



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

Case reference : **LON/00AW/OLR/2020/0446**

HMCTS code (paper, video, audio) : **CVP Video**

Property : **Flat 2, 3 Vicarage Gate, London W8 4HH**

Applicant : **Church Commissioners for England**

Representative : **Mr Edward Blakeney of Counsel**

Respondent : **Mr Mirza Beg**

Representative : **Not known**

Type of application : **Sections 61A and 61B of the Leasehold Reform, Housing and Urban Development Act 1993**

Tribunal members : **Judge N Hawkes
Mr Kevin Ridgeway MRICS**

Date of determination and venue : **15 October 2020 10 Alfred Place,
London WC1E 7LR (remote hearing)**

Date of decision : **16 November 2020**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: FULL VIDEO HEARING REMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that the Tribunal was referred to are in a bundle of 205 pages, the contents of which we have noted. The order made is described below.

Summary of the Tribunal's decisions

- (1) The Tribunal was satisfied that reasonable steps had been taken to notify the Respondent of the hearing and that it was in the interests of justice to proceed in his absence.
- (2) The sum payable by the Respondent to the Applicant is £95,508.90.

Background

1. The Applicant brings this application under sections 61A, 61B and 91(2)(cb) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act"). These provisions are set out in an Appendix to this decision.
2. The application relates to Flat 2, 3 Vicarage Gate, London W8 4HH ("the Property"). The Applicant is the freehold owner of Vicarage Gate, which is registered under Title Number LN117443 and of which the Property forms part.
3. There was previously an intermediate leasehold interest over 3 Vicarage Gate held by the Vicarage (Tenants) Company Limited, which was registered under Title Number LN151075. The intermediate lease was for a term of 60 years from 25 December 1956 and it expired on 25 December 2016.
4. The Respondent became the registered leasehold owner of the long leasehold interest in the Property on 25 March 2009, which was registered under Title Number LN151692 ("the Lease"). The Lease was for a term of 60 years less 10 days from 25 December 1956 and expired on 15 December 2016.
5. Shortly before the expiry of the Lease on 15 December 2016, by notice dated 13 December 2016, the Respondent claimed a new lease of the Property, pursuant to section 42 of the 1993 Act.
6. By virtue of paragraph 5 of Schedule 12 to the 1993 Act, the Respondent's leasehold interest did not terminate by effluxion of time on 15 December 2016, but continued while his section 42 notice remained effective.
7. Paragraph 5 to Schedule 12 of the 1993 Act provides that:

(1) Where by a notice under section 42 a tenant makes a claim to acquire a new lease of a flat, then during the currency of the claim and for three months thereafter the lease of the flat shall not terminate –

(a) by effluxion of time, ...

but if the claim is not effective, and but for this sub-paragraph the lease would have so terminated before the end of those three months, the lease shall so terminate at the end of those three months.

8. Terms of acquisition were agreed, but a lack of engagement on the part of the Respondent resulted in the Applicant issuing County Court proceedings against him. Following non-compliance with a consent order in the County Court proceedings, the section 42 notice was deemed withdrawn as of 4:01pm on 9 November 2018.
9. The Applicant then served notices under Schedule 10 to the Local Government and Housing Act 1989, which had the effect of converting the Lease into an assured tenancy from 16 May 2019. As a result of the Respondent's failure to pay the rent due under the assured tenancy, the Applicant obtained a possession order in respect of the Property on 22 November 2019 and possession was recovered on 11 February 2020. Between 26 December 2016 and 11 February 2020, the Applicant was the Respondent's direct landlord.
10. By this application, the Applicant seeks compensation from the Respondent in accordance with sections 61A and 61B of the 1993 Act, for the period during which the Respondent's Lease was extended by virtue of Schedule 12 of the 1993 Act. The Applicant seeks £106,121 in compensation, contending that this was the market rent for the Property between 26 December 2016 and 9 February 2019.
11. The Tribunal issued Directions on 25 June 2020. Prior to the issue of Directions, the Applicant's solicitors informed the Tribunal that they had had difficulties in locating the Respondent and the Tribunal ordered the Applicant to serve the Notice of Application, the supporting documents, the Tribunal Directions and correspondence on the Respondent by three different methods.
12. The Applicant's solicitors have confirmed that this was done. However, the Respondent has not complied with the Tribunal's Directions or otherwise responded to the service of these documents.

The hearing

13. The hearing in this matter took place by video on 15 October 2020. The Applicant was represented by Mr Blakeney of Counsel, instructed by Charles Russell Speechlys LLP, at the hearing. The Respondent did not attend and was not represented. Mr Blakeney called Mr Joseph Green, a solicitor at Charles Russell Speechlys LLP and Mrs Vanda Kelsey MA MRICS to give oral evidence.

The Tribunal's determinations

Whether to proceed with the hearing in the Respondent's absence

14. When the application was issued, the Respondent's whereabouts were unknown and the Tribunal directed service of the proceedings to be effected by sending the relevant documents:

- (1) by ordinary first class post to 88 Cuckoo Dene, London, W7 3DT (on the basis that the Respondent owns the freehold interest in this property);
 - (2) by e-mail to mirza.beg@gmail.com (this being the e-mail address which the Respondent has used to correspond with Applicant and the Applicant's representatives); and
 - (3) by ordinary first class post to Flat 2, 3 Vicarage Gate, London W8 4HH (as the Respondent may be forwarding his post from the Property to his new address).
15. Mr Green's evidence was as follows.
 16. Mr Green confirmed that service was effected in accordance with the Tribunal's Directions. He stated that, whilst the proceedings in respect of the lease extension and the possession claim were ongoing, his firm was able to contact the Respondent both via the Respondent's personal email address and by sending documents to the Property.
 17. After possession of the Property had been obtained on 11 February 2020, the Applicant's solicitors found it increasingly difficult to contact the Respondent as he was no longer occupying the Property, he had not provided any forwarding address, and he did not generally respond to emails. These issues were raised with the Tribunal when the Notice of Application was filed.
 18. However, on one occasion following the recovery of possession (between 6 and 10 March 2020), the Respondent corresponded with Mr Green's colleague, Ms Helen Mitchell, in order to collect some possessions that he had left at the Property. He did so via e-mail and Mr Green produced a copy of the relevant email chain.
 19. On 22 April 2020, Ms Mitchell e-mailed the Respondent with an interim charging order the Applicant had obtained against the Respondent's property at 36 Sherborne Gardens. The Respondent is not believed to reside at this address. Ms Mitchell sent the e-mail using a registered post function similar to sending a letter by recorded delivery, which notifies the sender when the e-mail has been sent, delivered and opened. Mr Green produced a copy of the e-mail receipt which confirms the Respondent opened the e-mail on the same day it was sent.
 20. Mr Green stated that his firm has since tried to send e-mails to the Respondent using the same function but they have not received a delivery or open receipt which suggests either that the Respondent is no longer using the e-mail address or that he has blocked e-mails sent from their e-mail addresses. The Applicant's solicitors continued to attempt to contact the Respondent using the addresses and email address provided in the letter they sent to the Tribunal when filing the application but without success.

21. The Applicant's solicitors then carried out further investigations in order to see whether there were any other methods by which the Respondent could be contacted. In particular, they ascertained that the Respondent has appointments with the following companies:
 - i. Artifice Media Limited (06545106) – Director
 - ii. Legacy Arts Limited (11854992) – Director.
22. Mr Green referred the Tribunal to a Companies House print-out concerning Artifice Media Limited. This records that the Respondent was appointed a director of Artifice Media Limited on 26 March 2008. On 6 July 2020, the registered office of Artifice Media Limited was changed from the Property to 41 Sedgeford Road, London, W12 0NA.
23. Mr Green informed the Tribunal that Artifice Media Limited has a website (<http://www.artifice-media.com/>) which describes the Respondent as the Chairman of the Artifice Media Group. He stated that the company's contact details on their website are a postal address, namely, 6 Agar Street, London WC2N 4HN and an email address, namely, info@artificefilm.com.
24. Mr Green referred the Tribunal to a Companies House print-out concerning Legacy Arts Limited. This records that the Respondent was appointed the sole director of Legacy Arts Limited on 1 March 2019. The registered office of Legacy Arts Limited is Churchill House, 137- 139 Brent Street, Hendon, London, United Kingdom, NW4 4DJ. Mr Green has been unable to find a website for this company.
25. Mr Green informed the Tribunal that, as a result of these investigations and in light of the Respondent's failure to respond to the Applicant's application, on 27 August 2020 he sent a copy of his previous correspondence, the application and the Tribunal's Directions to the Respondent at the following addresses and e-mail address:
 - i. 41 Sedgeford Road, London, W12 0NA
 - ii. 6 Agar Street, London WC2N 4HN
 - iii. Churchill House, 137-139 Brent Street, Hendon, London, United Kingdom, NW4 4DJ
 - iv. info@artificefilm.com.
26. Mr Green stated that the letter sent to 41 Sedgeford Road was delivered at 11:30am on 28 August 2020 and signed for by the Respondent. He referred the Tribunal to a copy of a proof of delivery record obtained from the Royal Mail's website. Mr Green stated that a hard copy of the trial bundle was also sent to

the Respondent at this address and that proof of delivery was again received. He stated that he served the Applicant's skeleton argument on the Respondent by email. The Tribunal asked Mr Green to send the Tribunal Case Officer the Royal Mail receipt in respect of the hearing bundle and this was done during the course of the hearing.

27. The Tribunal accepts Mr Green's evidence and we are satisfied that extensive steps have been taken by the Applicant's solicitors to notify the Respondent of the hearing. We note the Respondent's previous failure to comply with the order made in the County Court proceedings, notwithstanding that this order was made by consent.
28. Rule 34 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 provides:

34. Hearings in a party's absence

If a party fails to attend a hearing the Tribunal may proceed with the hearing if the Tribunal—

(a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and

(b) considers that it is in the interests of justice to proceed with the hearing.

29. On the basis of Mr Green's evidence, the Tribunal was satisfied that reasonable steps had been taken to notify the Respondent of the hearing and that it was in the interests of justice to proceed.

The compensation payable by the Respondent

30. Mr Blakeney makes the following submissions on behalf of the Applicant.
31. Whilst the Lease was continued pursuant to paragraph 5 of Schedule 12 to the 1993 Act, the Respondent was only liable to pay a ground rent of £40 each year and the Applicant was unable to serve notices under Schedule 10 to the Local Government and Housing Act 1989 to convert the Lease into an assured tenancy at a market rent.
32. Section 61A of the 1993 Act intervenes in these circumstances and permits the Applicant to recover compensation; the section is entitled "Compensation for postponement of termination in connection within effective claims".
33. Section 61A of the 1993 Act (as modified by s61B of the 1993 Act) is not the most straight-forward provision that one may encounter in enfranchisement law. Nor is it one that is commonly encountered at all; Mr Blakeney has been unable to find any reported or first-instance decision on the section, nor are any

referenced in the leading practitioner texts. The Tribunal is also unaware of any reported decision concerning these provisions.

34. The Tribunal is asked to determine:
 - i. which subparagraph of section 61A(2) of the 1993 Act applies;
 - ii. what is the “appropriate period” under section 61A(5) of the 1993 Act; and
 - iii. the sum payable by the Respondent.
35. As regards the first issue, Mr Blakeney states that the Lease has been extended pursuant to paragraph 5 of Schedule 12 to the 1993 Act, and therefore subparagraph 61A(2)(c) is applicable. The Tribunal accepts this submission.
36. Mr Blakeney made some interesting and considered observations concerning whether the three limbs of section 61A(2) of the 1993 Act should be read as only covering different circumstances; if the limbs do overlap, whether they should be read as being mutually exclusive; and, if they are not mutually exclusive, whether an applicant is free to choose the limb under which to seek compensation. As stated by Mr Blakeney, these matters are not in issue in the present proceedings. Accordingly, whilst we are grateful to Mr Blakeney for his observations, we make no findings concerning these matters.
37. The second issue concerns the “appropriate period” under section 61A(5) of the 1993 Act. Mr Blakeney submits the “appropriate period” is determined as follows:
 - i. On the basis that section 61A(2)(c) applies, then section 61A(5)(c) is used to calculate the “appropriate period”. That is defined as *“the period for which the existing lease is continued under paragraph 5(1) of Schedule 12”*.
 - ii. Paragraph 5 of Schedule 12 provides that the service of a s42 notice shall prevent the termination of the lease by effluxion of time *“during the currency of the claim and for three months thereafter”*.
 - iii. The reference to “the currency of the claim” is further defined in paragraph 8(1)(c)(i) of Schedule 12 (there having been a valid notice of claim), which refers *“to the period during which the notice continues in force in accordance with subsection (8) of [section 42]”*.
 - iv. Section 42(8)(b) provides that the notice continues in force from the date it is served until the date of withdrawal or deemed withdrawal.
38. Accordingly, under section 61A the “appropriate period” is from the 16 December 2016 (i.e. the first day the Lease was continued by virtue of paragraph 5 of Schedule 12) to 9 February 2019 (i.e. three months after deemed

withdrawal of the Notice). This is modified by section 61B of the 1993 Act, which applies where there are two reversioners during the “appropriate period”.

39. In this case, there was an intermediate leasehold interest that fell away during the period that the Lease was extended under paragraph 5 of Schedule 12 of the 1993 Act. Accordingly, the “appropriate period” for which the Applicant is entitled to claim excludes the ten days when the Vicarage (Tenants) Company Limited was the Respondent’s direct landlord, and therefore runs from 26 December 2016 to 9 February 2019.
40. The Tribunal accepts these submissions.
41. As regards the sum payable by the Respondent, the Applicant relies upon the valuation evidence of Mrs Vanda Fay Kelsey MRICS. The Tribunal carefully questioned Mrs Kelsey and we have no hesitation in finding her expert opinion to be reliable.
42. The Tribunal invited submissions from Mr Blakeney concerning the meaning of the valuation assumption that “*the letting confers no security of tenure*”. We also asked Mrs Kelsey, during a short adjournment, to consider the effect on her valuation evidence of the potential interpretations which were discussed with Mr Blakeney.
43. We consider that the valuation assumption that “*the letting confers no security of tenure*” is best given effect to by assuming an occupancy which could be terminated by the service of a 28 day notice to quit.
44. Mrs Kelsey gave evidence that, if the Tribunal were to proceed on this basis, the figure given in her report would fall to be reduced by 10%, that is from £106,121 to £95,508.90. We accept this valuation evidence and find that the compensation payable by the Respondent to the Applicant in accordance with the statutory provisions to which we have been referred is £95,508.90.

Name: Judge N Hawkes

Date: 16 November 2020

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix

Leasehold Reform, Housing and Urban Development Act 1993

61A.— Compensation for postponement of termination in connection with ineffective claims.

- (1) This section applies where, on or after 15th January 1999—
- (a) a tenant of a flat makes a claim to acquire a new lease of the flat, and
 - (b) the claim is not made at least two years before the term date of the lease in respect of which the claim is made (“the existing lease”).
- (2) The tenant shall be liable to pay compensation if the claim is not effective and—
- (a) the making of the claim caused a notice served under paragraph 4(1) of Schedule 10 to the Local Government and Housing Act 1989 to cease to have effect and the date on which the claim ceases to have effect is later than four months before the termination date specified in the notice,
 - (b) the making of the claim prevented the service of an effective notice under paragraph 4(1) of Schedule 10 to the Local Government and Housing Act 1989 (but did not cause a notice served under that provision to cease to have effect) and the date on which the claim ceases to have effect is a date later than six months before the term date of the existing lease, or
 - (c) the existing lease is continued under paragraph 5(1) of Schedule 12 by virtue of the claim.
- (3) Compensation under subsection (2) shall become payable at the end of the appropriate period and be the right of the person who is the tenant's immediate landlord at that time.
- (4) The amount which the tenant is liable to pay under subsection (2) shall be equal to the difference between—
- (a) the rent for the appropriate period under the existing lease, and
 - (b) the rent which might reasonably be expected to be payable for that period were the property to which the existing lease relates let for a term equivalent to that period on the open market by a willing landlord on the following assumptions—
 - (i) that no premium is payable in connection with the letting,
 - (ii) that the letting confers no security of tenure, and
 - (iii) that, except as otherwise provided by this paragraph, the letting is on the same terms as the existing lease.
- (5) For the purposes of subsections (3) and (4), the appropriate period is—
- (a) in a case falling within paragraph (a) of subsection (2), the period—

(i) beginning with the termination date specified in the notice mentioned in that paragraph, and

(ii) ending with the earliest date of termination which could have been specified in a notice under paragraph 4(1) of Schedule 10 to the Local Government and Housing Act 1989 served immediately after the date on which the claim ceases to have effect, or, if the existing lease is terminated before then, with the date on which it is terminated;

(b) in a case falling within paragraph (b) of subsection (2), the period—

(i) beginning with the later of six months from the date on which the claim is made and the term date of the existing lease, and

(ii) ending six months after the date on which the claim ceases to have effect, or, if the existing lease is terminated before then, with the date of its termination; and

(c) in a case falling within paragraph (c) of subsection (2), the period for which the existing lease is continued under paragraph 5(1) of Schedule 12.

(6) For the purposes of subsection (2), a claim to a new lease is not effective if it ceases to have effect for any reason other than—

(a) the application of section 47(1) or 55(2), or

(b) the acquisition of the new lease in pursuance of the claim.

(7) For the purposes of this section—

(a) references to a claim to acquire a new lease shall be taken as references to a notice given, or purporting to be given (whether by a qualifying tenant or not), under section 42, and

(b) references to the date on which a claim ceases to have effect shall, in the case of a claim made by a notice which is not a valid notice under section 42, be taken as references to the date on which the notice is set aside by the court or is withdrawn or would, if valid, cease to have effect or be deemed to have been withdrawn, that date being taken, where the notice is set aside, or would, if valid, cease to have effect, in consequence of a court order, to be the date when the order becomes final.

61B.— Modification of section 61A where change in immediate reversion.

(1) Where a tenant's liability to pay compensation under section 61A relates to a period during which there has been a change in the interest immediately expectant on the determination of his lease, that section shall have effect with the following modifications.

(2) For subsections (3) and (4) there shall be substituted—

“(3) Compensation under subsection (2) shall become payable at the end of the appropriate period and there shall be a separate right to compensation in respect of

each of the interests which, during that period, have been immediately expectant on the determination of the existing lease.

(4) Compensation under subsection (2) above shall—

(a) in the case of the interest which is immediately expectant on the determination of the existing lease at the end of the appropriate period, be the right of the person in whom that interest is vested at that time, and

(b) in the case of an interest which ceases during the appropriate period to be immediately expectant on the determination of the existing lease, be the right of the person in whom the interest was vested immediately before it ceased to be so expectant.

(4A) The amount which the tenant is liable to pay under subsection (2) above in respect of any interest shall be equal to the difference between—

(a) the rent under the existing lease for the part of the appropriate period during which the interest was immediately expectant on the determination of that lease, and

(b) the rent which might reasonably be expected to be payable for that part of that period were the property to which the existing lease relates let for a term equivalent to that part of that period on the open market by a willing landlord on the following assumptions—

(i) that no premium is payable in connection with the letting,

(ii) that the letting confers no security of tenure, and

(iii) that, except as otherwise provided by this paragraph, the letting is on the same terms as the existing lease.”

(3) In subsection (5), for “(3) and (4)” there shall be substituted “(3) to (4A)”.

91.— Jurisdiction of tribunals.

(1) Any question arising in relation to any of the matters specified in subsection (2) shall, in default of agreement, be determined by the appropriate tribunal.

(2) Those matters are—

...

(cb) the amount of any compensation payable under section 61A;

...

(12) For the purposes of this section, “appropriate tribunal” means—

(a) in relation to property in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and

(b) in relation to property in Wales, a leasehold valuation tribunal.