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

Case Reference : **LON/00AG/OLR/2016/0741**

Property : **6 Walsingham Queensmead St John's
Wood Park London NW8 6RB**

Applicant : **M Salehabady**

Representative : **Barber Young Burton & Rind**

Respondent : **Trustees of the Eyre Estate**

Representative : **Pemberton Greenish**

Type of Application : **S.48 Leasehold Reform Housing and
Urban Development Act 1993**

Tribunal Members : **Mrs F J Silverman Dip Fr LLM
Ms M Krisko Bsc (Est Man) BA FRICS**

**Date and venue of paper
consideration** : **8 June 2016.
10 Alfred Place, London WC1E 7LR**

Date of Decision : **8 June 2016**

DECISION

The Tribunal determines that the Applicant's application for an extended lease of the property was not received by the Tribunal within the time limits prescribed by s48 Leasehold Reform Housing and Urban Development Act 1993 and the Tribunal therefore does not have jurisdiction to deal with the claim.

Reasons

1. The applicant seeks a determination pursuant to s.48 Leasehold Reform Housing and Urban Development Act 1993.
2. The decision in this matter was made at a paper consideration by a Tribunal sitting in London on 8 June 2016. Written representations received from both parties were taken into consideration by the Tribunal.
3. The issue which the Tribunal was asked to determine was whether the Tribunal had received the Applicant's application within the time limits prescribed by s48 Leasehold Reform Housing and Urban Development Act 1993 and thus whether or not the Tribunal had jurisdiction to entertain the claim.
4. For the Applicant, it was stated that the envelope containing the application to the Tribunal had sufficient postage affixed on it, and had been posted on 18 April 2016. It was submitted that by virtue of the Interpretation Act 1978 that letter should be deemed to have arrived at the Tribunal office in the ordinary course of post and have therefore have arrived prior to the deadline of 21 April 2016. No evidence of the date on which the application form was said to have been posted to the Tribunal was offered to the Tribunal. For the Respondent it was submitted that the statute required the Tribunal to receive the application within the prescribed time limits and that as it had not done so the application was out of time and the Tribunal had no jurisdiction to deal with it.
5. The envelope relating to the only copy of the application and accompanying letter on the Tribunal file is stamped as having been received by the Tribunal on 9 May 2016 which is outside the time limit prescribed by s48 of the Act which, in this case, expired on 21 April 2016.
6. Without any evidence from the Applicant that the application had indeed been posted (eg a certificate of posting) within the prescribed time limits the Tribunal concludes that it only received the Applicant's application after the expiry of the statutory time limit. It was therefore received too late and the Tribunal has no jurisdiction to deal with this matter.
7. The Law

S48 Applications where terms in dispute or failure to enter into new lease.

- (1) Where the landlord has given the tenant—
 - (a) a counter-notice under section 45 which complies with the requirement set out in subsection (2)(a) of that section, or

- (b) a further counter-notice required by or by virtue of section 46(4) or section 47(4) or (5),
but any of the terms of acquisition remain in dispute at the end of the period of two months beginning with the date when the counter-notice or further counter-notice was so given, a leasehold valuation tribunal may, on the application of either the tenant or the landlord, determine the matters in dispute.
- (2) Any application under subsection (1) must be made not later than the end of the period of six months beginning with the date on which the counter-notice or further counter-notice was given to the tenant.
- (3) Where—
- (a) the landlord has given the tenant such a counter-notice or further counter-notice as is mentioned in subsection (1)(a) or (b), and
- (b) all the terms of acquisition have been either agreed between those persons or determined by a leasehold valuation tribunal under subsection (1),
- but a new lease has not been entered into in pursuance of the tenant's notice by the end of the appropriate period specified in subsection (6), the court may, on the application of either the tenant or the landlord, make such order as it thinks fit with respect to the performance or discharge of any obligations arising out of that notice.
- (4) Any such order may provide for the tenant's notice to be deemed to have been withdrawn at the end of the appropriate period specified in subsection (6).
- (5) Any application for an order under subsection (3) must be made not later than the end of the period of two months beginning immediately after the end of the appropriate period specified in subsection (6).
- (6) For the purposes of this section the appropriate period is—
- (a) where all of the terms of acquisition have been agreed between the tenant and the landlord, the period of two months beginning with the date when those terms were finally so agreed; or
- (b) where all or any of those terms have been determined by a leasehold valuation tribunal under subsection (1)—
- (i) the period of two months beginning with the date when the decision of the tribunal under subsection (1) becomes final, or
- (ii) such other period as may have been fixed by the tribunal when making its determination.
- (7) In this Chapter "the terms of acquisition", in relation to a claim by a tenant under this Chapter, means the terms on which the tenant is to acquire a new lease of his flat, whether they relate to the terms to be contained in the lease or to the premium or any other amount payable by virtue of Schedule 13 in connection with the grant of the lease, or otherwise.

S49 Applications where landlord fails to give counter-notice or further counter-notice.

- (1) Where the tenant's notice has been given in accordance with section 42 but—
- (a) the landlord has failed to give the tenant a counter-notice in accordance with section 45(1), or
- (b) if required to give a further counter-notice to the tenant by or by virtue of section 46(4) or section 47(4) or (5), the landlord has failed to comply with that requirement,
- the court may, on the application of the tenant, make an order determining, in accordance with the proposals contained in the tenant's notice, the terms of acquisition.
- (2) The court shall not make such an order on an application made by virtue of paragraph (a) of subsection (1) unless it is satisfied—

- (a) that on the relevant date the tenant had the right to acquire a new lease of his flat; and
- (b) if applicable, that the requirements of Part I of Schedule 11 were complied with as respects the giving of copies of the tenant's notice.
- (3) Any application for an order under subsection (1) must be made not later than the end of the period of six months beginning with the date by which the counter-notice or further counter-notice referred to in that subsection was required to be given.
- (4) Where—
 - (a) the terms of acquisition have been determined by an order of the court under this section, but
 - (b) a new lease has not been entered into in pursuance of the tenant's notice by the end of the appropriate period specified in subsection (7),
 the court may, on the application of either the tenant or the landlord, make such order as it thinks fit with respect to the performance or discharge of any obligations arising out of that notice.
- (5) Any such order may provide for the tenant's notice to be deemed to have been withdrawn at the end of the appropriate period specified in subsection (7).
- (6) Any application for an order under subsection (4) must be made not later than the end of the period of two months beginning immediately after the end of the appropriate period specified in subsection (7).
- (7) For the purposes of this section the appropriate period is—
 - (a) the period of two months beginning with the date when the order of the court under subsection (1) becomes final, or
 - (b) such other period as may have been fixed by the court when making that order.

S53 Deemed withdrawal of tenant's notice.

- (1) Where—
 - (a) in a case to which subsection (1) of section 48 applies, no application under that subsection is made within the period specified in subsection (2) of that section, or
 - (b) in a case to which subsection (3) of that section applies, no application for an order under that subsection is made within the period specified in subsection (5) of that section,
 the tenant's notice shall be deemed to have been withdrawn at the end of the period referred to in paragraph (a) or (b) above (as the case may be).
- (2) Where, in a case falling within paragraph (a) or (b) of subsection (1) of section 49, no application for an order under that subsection is made within the period specified in subsection (3) of that section, the tenant's notice shall be deemed to have been withdrawn at the end of that period.
- (3) Where, in a case to which subsection (4) of section 49 applies, no application for an order under that subsection is made within the period specified in subsection (6) of that section, the tenant's notice shall be deemed to have been withdrawn at the end of that period.
- (4) The following provisions, namely—
 - (a) section 43(3),
 - (b) section 48(4), and
 - (c) section 49(5),

also make provision for a notice under section 42 to be deemed to have been withdrawn at a particular time.

Judge F J Silverman as Chairman
Date 08 June 2016

Note:
Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.