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

Case Reference : LON/00BH/OLR/2017/0899

Property : 12b Fraser Road London E17 9DD

Applicants : (1) Stephen Christopher Jones
(2) Lorna Christine Jones

Representative : Cavendish Legal Group Ltd.

Respondent : Kaleem Ullah Lodhi

Type of Application : Determination of terms of lease
extension (missing landlord)

Tribunal Members : (1) Mr N Martindale FRICS
(2) Judge Mr R Percival

Date of Decision : 15 August 2017

DECISION

Decisions of the Tribunal

1. The premium to be paid by the applicants for the lease extension at first Floor Flat, 12b Fraser Road, Walthamstow, London E17 9DD, registered at HM Land registry under title number EGL143512 (the "Property") is **£30,450**.
2. The draft deed of surrender and re-grant attached as an appendix to the applicants bundle, is approved.

Introduction

3. This is an application made under Section 50 and 51 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) for a determination of the premium to be paid and the terms of an acquisition of an extension to the leasehold interest in the Property. The relevant legal provisions are set out in the Appendix to this decision.
4. The Property is a first floor flat, being the upper level of a two storey building, itself formerly one of a terrace of houses. The upper floor constitutes a separate flat. The whole Property dates from the 1890s, the flat conversion from the 1980’s.
5. The applicants are the long leaseholders of the first floor flat, holding their interest under the terms of a lease dated 15 June 1984 and registered under title number EGL143512. That lease was granted by Kaleem Ullah Lodhi to the original tenant Peter North, for a term of 99 years from 29 September 1983. The lease reserves a fixed ground rent of £55 pa for the first 33 years, at £75 pa for the next 33 years and £100 pa for the remainder. The residual term of the lease is now vested in the applicants who were registered as the leasehold proprietors on 13 March 2006.
6. The registered freehold proprietor of the Property is the respondent, Kaleem Ullah Lodhi formerly of 966 London Road Thornton Heath. He was registered as such under title number EGL133008 on 2 August 1983.
7. By order made by Deputy District Judge Colquhoun on 24 May 2017 on the court being satisfied that the respondent could not be found, the respondent’s interest in the subject Property was vested in the applicants in accordance with section 50 of the Act. The proceedings were transferred to this Tribunal for a determination of the terms of the new lease.
8. The Tribunal considered the issue on the papers submitted by the applicants, without a hearing, in accordance with directions issued on 4 July 2017. The case was to be determined in the week commencing 14 August 2017.
9. The Tribunal’s jurisdiction is derived from the vesting order made by the court on 24 May 2017.

The statutory basis of valuation

10. Part 2, Schedule 13 to the Act provides that the price to be paid by the leaseholders, the applicants for the new leasehold interest, where there is no intermediary head leaseholder, as applies here.
11. The premium payable in respect of the grant of a new lease is the total of: (a) the diminution in value of the landlord's interest in the tenant's flat as determined in accordance with paragraph 3, (b) the landlord's share of the marriage value as determined in accordance with paragraph 4, and (c) any amount of compensation payable to the landlord under paragraph 5.
12. The diminution is in accordance with paragraph 3(1) The diminution in value of the landlord's interest is the difference between (a) the value of the landlord's interest in the tenant's flat prior to the grant of the new lease; and (b) the value of his interest in the flat once the new lease is granted.
13. Paragraph 4 of the Schedule, as amended, provides that the freeholder's share of the marriage value is to be 50%, and that any marriage value is to be ignored where the unexpired term of the lease exceeds eighty years at the valuation date. Here it is included as the unexpired term is less than eighty years.
14. Paragraph 5 of the Schedule provides for the payment of compensation for other loss resulting from the enfranchisement.

The evidence before the Tribunal

15. The applicants have provided a valuation report dated 25 July 2017 by Genevieve Mariner of Strettons Chartered Surveyors ("the Valuation Report"). Having considered the contents of the Valuation Report and of the opinions expressed by the valuer, the Tribunal is broadly satisfied that the method adopted is appropriate to determine the premium for the new lease for the Property. The Tribunal accepts the description of the Property and its location as stated in the Valuation Report.
16. A photograph of the exterior of the Property was included in the Valuation Report. The Tribunal did not consider it necessary or proportionate to carry out an inspection of the Property.

Valuation

17. The First Floor Flat at 12b Fraser Road E17 consists of a staircase, entrance hall, two bedrooms, living room, kitchen, and bathroom/WC. The second bedroom is accessed through the kitchen. The GIA is 499ft², small for a two bedroom flat.

18. Entry to the two flats is via a shared ground floor entrance door and small front garden path from the street.
19. It is stated in the valuer's report that the flat has double glazing and central heating, but it also confirms that there are no tenant's improvements the value of which is to be ignored in the valuation.
20. The valuation date prescribed by section 27(1) of the Act is the date of the issue from the court by the court of the application, namely 5 December 2016. The unexpired residue of the lease for the flat is approximately 65.81 years.
21. Ms Mariner's assessment of the market value of the property is based on evidence of three recently completed sales of flats. One, significantly larger, but in the same road, at January 2017, having a 900+ years unexpired term, and two other converted flats in nearby roads, one of a similar size, one again larger. All three flats have gardens and are in either a better location or external condition.
22. Adjustments are made by the valuer for changes over time using the HMLR index for Waltham Forest; for the absence of a garden and for the poorer external condition of the building within which the flats are located, as at the subject property. The Tribunal accepts the principle and extent of these.
23. From this material the valuer draws the conclusion that as at the valuation date, the long lease value of the property was £320,000. The Tribunal is satisfied with the relevance and detail of the three completed comparable property sales provided in the Valuation Report. The Tribunal accepts the valuer's analysis and assessment of each in the assessment of the value of new long lease of the Property.
24. The Tribunal notes and accepts the 1% adjustment by the valuer in uplifting the long lease value to its notional freehold value.
25. The valuer identifies that in order to assess the relativity of short to long leases the best evidence is that of actual sales of short leases. However have searched for same, locally, none were to be found of otherwise similar properties in this location.
26. The valuer then turned to the RICS approved graphs and those more recently produced in 2017 by Beckett and Kay. The valuer considered that the Gerald Eve Graph 1996 and the Savills Graph of 2002 the most relevant. For the unexpired term in this case these produced 84.49% and 84.05%, the latter produced after deduction from the graph figure of 87.52% of a further 3.47% to reflect the 'no Act' world. Although the valuer referenced the Beckett and Kay mortgage graph which produced 79% this was discarded as not yet being widely recognised as helpful by

Tribunals without further transactional evidence in support. The valuer concluded by adopting 84.49% relativity which the Tribunal accepts.

27. The diminution in the value of the landlord's interest in the tenants' flat is represented first by the capitalised value of the grounds rent receivable under their leases. That small income stream is capitalised by the valuer at 7%, which the Tribunal accepts is appropriate in this case owing to the stepped, but otherwise low ground rents.
28. The effect of the lease extension will deprive the landlord of the property for a further 90 years in addition to the current unexpired term. The present value of that delayed reversion is determined by applying a deferment rate to the freehold value of the flat. The deferment rate appropriate for leasehold flats in Central London was authoritatively determined to be 5% in the case of *Earl Cadogan v Sportelli* [2007] 1EGLR 153. The valuer accepts this and adopts 5% which we agree with.
29. As there are less than 80 years unexpired on the existing lease, the resultant increase in value owing to the marriage of interests is to be shared equally between the parties, as required by the Act.
30. The Tribunal determines that there is no compensation payable to the landlord under Schedule 13, paragraph 5.
31. The Tribunal accepts the valuation for the property, as produced by Ms Mariner and in particular her final opinion of value of £30,450 as expressed in her report. The Tribunal has therefore not produced its own valuation.
32. The premium to be paid by the applicants for the new lease of the Property is therefore **£30,450**.

Name: N Martindale

Date: 15 August 2017

Appendix

Leasehold Reform, Housing and Urban Development Act 1993

S.50 Applications where landlord cannot be found.

(1) Where—

(a) a qualifying tenant of a flat desires to make a claim to exercise the right to acquire a new lease of his flat, but

(b) the landlord cannot be found or his identity cannot be ascertained,

the court may, on the application of the tenant, make a vesting order under this subsection.

(2) Where—

(a) a qualifying tenant of a flat desires to make such a claim as is mentioned in subsection (1), and

(b) paragraph (b) of that subsection does not apply, but

(c) a copy of a notice of that claim cannot be given in accordance with Part I of Schedule 11 to any person to whom it would otherwise be required to be so given because that person cannot be found or his identity cannot be ascertained,

the court may, on the application of the tenant, make an order dispensing with the need to give a copy of such a notice to that person.

(3) The court shall not make an order on any application under subsection (1) or (2) unless it is satisfied—

(a) that on the date of the making of the application the tenant had the right to acquire a new lease of his flat; and

(b) that on that date he would not have been precluded by any provision of this Chapter from giving a valid notice under section 42 with respect to his flat.

(4) Before making any such order the court may require the tenant to take such further steps by way of advertisement or otherwise as the court thinks proper for the purpose of tracing the person in question; and if, after an application is made for a vesting order under subsection (1) and before any lease is executed in pursuance of the application, the landlord is traced, then no further proceedings shall be taken with a view to a lease being so executed, but (subject to subsection (5))—

(a) the rights and obligations of all parties shall be determined as if the tenant had, at the date of the application, duly given notice under section 42 of his claim to exercise the right to acquire a new lease of his flat; and

(b) the court may give such directions as the court thinks fit as to the steps to be taken for giving effect to those rights and obligations, including directions modifying or dispensing with any of the requirements of this Chapter or of regulations made under this Part.

(5) An application for a vesting order under subsection (1) may be withdrawn at any time before execution of a lease under section 51(3) and, after it is withdrawn, subsection (4)(a) above shall not apply; but where any step is taken (whether by the landlord or the tenant) for the purpose of giving effect to subsection (4)(a) in the case of any application, the application shall not afterwards be withdrawn except—

(a) with the consent of the landlord, or

(b) by leave of the court,

and the court shall not give leave unless it appears to the court just to do so by reason of matters coming to the knowledge of the tenant in consequence of the tracing of the landlord.

(6) Where an order has been made under subsection (2) dispensing with the need to give a copy of a notice under section 42 to a particular person with respect to any flat, then if—

(a) a notice is subsequently given under that section with respect to that flat, and

(b) in reliance on the order, a copy of the notice is not to be given to that person,

the notice must contain a statement of the effect of the order.

(7) Where a notice under section 42 contains such a statement in accordance with subsection (6) above, then in determining for the purposes of any provision of this Chapter whether the requirements of Part I of Schedule 11 have been complied with in relation to the notice, those requirements shall be deemed to have been complied with so far as relating to the giving of a copy of the notice to the person referred to in subsection (6) above.

51 Supplementary provisions relating to vesting orders under section 50(1).

(1) A vesting order under section 50(1) is an order providing for the surrender of the tenant's lease of his flat and for the granting to him of a new lease of it on such terms as may be determined by a leasehold valuation tribunal to be appropriate with a view to the lease being granted to him in like manner (so far as the circumstances permit) as if he had, at the date of his application, given notice under section 42 of his claim to exercise the right to acquire a new lease of his flat.

(2) If a leasehold valuation tribunal so determines in the case of a vesting order under section 50(1), the order shall have effect in relation to property which is less extensive than that specified in the application on which the order was made.

(3) Where any lease is to be granted to a tenant by virtue of a vesting order under section 50(1), then on his paying into court the appropriate sum there shall be executed by such person as the court may designate a lease which—

(a) is in a form approved by a leasehold valuation tribunal, and

(b) contains such provisions as may be so approved for the purpose of giving effect so far as possible to section 56(1) and section 57 (as that section applies in accordance with subsections (7) and (8) below);

and that lease shall be effective to vest in the person to whom it is granted the property expressed to be demised by it, subject to and in accordance with the terms of the lease.

(4) In connection with the determination by a leasehold valuation tribunal of any question as to the property to be demised by any such lease, or as to the rights with or subject to which it is to be demised, it shall be assumed (unless the contrary is shown) that the landlord has no interest in property other than the property to be demised and, for the purpose of excepting them from the lease, any minerals underlying that property.

(5) The appropriate sum to be paid into court in accordance with subsection (3) 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) Where any lease is granted to a person in accordance with this section, the payment into court of the appropriate sum shall be taken to have satisfied any claims against the tenant, his personal representatives or assigns in respect of the premium and any other amounts payable as mentioned in subsection (5)(a) and (b).

(7) Subject to subsection (8), the following provisions, namely—

(a) sections 57 to 59, and

(b) section 61 and Schedule 14,

shall, so far as capable of applying to a lease granted in accordance with this section, apply to such a lease as they apply to a lease granted under section 56; and subsections (6) and (7) of that section shall apply in relation to a lease granted in accordance with this section as they apply in relation to a lease granted under that section.

(8) In its application to a lease granted in accordance with this section—

(a) section 57 shall have effect as if—

(i) any reference to the relevant date were a reference to the date of the application under section 50(1) in pursuance of which the vesting order under that provision was made, and

(ii) in subsection (5) the reference to section 56(3)(a) were a reference to subsection (5)(c) above; and

(b) section 58 shall have effect as if—

(i) in subsection (3) the second reference to the landlord were a reference to the person designated under subsection (3) above, and

(ii) subsections (6)(a) and (7) were omitted.