



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

Case Reference : LON/00BJ/OLR/2015/0340

Property : Flat 2, 23 Galveston Road, Putney, London
SW15 2RZ

Applicant : Kathryn Sara Gent

Representative : TWM Solicitors LLP

Respondent : Zul Jamal Habib

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 : 29th 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 supplementary bundle before the tribunal.
- (2) The tribunal determines that the appropriate premium to be paid into Court for the grant of a new lease to the applicant for Flat 2, 23 Galveston Road, Putney, London SW15 2RZ ("the Flat") pursuant to section 51(5) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act"), is **£7,261 (seven thousand two hundred and sixty one pounds)**.

The Application

1. The applicant, Miss Kathryn Sara Gent, is the long leaseholder of the Flat Miss Gent wishes to extend her lease under the 1993 Act, but it appears that the freeholder, Mr Zul Jamal Habib, cannot be located.
2. On 22nd October 2014 the applicant issued a Part 8 Claim in the County Court at Wandsworth under claim number AO1WT293, seeking a vesting order under section 50(1) of the 1993 Act. On 9th February 2015 District Judge Swan made a vesting order which provided that a new lease of the Flat shall be vested in Miss Gent pursuant to section 50(1) of the Act on such terms as may be determined by the Property Chamber, First-tier Tribunal to be appropriate with a view to the new lease being granted to the Claimant in accordance with section 51(1) of the Act.
3. The case was transferred to the 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.
4. The applicant's solicitors supplied the tribunal with a bundle of documents (and following further directions from the tribunal) a supplementary bundle of documents, 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 new lease.
5. In the applicant's bundle the tribunal was also provided with a valuation report and supplementary report from the applicant's surveyor, Mr I J Ailes BSc FRICS, of Andrew Scott Robertson, Surveyors dated 16th December 2014 and 14th April 2015.
6. The relevant legal provisions are set out in the Appendix to this decision.

The background

7. The applicant is the leaseholder of the Flat. The respondent is the freeholder of 23 Galveston Road, SW15 2RZ ("the Building"). Miss Gent and her representatives have been unable to contact the respondent in the circumstances set out in the witness statements of John Nigel Pursley, Solicitor, in the County Court.
8. 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

9. The existing lease was dated 23rd July 1981 and was made between Zul Jamal Habib as lessor and Venetia Lucie Wood as lessee for the term of 125 years from 24th June 1981 at the rent described in the lease. The applicant is the successor in title of the above lessee.
10. The tribunal was informed that no ground rent had been demanded since purchase by Miss Gent of the lessee's interest on 23rd July 1987, and that there were no other amounts known due to the respondent.

The issues

11. 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.
12. Having studied the documents the tribunal has made the following determination.

Form of new lease

13. The tribunal has seen the terms of the proposed lease (as amended and contained in the applicant's supplementary bundle following the tribunal's further directions) and determines that they are satisfactory.

The premium

14. The tribunal carefully considered the contents of the valuation report of I J Ailes BSc FRICS of Andrew Scott Robertson dated 16th December 2014 and supplementary report 14th April 2015.

15. In his supplementary report Mr Ailes elaborated his earlier comparables and produced further comparables. He concluded a revised figure for the long lease value unimproved in statutory condition at £525,000.
16. The tribunal considered the evidence submitted is sufficient to determine that the long lease value unimproved of this flat in its present condition is £525,000.
17. We agree Mr Ailes' capitalisation figure of 7%.
18. Mr Ailes argues for a deferment rate of 5.25% to reflect the disadvantages of the absent landlord outlined in paragraph 9 of his supplementary report. Mr Ailes further argues that if the deferment rate remains at 5% that there should be a 10% deduction from the extended lease value to reflect those matters relating to the missing landlord issues.
19. The tribunal determines 5% appropriate. The tribunal does not consider that Mr Ailes has provided sufficient evidence to depart from the Sportelli figure. The tribunal does not consider a further discount to the long lease value is merited. The long lease value determined (paragraph 16) takes into account all relevant issues including condition.
20. The tribunal considers that Mr Ailes does not satisfactorily explain his approach to relativity.
21. In the absence of market evidence the tribunal has considered the RICS research document on Leasehold Reform: Graphs of Relativity. The average relativity for Greater London and England is approximately 98% at 91.67 years unexpired. The Tribunal determines that this is the appropriate figure.
22. Accordingly, the resulting premium for the new lease is £7,261. 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 **£7,261**.

A Seifert (Judge of the First tier Tribunal (Property Chamber))

Date: 29th 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
First Floor Flat, 23 Galveston Road SW15 2RZ

Facts

Lease commences 24th June 1981 ends 24th June 2106 (125 Years)

Ground rent £50 pa to 24/6/23, £100 pa to 24/6/2066, £200 pa to 24/6/2106
 Valuation date 24th October 2014
 Unexpired term 91.67 years

Matters determined

Capitalisation rate 7%
 Deferment rate 5%
 Existing lease relativity as %age of FHVP value 98.00%
 Other compensation Nil
 Virtual freehold value £535,714
 Existing lease (unimproved) £525,000

Diminution in Value of Freeholder's interest

| | £ | £ |
|--|---------|-----|
| Present value of Freeholder's interest | | |
| Ground rent | 50.00 | |
| YP 8.67 years @ 7% | 6.4302 | 322 |
| Ground rent | 100.00 | |
| YP 43 years @ 7% | 13.5070 | |
| deferred 8.67 years @ 7% | 0.5562 | 751 |
| Ground rent | 200.00 | |
| YP 40 years @ 7% | 13.3315 | |
| deferred 51.67 years @ 7% | 0.0303 | 81 |

Value of term

| | | |
|--|----------|--------------|
| Reversion | | |
| Virtual freehold market value unimproved | 535,714 | |
| Deferred 91.67 years @ 5% | 0.011400 | <u>6,107</u> |
| Freeholder's present interest | | 7,261 |

Calculation of Marriage Value

No calculation required for term over 80 years

Other compensation: Nil

TOTAL PREMIUM PAYABLE

£7,261