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

Case Reference : LON/00BH/OLR/2015/0569

Property : Flat A, 52 Francis Road, London E10 6PP

Applicant : Louise Elizabeth Clemo

Representative : Thirsk Winton LLP

Respondent : Faiz Ullah

Representative : None

Type of Application : Section 50 and 51 of the Leasehold and Urban Development Act 1993

Tribunal Members : Miss A Seifert FCI Arb
Mrs S Redmond BSc MRICS

Date of Decision : 28th April 2015

DECISION

Decision of the Tribunal

- (1) The tribunal determines that the form of the new lease is as included in the applicant's bundle before the tribunal save for the changes referred to in paragraph 11 of this decision.
- (2) The tribunal determines that the appropriate sum to be paid into Court for the grant of a new lease to the applicant for Flat A, 52 Francis Road, London E10, 6PP ("the Flat") pursuant to section 51(5) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act"), is £18,360 (eighteen thousand, three hundred and sixty pounds).

The Application

1. The applicant, Mrs Louise Elizabeth Clemo, is the long leaseholder of the Flat. Mrs Clemo wishes to extend her lease under the 1993 Act, but it appears that the freeholder, Mr Faiz Ullah, cannot be located.
2. On 6th November 2014 the applicant issued a Part 8 Claim in the County Court at Bow under claim number AO3BO798, seeking a vesting order under section 50(1) of the 1993 Act. On 27th February 2015 District Judge Bell made a vesting order which provided that the existing lease should be surrendered and there should be granted to the applicant a new lease of the Flat on such terms as may be determined by the First-tier Tribunal. The order provided that the claim be transferred to Property Chamber, First-tier Tribunal for determination as to (a) The form of the new lease; and (b) The sum to be paid into court in accordance with section 51(5) of the Act.
3. The applicant's solicitors supplied the tribunal with a hearing bundle for the tribunal to determine the matter without a hearing. The applicant's bundle contained copies of the existing lease, Land Registry searches for the freehold and leasehold titles, relevant documents from the County Court proceedings, and a draft Deed of Surrender and Re-Grant.
4. In the applicant's bundle the tribunal was also provided with a valuation report from the applicant's surveyor, Mr Richard Murphy Dip. Surv. MRICS, of Richard John Clarke, Chartered Surveyors dated 15th March 2015.
5. The relevant legal provisions are set out in the Appendix to this decision.

The background

6. The applicant is the leaseholder of the Flat. The respondent is the freeholder of 52 Francis Road, London E10 6PP ("the Building"). Mrs Clemo and her representatives have been unable to contact the

respondent in the circumstances set out in the witness statement of Mrs Clemo dated 30th October 2014 and the witness statement of Jason Winton, Solicitor, dated 5th November 2014.

7. The tribunal does not consider that an inspection of the Building or Flat was necessary, nor would it have been proportionate to the issues in dispute.

The existing lease

8. The existing lease was dated 19th January 1984 and was made between Faiz Ullah as lessor and Donald Alphonso Duffus and Kim Leslie Noble as lessees for the term from 25th December 1982 of 99 years at the rent described in the Fifth Schedule to the lease. The applicant is the successor in title of the above lessees.

The issues

9. The tribunal is required to determine the form of the new lease and the appropriate sum to be paid into court under section 51(5) of the 1993 Act.
10. Having studied the documents the tribunal has made the following determination.

Form of new lease

11. The tribunal has seen the terms of the proposed lease and determines that they are satisfactory, subject to the insertion of the premium determined by the tribunal, the substitution of "Signed as a deed by DISTRICT JUDGE [NAME]" for "MARTIN WINTON a Partner in Thirsk LLP", and insertion of the date of the Order of the Bow County Court.

Section 51(3) of the 1993 Act provides that '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.....'. The Court Order does not designate Mr Winton.

The premium

12. The tribunal carefully considered the contents of Mr Murphy's report. The tribunal generally accepts Mr Murphy's report for the elements of his valuation, all of which are clearly explained within the report.
13. However, the tribunal has made adjustments to the valuation calculation of marriage value and diminution of the landlord's

reversion. The tribunal has provided its own valuation calculation which results in the total premium payable of £18,360.

14. The tribunal's calculation of the premium payable is set out in the Appendix to this decision. In the circumstances the tribunal determines the amount of the premium is **£18,360**.

A Seifert

Judge of the First tier Tribunal (Property Chamber)

Date: 28th April 2015

Attached Appendices:

- (1) Valuation setting out the tribunal's calculations
- (2) Appendix of relevant legislation

Appendix of relevant legislation

Leasehold Reform, Housing and Urban Development Act 1993 (as amended)

Section 51

- (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 the appropriate 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, as 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 the appropriate 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 the appropriate 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 the appropriate tribunal of any question as to which 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 the appropriate 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, as 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 or 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 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.

VALUATION FOR PREMIUM FOR A NEW LEASE
Leasehold Reform & Urban Development Act 1993
52a Francis Street, Leyton, E10 6PP

Facts

Lease commences 25th December 1982 27th September 2047

Ground rent £50 rising to £150 per annum

Valuation date 6th November 2014

Unexpired term 67.13 years

Matters determined

Capitalisation rate 7%

Deferment rate 5%

Existing lease relativity as %age of FHVP value 91.26%

Other compensation Nil

Virtual freehold value £305,000

Existing lease (unimproved) £278,330

Long lease value (99%) £301,950

Diminution in Value of Freeholder's interest

	£	£	£
Present value of Freeholder's interest			
Ground rent		50.00	
YP 1.13 years @ 7%		1.0515	53
Ground rent		100.00	
YP 33 years deferred 1.13 years @ 7%		11.8151	1,182
Ground rent		150.00	
YP 33 years deferred 34.13 years @ 7%		1.2670	190
Value of term			
Reversion			
Virtual freehold market value unimproved		305,000	
Deferred 67.13 years @ 5%		0.037806	<u>11,531</u>
Freeholder's present interest			12,956
Value of Reversion after extension	305,000		
deferred 157.13 years @ 5%	0.000468	143	

Calculation of Marriage Value

Value of proposed interests:

Landlords'	143	
Tenant's new 157.13 year lease at a peppercorn	<u>301,950</u>	302,093

Less value of existing interests:

Landlords'	12,956	
Tenant's existing lease	<u>278,330</u>	<u>291,286</u>

Marriage Value 10,807

50% marriage value attributed to landlord say 5,404

TOTAL PREMIUM PAYABLE

£18,360