



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

**Case Reference** : **CAM/26UG/OLR/2022/0112**

**Property** : **98 Newgate Close, St Albans  
Herts, AL4 9JE**

**Applicant** : **Susannah Esther and Aaron  
Christopher Rickard  
(Leaseholders)**

**Representative** : **Masters Residential Leasehold Law**

**Respondent** : **St. Albans District Council  
(Freeholder)**

**Representative** : **St. Albans District Council Finance  
and Legal Department**

**Type of Application** : **Determination of terms for a new  
lease under LRHUDA 1993**

**Tribunal Member** : **N Martindale FRICS**

**Date of Decision** : **9 December 2022**

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**DECISION**

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**Decision**

The terms of the new lease are as the existing lease, save for the terms already agreed between the parties for the Property, under the existing HM Land Registry title number HD277767.

**Introduction**

1. By a Notice dated 22 January 2022, under S.42 of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act), the applicant leaseholders sought an extension to the lease dated 3

September 1990, of the Property. The existing lease ran for 125 years from 17 January 1983.

2. By a Counter Notice dated 31 March 2022, made under S.45 of the Act the respondent landlord admitted the claim but, challenged the terms. They made a counter proposal of a premium and sought significant changes to the existing lease.
3. Negotiations between the parties, over the premium, resulted in settlement of a figure but, the other lease terms remained unagreed. On 20 September 2022 the tenant filed an application at the Tribunal, for the determination of the terms of the new lease.

### **Directions**

4. On 27 September 2022, Directions were issued to the parties to address the lease terms. It set out the timings and the documentary and evidential requirements, leading to a hearing.
5. The determination was set down on or after 6 December 2022. It was to be based on the bundle submitted.

### **Hearing**

6. The parties settled the premium and costs between themselves and no hearing in person or via remote video link was sought by either party. A single copy of a paper bundle prepared by the applicant and received by the Tribunal for a paper determination in the week commencing 6 December 2022.

### **Applicants Case**

7. The applicants included a short Statement of Case setting out a brief account of events following their service of notice of claim. The applicant drew the attention of the Tribunal to the requirements of sections 56 and 57 of the 1993 Act, which govern the form and content of the new lease to be granted by the landlord.
8. The applicants referred at paragraph 3 of their Statement: *“Section 57 (1) of the 1993 Act contains three sub-clauses which set out the circumstances in which the new lease may deviate from the existing lease. However, none of these three sub-clauses are being relied upon by the Applicants to support any changes to the existing lease and it does not appear they are being relied upon by the Respondent either.”*
9. S,57 reads: *... the new lease to be granted to a tenant under section 56 shall be a lease on the same terms as those of the existing lease, as they*

*apply on the relevant date, but with such modifications as may be required or appropriate to take account*

10. They quoted part of S.57(2) of the 1993 Act: *“Where during the continuance of the new lease the landlord will be under any obligation for the provision of services, or for repairs, maintenance or insurance – (a) the new lease may require payments to be made by the tenant (whether as rent or otherwise) in consideration of those matters or in respect of the cost thereof to the landlord.”*
11. S.57(2)(b) requires the Tribunal to include terms in a new lease where there are currently no provisions in the existing lease. The applicant at para 6. *“The Applicants however do not accept that section 57(2)(b) applies because the terms of the existing lease already provide for the making of payments by the tenant in consideration of the provision of services, repairs maintenance and insurance of the building by the Respondent.”* The applicants considered it entirely appropriate and sufficient for the purposes of the Act *...:” that the service charge provisions in the existing lease should simply be carried over to the new lease and are adequate for providing compensation to the landlord for providing services to the building and have been since the lease was granted.”*
12. The statement continues at para 8: *“In contrast the Respondent has sought to deviate from the provisions of the existing lease with regard to the service charge provisions. The Respondent has inserted entirely new service charge provisions into the Second Schedule of the new lease that are far more comprehensive and favourable to the Respondent.”*
13. As the applicant states in reference to S.57(6) that either party: *“... that for the purposes of the new lease any term of the existing lease shall be excluded or modified in so far as- (a) it is necessary to do so in order to remedy a defect in the existing lease; or (b) it would be unreasonable in the circumstances to include or include without modification, the term in question in view of changes occurring since the date of commencement of the existing lease which affect the suitability on the relevant date of the provisions of that lease.”*
14. The applicants case is that there are no defects in the existing lease and no changes are therefore required under S.57(6)(a). The applicants do however accept that its reasonable for the respondent to proposed changes to the existing lease in the new lease in line with S.57(6)(b). The applicant considers that these changes would be those in line with modern ‘*acceptable conveyancing practice*’, since the initial grant, only.

15. The applicants stated that the ‘default’ position, is that the new lease “...should be granted on the same terms as the existing lease as set out in section 57(1).”
16. They referenced the Upper Tribunal Lands Chamber decision in DC Gordon v Church Commissioners for England [2007] LRA/110/2006. In that case the leaseholder was unable to have inserted a new clause requiring the landlord to enforce covenants in a new lease regarding an obligation to enforce covenants in other existing leases in a block of flats in Hyde Park Square London. The Upper Tribunal deemed that this was a proposed change outwith the scope of 57(6)(b).
17. The applicants continued at paragraph 13: “It is for the Respondent to demonstrate that the changes they are proposing to make for the existing lease are permissible without the Applicant’s consent on the basis that they fall within section 57(6)(b). The Respondent has so far not provided the Applicants with a sufficient explanation as to why the changes they are proposing (to which the Applicants object) are required as a result of changes to conveyancing practices.”
18. The applicants confirmed that they are only prepared to agree to the following change under 57(6)(b): an increase in the registration fee increased in line with inflation rather than changed as proposed by the respondent to “a reasonable f(r)ee of not less than £x.” as being in line with more modern conveyancing practices.
19. The applicants reported that “The explanation tendered by the Respondents for the variation of the provisions of the existing lease (to which the Applicants object) is that they wish to have similar leases across their housing stock in order to make it easier to manage them. However this argument cannot be correct as if the Applicants were not to extend their lease now, the Respondent would still have to manage the building for another 85 years. The Applicants assume there must be many other leases granted on the same terms as their existing lease that have not been varied.”
20. The applicants case is that the proposed changes to the service charge provisions extant in the existing lease are quite sufficient and that the contents of the Second Schedule to the new lease do not reflect changes in conveyancing practice for the purposes of S.57(6)(b).

### **Respondents Case**

21. The respondent appeared to rely on their draft new lease and on the footnotes referenced above. The new lease provided by the respondent landlord was substantially different from the existing lease in places.

22. However the respondent chose not to submit a statement of case directly to the Tribunal setting out why all or any of these changes should be made by the Tribunal in its determination of the new lease terms under S.57 of the Act.

## **Decision**

23. The hearing bundle contained the application form, directions, and a summary of the issues in dispute prepared by applicant. A reduced size c.80% format A4 copy of the draft lease was attached. No reason was given for shrinking the document in this way. This made the draft lease hard for the Tribunal to read.
24. On most pages of the draft lease from the landlord there was a commentary box with a highlighted orange background to the right hand side of the text. The format and size of typeface chosen were much smaller than the already small text to the body of the lease. This made these comments extremely hard for the Tribunal to read. No reason was given for shrinking the text in this way there being plenty of blank space on each A4 sheet left. There was no key to the authorship of the contents of each box.
25. The Tribunal concluded that the commentary could not have been that important to either side's case or it would have been provided in an easily legible format to the Tribunal. They were treated as footnotes only.
26. The Tribunal considered the bundle, in particular the existing, and proposed new lease in the light of the statement from the applicant. There was no statement from the respondent in support of their proposed changes explaining the apparent need to introduce additional service charge provisions and/or to modernise other terms in line with standard current conveyancing practice. In particular the Tribunal received no witness statements regarding current conveyancing practice from the respondent.
27. The Tribunal accepts the case made for the applicant for the reasons they set out clearly in their statement and relayed above.
28. The Tribunal approves the new draft lease by reference to the paper copy of the new lease, included within the trial bundle with the following decisions on its format. The Tribunal adopts the printed bundle page numbers. The new draft lease is numbered from page 1 to and including page 25 (unnumbered lease plan). Each of the pages of the new lease are to be as drafted in black bold or faint grey; except as follows:
29. p.6 Delete red entirely at: *'k) The Service Charge'*.

30. p.7 Delete red entirely at: *'by way of additional rent.'*
31. p.8 Delete red entirely at: *'b) and c)'*.
32. p.8 Delete red entirely at: *'a proportionate share'*.
33. p.9 Delete red entirely at: *'shares'*.
34. p.10 Delete red entirely at 3 places: *'or additions'*.
35. p.11 Delete red entirely numbers and letters: *'75 Seventy Five.'*
36. p.20/21 Delete red entirely: *'Service Charge'* etc.
37. p.21 Delete red entirely: words *'The Third Schedule'*.
38. p.22 Delete red entirely: *'(v)'* the first two lines of text and insert the underlined red text.
39. p.22 Delete red entirely within: *'(vii)'*.

**Name: Neil Martindale FRICS Date: 9 December 2022**

## **S. 57 Terms on which new lease is to be granted.**

(1) Subject to the provisions of this Chapter (and in particular to the provisions as to rent and duration contained in section 56(1)), the new lease to be granted to a tenant under section 56 shall be a lease on the same terms as those of the existing lease, as they apply on the relevant date, but with such modifications as may be required or appropriate to take account—

(a) of the omission from the new lease of property included in the existing lease but not comprised in the flat;

(b) of alterations made to the property demised since the grant of the existing lease; or

(c) in a case where the existing lease derives (in accordance with section 7(6) as it applies in accordance with section 39(3)) from more than one separate leases, of their combined effect and of the differences (if any) in their terms.

(2) Where during the continuance of the new lease the landlord will be under any obligation for the provision of services, or for repairs, maintenance or insurance—

(a) the new lease may require payments to be made by the tenant (whether as rent or otherwise) in consideration of those matters or in respect of the cost thereof to the landlord; and

(b) (if the terms of the existing lease do not include any provision for the making of any such payments by the tenant or include provision only for the payment of a fixed amount) the terms of the new lease shall make, as from the term date of the existing lease, such provision as may be just—

(i) for the making by the tenant of payments related to the cost from time to time to the landlord, and

(ii) for the tenant's liability to make those payments to be enforceable by re-entry or otherwise (subject to section 85 of the Tribunals, Courts and Enforcement Act 2007) in like manner as if it were a liability for payment of rent.

(3) Subject to subsection (4), provision shall be made by the terms of the new lease or by an agreement collateral thereto for the continuance, with any suitable adaptations, of any agreement collateral to the existing lease.

(4) For the purposes of subsections (1) and (3) there shall be excluded from the new lease any term of the existing lease or of any agreement collateral thereto in so far as that term—

(a) provides for or relates to the renewal of the lease,

(b) confers any option to purchase or right of pre-emption in relation to the flat demised by the existing lease, or

(c) provides for the termination of the existing lease before its term date otherwise than in the event of a breach of its terms;

and there shall be made in the terms of the new lease or any agreement collateral thereto such modifications as may be required or appropriate to take account of the exclusion of any such term.

(5) Where the new lease is granted after the term date of the existing lease, then on the grant of the new lease there shall be payable by the tenant to the landlord, as an addition to the rent payable under the existing lease, any amount by which, for the period since the term date or the relevant date (whichever is the later), the sums payable to the landlord in respect of the flat (after making any necessary apportionment) for the matters referred to in subsection (2) fall short in total of the sums that would have been payable for such matters under the new lease if it had been granted on that date; and section 56(3)(a) shall apply accordingly.

(6) Subsections (1) to (5) shall have effect subject to any agreement between the landlord and tenant as to the terms of the new lease or any agreement collateral thereto; and either of them may require that for the purposes of the new lease any term of the existing lease shall be excluded or modified in so far as—

(a) it is necessary to do so in order to remedy a defect in the existing lease; or

(b) it would be unreasonable in the circumstances to include, or include without modification, the term in question in view of changes occurring since the date of commencement of the existing lease which affect the suitability on the relevant date of the provisions of that lease.

(7) The terms of the new lease shall—

(a) make provision in accordance with section 59(3); and

(b) reserve to the person who is for the time being the tenant's immediate landlord the right to obtain possession of the flat in question in accordance with section 61.



(8) In granting the new lease the landlord shall not be bound to enter into any covenant for title beyond—

(a) those implied from the grant, and

(b) those implied under Part I of the Law of Property (Miscellaneous Provisions) Act 1994 in a case where a disposition is expressed to be made with limited title guarantee, but not including (in the case of an underlease) the covenant in section 4(1)(b) of that Act (compliance with terms of lease);

and in the absence of agreement to the contrary the landlord shall be entitled to be indemnified by the tenant in respect of any costs incurred by him in complying with the covenant implied by virtue of section 2(1)(b) of that Act (covenant for further assurance).

(8A) A person entering into any covenant required of him as landlord (under subsection (8) or otherwise) shall be entitled to limit his personal liability to breaches of that covenant for which he is responsible.

(9) Where any person—

(a) is a third party to the existing lease, or

(b) (not being the landlord or tenant) is a party to any agreement collateral thereto,

then (subject to any agreement between him and the landlord and the tenant) he shall be made a party to the new lease or (as the case may be) to an agreement collateral thereto, and shall accordingly join in its execution; but nothing in this section has effect so as to require the new lease or (as the case may be) any such collateral agreement to provide for him to discharge any function at any time after the term date of the existing lease.

(10) Where—

(a) any such person (“the third party”) is in accordance with subsection (9) to discharge any function down to the term date of the existing lease, but

(b) it is necessary or expedient in connection with the proper enjoyment by the tenant of the property demised by the new lease for provision to be made for the continued discharge of that function after that date,

the new lease or an agreement collateral thereto shall make provision for that function to be discharged after that date (whether by the third party or by some other person).

(11)The new lease shall contain a statement that it is a lease granted under section 56; and any such statement shall comply with such requirements as may be prescribed by land registration rules under the Land Registration Act 2002.