, at the time of execution of that lease, due to the landlord from the tenant (whether due under or in respect of the tenant's lease of his flat or under or in respect of any agreement collateral thereto)"

6. The Applicant has provided the Tribunal with a valuation prepared by Mr. Paul Wright BSc (Hons) MRICS which concludes that the premium which should be paid for the new lease is £11,850.00. However, he

was not aware that in this sort of application, the valuation date is the date when the application to the court was made for a vesting order (section 51(8) of the Act). Mr. Topping, on behalf of the Applicant, told the Tribunal that the application was issued by the court on the 15th May 2015 i.e. some 6 months before the date used by Mr. Wright.

The Inspection

7. The members of the Tribunal inspected the property in the presence of Mr. Wright. It was a dry, sunny but fairly cold late winter's morning.

8. The subject property is a first floor flat being part of a building containing 2 flats which has the appearance of a semi-detached house. It was built in the early part of the 20th century of brick construction under a pitched slate roof. There is a small piece of garden to the front and the demise has the benefit of quite a large garden at the rear including small and a medium sized sheds. There is also a parking space at the rear with easy access from the road which is within walking distance of the railway station.

9. The front door is for the exclusive use of this flat and there is a staircase to the first floor. The Tribunal was told that when the demise commenced, the first floor consisted of a landing with 4 rooms off i.e. a lounge at the front, a bedroom behind that, a bathroom/WC and then a kitchen. The bedroom is now at the front and the original bedroom (now the lounge) has been opened out with the removal of the wall to the landing. The Tribunal was told that there is loft space through a hatch, which they could see, via a ladder.

10. It is generally in good condition with double glazed uPVC windows and front door, updated kitchen, shower room/WC and updated heating boiler. The soffits, fascias and barge boards on the gable ends could do with urgent decoration.

11. There is a large supermarket within easy walking distance of the property and some on street parking.

The Hearing

12. The hearing was attended by Mr. Topping and Mr. Wright. Mr. Topping was given some indication of the technical legal problems indicated above and was told that the Tribunal would do as the application asked it to do in the absence of any draft deed to approve i.e. assess the appropriate sum to be paid into court. He mentioned the sum which the court had determined as costs to be deducted and was told that this was a matter for the court. The Tribunal would assess the appropriate sum only.

13. The Tribunal accepted Mr. Wright's assessment of the capitalisation of ground rent at 7% and asked him how he had arrived at his figure for relativity. He produced a page containing various graph comparisons

but it became clear from the heading that this was comparing graphs for central London.

14. He then gave evidence as to the comparables and the Tribunal was persuaded that his assessment of the current value without improvements was correct at £140,000.00. He tried to suggest that as the valuation date was much earlier than the date he had used, the correct valuation should be £135,000.00.

15. As to the deferment rate, he argued that the Sportelli suggested rate of 5% (see below) was too low because this was a property outside London and a figure of 5.25% was generally accepted. He was asked whether he could produce any evidence, let alone 'compelling' evidence, to support his contention. He could not.

Conclusions

16. In calculating the premium to be paid in an enfranchisement case, the Act states that the calculation is as set out in Schedule 13 of the Act. In essence, one has to calculate the loss to the landlord of granting an extension to the existing lease of 90 years without any ground rent, taking into account such matters as loss of the ground rent (the capitalisation rate) and the deferment of the right of the landlord to obtain vacant possession of the property from a date in 71.4 years' time to a date in 161.4 years' time (the deferment rate).

17. The first thing one has to do is calculate the difference in value of the leasehold interest as it is now i.e. with 71.4 years remaining approximately, on the basis that there is no right to obtain an extension – often referred to as the 'no-Act world' – and the value after the existing lease has been surrendered and a new lease has been granted at a peppercorn ground rent for the remaining term plus 90 years.

18. This can be very difficult because market evidence of the value of a lease in the no-Act world is obviously going to be difficult to obtain. The fact is that the Act does exist and any buyer of a new lease will know that he or she can get it extended. Where there is little or no evidence, the most usual method of calculating the no-Act world value is to use what is known as a relativity percentage.

19. In this case, the Tribunal looked at, and accepted, the evidence supplied by Mr. Wright of 2 comparable properties sold in April 2015. Those were £135,000.00 in value and, as has been said, Mr. Wright argued that the subject property's value should go down to that figure. The Tribunal was not convinced by that. This property, as compared with those other 2, is close to the railway station, has its own entrance, loft space and quite a large garden with off street parking. The Tribunal felt that a slightly higher value of £140,000.00 was the correct figure.

20. As far as tenant's improvements are concerned, the Tribunal was told that the flat had gas fired central heating before. There was some doubt about when the windows and front door were installed. Mr. Wright also made the relevant point that it was always difficult in these cases to assess improvements as compared with simple updating. On balance, the Tribunal did not consider that any deduction should be made for improvements. If there was any assessable value, it is *de minimis*.

21. As to the deferment rate, Mr. Wright referred, by implication, to the important decision of the Lands Tribunal ("LT"), as it then was, in 5 cases commencing with **Earl Cadogan and Cadogan Estates Ltd. v. Sportelli** which was handed down on the 15th September 2006 ("Sportelli"). It was the subject of appeal but its important provisions were not overturned.

22. Occasionally, the LT, now called the Upper Tribunal, does make "*principles of practice to which regard should be had by the first-tier tribunals and by practitioners dealing with claims in any of the Tribunal's original or appellate jurisdictions*" (paragraph 117 of the Sportelli decision). Deferment rates have been the subject of much argument and many appeals over the years and Sportelli was a case where the LT sought to end these arguments and appeals and said, in effect, that a deferment rate of 5% for flats with an unexpired term in excess of 20 years was appropriate throughout the country.

23. Having said that, the LT, at paragraph 91 of its decision said that "*we do not rule out the possible need to adjust the deferment rate to take account of such matters as obsolescence and condition*". However, the LT made it clear that before there was to be any change from the rate set down by Sportelli, there had to be clear evidence. There have been a number of cases since then which have sought to challenge that general principle. All have failed. In the latest case of **Sinclair Gardens v Ray** [2015] EWCA Civ, the Court of Appeal upheld the general principle that only compelling evidence could be used to obtain disparity from the Sportelli provisions. There was such evidence in that case for some change but the principle was maintained.

24. In this case, Mr. Wright provided no evidence at all to support his suggestion that the rate of 5% should be increased simply because the property was outside London. The Tribunal therefore adopts the Sportelli rate of 5%.

25. As far as relativity is concerned, the Tribunal looked at the Royal Institution of Chartered Surveyors' guidance and, in particular its analysis of more general graphs covering areas outside central London. It also looked at the correct unexpired term and came to a figure of 90%.

26. As to any further sum payable under Section 51(5), the Tribunal does not add anything to the Schedule 13 figure. There was no evidence as to the amount of ground rent not paid. It would not have been that great in view of the length of the lease. There was no other matter of relevance to include.

27. Taking all these factors into account, the Tribunal decided that the appropriate figure for payment into court is £9,380.00 in accordance with the calculation set out in the Schedule below.

THE SCHEDULE

36B Braintree Road
Witham
Essex CM8 2DB

Lease expiry date	7/10/2086
Valuation date	15/5/2015
Unexpired term	71.4 years
Capitalisation rate	7%
Deferment rate	5%
Extended lease value	£140000
Existing lease value	£126000
Relativity	90%

Value of landlords existing interest

Ground Rent	£40		
YP@7% for 71.4 yrs	14.1716	£567	
Reversion to Freehold/ long lease value	£140000		
PV of £1@5% def. 71.4 yrs	0.03071	£4299	
			£4866

Value of landlords proposed interest

Extended lease value	£140000	
Reversion to PV of £1@5% def. 161.4 yrs	0.000380	£53
		£4813

Marriage Value

Freehold/long lease value		£140000	
Less	£4866		
	£126000	£130866	
		£9134	
50% of Marriage Value			£4567
			£9380

Premium Payable - £9,380.00

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Bruce Edgington
Regional Judge
3rd March 2016

ANNEX - RIGHTS OF APPEAL

i. 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.

ii. 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.

iii. 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.

iv. 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.