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

Case Reference : **LON/00AN/OLR/2016/0048**

Property : **The Garden Flat, 37A Palliser Road,
London, W14 9EB**

Applicant : **Gerald Michael Oliver Bunting**

Representative : **Tilly Bailey & Irvine, Solicitors**

Respondent : **Italo Maddalena**

Representative : **Did not appear and was not
represented**

Type of Application : **Section 48 of the Leasehold
Reform, Housing and Urban
Development Act 1993**

Tribunal Members : **Judge Ian Mohabir
Mr N Martindale FRICS**

**Date and venue of
Determination** : **24 May 2016
10 Alfred Place, London WC1E 7LR**

Date of Decision : **8 July 2016**

DECISION

Introduction

1. This is an application made by the Applicant under section 48 of the Leasehold Reform, Housing and Urban and Development Act 1993 (as amended) (“the Act”) for a determination of the premium to be paid for the grant of a new lease for the property known as The Garden Flat, 37A Palliser Road, London, W14 9EB (“the property”).
2. The Applicant is the lessee of the lower ground floor flat in the building.
3. The Respondent is the landlord and freeholder.
4. By a Notice of Claim dated 11 May 2015 (“the valuation date”) served pursuant to section 42 of the Act, the Applicant’s predecessor in title exercised the right to the grant of a new lease of the property. The proposed premium was £60,000. The benefit of the notice was assigned to the Applicant by an assignment dated 10 July 2015.
5. By a counter notice dated 23 July 2015 served pursuant to section 45 of the Act, the Respondent admitted the Applicant’s right to acquire a new lease and counter proposed a premium of £134,540.
6. On 26 January 2016, the Tribunal issued Directions.
7. Pursuant to the Directions, the Applicant has served the valuation evidence he relies on, which is set out in the report prepared by Mr Colin Ross, MSc MRICS dated 5 May 2016 and additional documents found at pages 98-120 in the hearing bundle. Mr Ross contends for a premium of £60,000.
8. The only valuation evidence from the Respondent is a report prepared on his behalf from James Flynn, Chartered Surveyors, dated 20 July 2015 and found at pages 124-128 of the hearing bundle. However, it is clear that the report was prepared on a confidential basis for the Respondent and was not intended to be disclosed to the Respondent’s professional advisers or to the Applicant on a without prejudice basis for the purpose of negotiations. The report contends for a premium of £67,450.
9. Apparently, the Respondent failed to instruct his valuer to negotiate and, therefore, the Applicant was obliged to make this application.

The Law

10. Schedule 13 to the Leasehold Reform, Housing and Urban Development Act 1993 (The Act) provides that the premium to be paid by the tenant for the grant of a new lease shall be the aggregate of the diminution in the value of the landlord’s interest in the tenant’s flat, the landlord’s share of the marriage value, and the amount of any compensation payable for other loss.

11. The value of the landlord's interests before and after the grant of the new lease is the amount which at the valuation date that interest might be expected to realise if sold on the open market by a willing seller (with neither the tenant nor any owner of an intermediate leasehold interest buying or seeking to buy) on the assumption that the tenant has no rights under the Act to acquire any interest in any premises containing the tenant's flat or to acquire any new lease.
12. Paragraph 4 of the Schedule, as amended, provides that the landlord's share of the marriage value is to be 50%, and that where the unexpired term of the lease exceeds eighty years at the valuation date the marriage shall be taken to be nil.
13. Paragraph 5 provides for the payment of compensation for loss arising out of the grant of a new lease.
14. Schedule 13 also provides for the valuation of any intermediate leasehold interests, and for the apportionment of the marriage value.

Decision

15. The hearing in this matter took place on 24 April 2016. The Applicant was represented by Mr Beattie, a Solicitor from the firm of Tilly Bailey & Irvine. The Tribunal also heard valuation evidence from Mr Ross who was also in attendance. The Respondent did not attend and was not represented.
16. The Tribunal relied on the description of the property internally given in Mr Ross's report and refer to page 2 of that report for the description (page 101 of the bundle). The Tribunal did not carry out an inspection.
17. The existing lease was granted for a term of 99 years from 29 September 1975 with a current ground rent of £75, £100 and £150 per annum for each 33 year period of the term. At the valuation date, the lease had 59.38 years to run.
18. Because the lease has less than 80 years to run, marriage value at 50 per cent is payable. Compensation under paragraph 5 of Schedule 13 to the Act does not arise.
19. The value of the ground rents should be discounted at 7% per annum. We agree with Mr Ross's figure on the basis that the ground rent would not be attractive to an investor due to the relatively small amount receivable and the relatively high cost of collecting it. This accords with the Tribunal's own knowledge of market values for this type of investment.
20. We agree with Mr Ross's use of 5% for the deferment of the reversion, which is in accordance with the decision in *Sportelli*.

21. We accept Mr Ross's evidence that the extended lease value is £510,000. Mr Ross arrived at this valuation by using the sale price of £420,000 of the subject property on 10 July 2015. To this figure he applied a relativity rate of 81.54% based on the average of the following 5 graphs of relativity outside Prime Central London:
- Nesbitt & Co – 82.63%
 - Beckett & Kay – 84.40%
 - South East Leasehold – 89.38%
 - Austin Gray – 84.83%
 - Andrew Pridell – 85.63%
22. As a cross-check, Mr Ross also produced a number of comparable properties mainly within the same street, which are set out in Appendix 2 of his report and had been obtained from Land Registry data. However, in evidence, he said that the two best comparable properties are second floor flat, 1 Palliser Road and ground floor flat, 9 Palliser Road. These had sold for £460,00 and £368,000 respectively, which produced an average sale price of £414,000.
23. Mr Ross then applied an uplift of 1% to arrive at the freehold vacant possession value of, say, £515,152.
24. The Tribunal, therefore, agreed and approved Mr Ross's valuation of £60,000 as being the premium payable by the Applicant for the grant of a new lease for the property.
25. The terms of the draft Deed of surrender and Lease provided by the Applicant's solicitors at pages 92-97 of the bundle are approved save that the new lease must also contain the provisions required by sections 57(7)(b), 57(11) and 59(3) of the Act.

Judge I Mohabir

8 July 2016