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

Case Reference : VG/LON/OOAW/OLR/2015/1619

Property : First Floor Flat, 53 Median Road, London E5
OPJ

Applicant : Lisa Chapman (tenant)

Representative : Mr Price BSc (Hons) MRICS

Respondent : Jean Sutton (landlord)

Representative: : Mr Sutton

Type of Application: : **For the determination of the premium payable under section 48**

Tribunal Members : Ms Sonya O'Sullivan
Ms Marina Krisko FRICS

Date and Venue of Hearing : **27 January 2016 at 10 Alfred Place,
London WC1E 7LR**

Date of Decision : **2 February 2016**

DECISION

Background

Property:	A first floor flat known as Flat B, 53 Median Road, London E5 OPJ
Date of tenant's notice:	11 March 2015
Date of landlord's counter-notice:	27 April 2015
Valuation date:	Agreed at 11 March 2015
Details of tenant's leasehold interest -	
(i) Date of lease :	31 December 1986
(ii) Expiry of lease:	30 December 2085
(iii) Ground rent:	£125 per annum for next 21.8 years, £175 per annum for following 25 years and £225 for the final 24 years of the term
(iv) Unexpired term at valuation date:	70.8 years
Tenant's proposed premium:	£16,014
Landlord's proposed premium:	£23,060

Inspection

1. The tribunal did not consider it necessary to inspect the flat given the issues in dispute.

The hearing

- 1) Both parties were represented. The Applicant relied upon a report dated 20 January 2016 of Mr Price BSC (Hons) MRICS of Peter Barry Surveyors. The Respondent relied on a witness statement of Henry Sutton dated 20 January 2016. Mr Sutton is the Respondent's husband, a retired solicitor whom the tribunal heard had extensive experience of dealing with lease extensions and enfranchisement. Both representatives

appeared to give evidence. Also attending for the Respondent were Mr Peck and Mr Hobbs also of Peter Barry Surveyors.

- 2) The parties had prepared a statement of agreed facts. The parties had agreed the value of the subject property with a new lease at £325,000 as at the valuation date. The deferment rate was agreed at 5% and the capitalization rate was agreed at 7%. The value of the term had also been agreed at £1953. The only issues remaining in dispute were relativity and the value of an unencumbered freehold interest in the property.
- 3) Both parties had prepared valuations. We would mention that we noticed two small errors in Mr Sutton's which would affect the figures reached. His unexpired term had been rounded up to 71 years from 70.8 years. In addition his figure for the reversion to the freehold for the extended lease was £324,994 rather than the £325,000 confirmed to have been agreed.
- 4) The evidence heard and the Tribunal's decision is set out below. What follows is necessarily a summary of the evidence, the majority being in any event contained in the bundles before the tribunal.
- 5) We would mention that as a preliminary point Mr Sutton raised the point of whether the landlord was bound to argue for the maximum figure of £17,000 as contained in the counter notice or whether he could contend for more. Mr Price did not make any submissions on this point as he had no instructions. Our view was that as long as a landlord has inserted a reasonable figure in a counter notice he is not bound by that figure. There was no suggestion that any unreasonable figure had been inserted in the counter notice. We therefore considered that it was open to him to now argue the premium should be higher if supported by the evidence.

Relativity

- 6) Mr Price contended for a relativity of 92.96% whilst Mr Sutton contended for 89.54%.

- 7) Mr Price referred the tribunal to the decision made in *Arrowdell Ltd v Coniston Court (North) Hove Ltd 2006, LA/72/2005*, in particular the following passage;

“Whilst it may be that relativities will vary between one type of property and another and from area to area, we think that there is little doubt that the predominant factor is the length of the term. It ought, we believe, to be possible to produce standard graphs, distinguishing between mortgage-dependent markets and those that are not so dependent, on the basis of a survey of assessments made by experienced valuers addressing themselves properly to the hypothetical no-Act world. We express the hope that the Royal Institute of Chartered Surveyors may find itself able to carry out such an exercise and to produce guidance in the form of standard graphs that can readily be applied by valuers in carrying out enfranchisement valuations.”

- 8) However he says that the working group established by RICS failed to agree definitive graphs presenting instead three sets of graphs entitled Prime Central London, Greater London and England and Published Research. Due to the location of the subject property and his knowledge of the local market he based his opinion of relativity on the Greater London and England graphs. Mr Price then went on to take an average of those five graphs to arrive at a relativity of 92.96%.
- 9) Mr Sutton submitted that the graphs were always a difficult issue. He relied on a variety of different sources as set out on an extract from myleasehold on graphs of relativity such as the 2009 RICS Prime Central London graphs, the 2009 RICS Greater London and England graphs, Published Research and 2015 data. He took an average of those graphs to reach his figure of 89.54%.

Relativity – the tribunal’s decision

- 10) In principle we preferred Mr Sutton’s approach as he had had regard to all of the available data which might be helpful to include published research and data. However we considered that some of that data should be discounted as follows.
- 11) Both parties had relied on the 2009 RICS Greater London graphs. Of those graphs we agreed all were useful save for the South East Leasehold which related to Brighton, Hove and the coast. Discounting this graph lead us to an average of 92.78%.
- 12) Mr Sutton had also relied on the 2009 RICS Prime Central London. We did not consider this should be taken into account as it related to prime central London which was a different market. Mr Sutton also relied on the Published Research. We did not agree that the Savills 2002 and 1992 data was helpful as it related likewise to prime central London. Likewise we did not take into account the two CEM reports for Inner London and the Rest of England as we do not have sufficient information about their content to be reliable. Of the Published Research we therefore considered that the Tribunal Graph, Moss Kaye and Leasehold Advisory services should be taken into account with an average of 91.48%..
- 13) As far as the 2015 data relied upon by Mr Sutton was concerned we considered only the Charles Boston 2015 percentage of 90.40% to be appropriate. The remainder related to either houses or flats in prime central London and were therefore not relevant.
- 14) We then took an average of those three figures (92.78%, 91.48% and 90.40%) to reach a figure for relativity of 91.55%.
- 15) We should also mention that Mr Sutton had taken into account a recent settlement in relation to a lease extension of Flat C. which was said to be linked to a sale of the property. He had used this by way of a cross check

to support his figure on relativity as the relativity in that case had been 89.54%. We also had a witness statement from Mr Ali which suggested that he had been forced to agree the price. We did not find this evidence persuasive as we had no real information in relation to this settlement and the surrounding circumstances and we preferred to rely on the overwhelming evidence contained in the graphs.

Value of unencumbered freehold

16) Mr Price had reached his figure for the value of the unencumbered freehold by taking the agreed long lease value and applying it as 99% of the unencumbered freehold. Mr Sutton submitted that although there might be a difference between the two figures it would be marginal. Mr Sutton confirmed that he did not have a strong view either way. We considered Mr Price's approach to be appropriate and adopted the figure as 99% of the unencumbered freehold.

Summary of the Tribunal's Decision

We therefore determined that the premium to be paid by the tenant on the grant of a new lease, in accordance with section 56 and Schedule 13 of the Leasehold Reform, Housing and Urban Development Act 1993 is £18,263 as shown on the attached valuation.

Name: Sonya O'Sullivan

Date: 2 February 2016

TRIBUNAL VALUATION
1ST FLOOR FLAT, 53B MEDIAN ROAD, LONDON, E5 oPJ

Matters agreed

Valuation date	11 th March 2015
Term	70.8 years
Capitalisation rate	7%
Reversion rate	5%
Value of term	£1953
Extended lease value	£325,000

Matters decided

Freehold value	£328,283
Relativity	91.55%
Existing lease value	£300,543

<u>Term</u>	Agreed	£ 1,953
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Reversion

£328,283	70.8 years	5%	0.03161	<u>£10,377</u>
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Landlord's interest	£12,330
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Less landlord's future reversion		
£328,283	160.8 years	5% 0.0004
	£ 131	£12,199

Marriage value

Extended value	£325,000	
Less existing	£300,543	
Less landlord's interest	<u>£ 12,330</u>	
-	£ 12,127	
	50%	<u>£ 6,064</u>

<u>Premium</u>	<u>£18,263</u>
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