



**PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : **LON/00BJ/OLR/2022/ 0544  
CVP/remote video**

**Property** : **Flat 1 Millbrook Court Keswick  
Road London SW15 2RA**

**Applicant** : **Sara Falchi**

**Representative** : **In person**

**Respondent** : **Laimond Properties Ltd**

**Representative** : **Mr J Griffin of Counsel**

**Type of Application** : **Extended lease under s48(1)  
Leasehold Reform Housing and  
Urban Development Act 1993**

**Tribunal Members** : **Judge F J Silverman MA LLM  
Ms M Krisko FRICS**

**Date and venue of  
Hearing** : **CVP/Remote  
24 January 2023**

**Date of Decision** : **26 January 2023**

## **DECISION**

**1 The new lease is to be engrossed in the wording and format as shown on page 87-99 of the hearing bundle. The parties to the new lease will be the parties to this application.**

**2 The Respondent's application for costs under Rule 13 of the Tribunal Rules of Procedure is refused.**

## **REASONS**

- 1** The Applicant is the tenant of the property known as Flat 1 Millbrook Court Keswick Road London SW15 2RA which she holds under a lease dated 30 March 1984 and made between Laimond Properties Ltd as landlord and Brian Eric Hamilton Sergeant as tenant (page 48). The Respondent in the present application is the superior landlord/freeholder of the property and from whom Fairhold Holdings (2006) Appts Ltd hold the property as lessees (the intermediate landlord).
- 2** The Applicant filed an application with the Tribunal on 16 July 2022 seeking a determination under s48(1) Leasehold Reform and Urban Development Act 1993 (the Act).
- 3** Directions were issued by the Tribunal on 25 October 2022.
- 4** The Applicant's right to acquire an extended lease has been accepted by the Respondent who, for the purposes of this application is the competent landlord.
- 5** Save for one issue (below) all the terms of the Applicant's extended lease have been agreed between the parties to this application.
- 6** A Tribunal hearing took place on 24 January 2023 to resolve the final outstanding issue. The Applicant represented herself and the Respondent was represented by Mr J Griffin of Counsel.
- 7** The hearing took place by remote video connection (CPV) to which both parties had either consented or not objected.
- 8** An electronic bundle of documents, pages of which are referred to below, had been made available to and read by the Tribunal prior to the hearing.
- 9** Following current Tribunal guidelines the Tribunal did not carry out an inspection of the property but considered that the issues in this case could properly be resolved without such an inspection.

- 10** The price to be paid by the Applicant and its apportionment between the Respondent and the intermediate landlord had been agreed by the parties.
- 11** The only matter outstanding between the parties was whether or not the intermediate landlord should be a party to the new lease. The Applicant contended that it should be made a party and was required to give a receipt for the payment of its portion of the premium. The Respondent took the view that the intermediate landlord's participation in the new lease was unnecessary because of the application of s56(4) and para 10 of Schedule 11 of the Act (both provisions set out below).
- 12** The original draft lease sent by the Respondent to the Applicant in November 2022 in compliance with the Tribunal's Directions (page 69 et seq) was a tripartite document which included the intermediate landlord as a party. The Applicant made some minor amendments to that document which was then returned to the Respondent at the beginning of December 2022. On 22 December 2022 (effectively the final working day before the Christmas break) the Respondent emailed the Applicant's solicitors apparently agreeing the amended draft but not agreeing the amount of the premium. As noted above the premium has now been agreed.
- 13** However, on 12 January 2023, ie very shortly after business recommenced after the Christmas break, the Respondent sent a new draft lease ('draft 2') to the Applicant which was substantially different from the original in that the intermediate landlord was no longer a party to the document (page 83).
- 14** Not only did the Applicant not agree with the form of draft 2 which came as a surprise to her as she had understood the previous amended draft to have been agreed, she also argued that she had been given insufficient time in which to consider it. Further, since its delivery she felt she had been harassed by the Respondent's solicitors into accepting draft 2 under threat of their making an application for a costs order against her under Rule 13 of the Tribunal Rules of Procedure.
- 15** Therefore, the principal issue which the Tribunal was asked to decide was the form wording of the proposed new lease.
- 16** Although it does appear that the Respondent had agreed the form of the lease as shown on page 69 of the bundle shortly before Christmas, the Tribunal takes the view that it would be wrong to insist that the parties should be bound by that decision if to do so would result in an incorrect document being used to complete this transaction.
- 17** The Respondent's explanation for the altered document was that they had made a mistake in the original drafting and therefore re-issued an amended version, draft 2, as soon as the mistake was discovered.
- 18** The Applicant was concerned that by excluding the intermediate landlord from draft 2 the terms of her new lease would not be concurrent with the residue of the lease held by the intermediate landlord and that there would be no receipt given by it for the part of the premium which was payable to it. The intermediate

landlord's participation in the document would be necessary for both these reasons, and presumably also for the enforcement of covenants between them although this last point was not mentioned by the Applicant.

- 19** The Respondent argued that the deeming provision of paragraph 10 of Schedule 11 of the Act was designed to overcome the difficulties raised by the Applicant thus removing the need for the intermediate landlord to be a party to the new lease.
- 20** The concept enacted by this provision is (in simple terms) that when the Applicant tenant acquires her new lease from the superior landlord, the intermediate landlord's lease is immediately treated as being surrendered and replaced by a new lease which mirrors the terms of the tenant's new lease thus ensuring that covenants between the intermediate landlord and the tenant remain both identical and in full force and effect for the remainder of the term of the intermediate lease after which, the superior landlord would take over such responsibilities for the remainder (if any) of the extended term. There is no requirement for there to be any documentary evidence of the surrender and re-grant. It is deemed to occur automatically by virtue of the Act itself.
- 21** The provisions of s56(4) of the Act resolve the Applicant's concerns about the receipt for that portion of the premium which is due to the intermediate landlord by providing that the tenant is to tender the entire premium to the competent landlord (in this case the Respondent) and having done so is discharged from liability for payment of the premium. It is then the competent landlord's responsibility to ensure that the premium is properly paid to the parties so entitled and in the correct proportions. Again, this absolves the intermediate landlord from having to participate in the new lease.
- 22** These two statutory provisions are somewhat abstract in concept and it is unsurprising that the Applicant was unfamiliar with them. It is unfortunate that her solicitors appear not to have explained the effect of these provisions to her which would have avoided the necessity for the hearing.
- 23** The Tribunal therefore concludes that the correct form of lease to be used in this case is as shown on pages 89-97 of the hearing bundle and the parties to the new lease are to be the Applicant and the Respondent. The intermediate landlord will not be a party.
- 24** The Respondent made an application for costs under Rule 13 of the Tribunal Rules of Procedure on the basis that the Applicant's behaviour had been unreasonable when she refused to accept the form of the new lease and thus avoid the necessity for a Tribunal hearing. This application was supported by a witness statement made by Liam Bell, a partner in the Respondent's solicitors who had conduct of this matter. Mr Bell did not attend the hearing and his evidence was not subjected to cross examination.
- 25** The Applicant objected to this application and referred to the timetable of events as recorded above as evidence that she had complied with the Tribunal's Directions, had understood that the Respondent had agreed her amendments to the original draft lease

before Christmas and that she had then been given insufficient time following the service on her of the revised draft 2 of the lease to consider its contents which in any event she considered to be flawed. She also objected to the pressure which had been put on her by the Respondent to agree draft 2 or in default to face a costs application.

- 26 As a general rule the Tribunal is a ‘no costs’ jurisdiction and Rule 13 provides an exception where unconscionable conduct by a party may be sanctioned by a financial penalty. The test or bar for unconscionable/unreasonable conduct is currently set against *Willow Court Management Co Ltd v Alexander* [2016] 0290 UKUT (LC) and it is the Tribunal’s view that in the present case the Applicant’s behaviour does not even begin to merit such an award being made against her. She was led to believe that the terms of the lease had been agreed and then found herself under pressure to accept a lease in quite different wording (although not different in effect) with the reason for the change of wording being explained by the Respondent’s reliance on two opaque sections of a complex statute which, as a lay person, she would not necessarily understand. In this context the Applicant’s behaviour was not unreasonable, the lease of her flat is a valuable asset and her behaviour suggests that she was exercising caution in to ensure that the transaction she was entering into would properly fulfil its purpose of extending the lease for the benefit of herself and her successors in title. The Respondent’s application for costs under Rule 13 is therefore refused.

27 **The Law**

**Leasehold Reform Housing and Urban Development Act 1993**

**56 Obligation to grant new lease.**

(1) Where a qualifying tenant of a flat has under this Chapter a right to acquire a new lease of the flat and gives notice of his claim in accordance with section 42, then except as provided by this Chapter the landlord shall be bound to grant to the tenant, and the tenant shall be bound to accept—

(a) in substitution for the existing lease, and

(b) on payment of the premium payable under Schedule 13 in respect of the grant,

a new lease of the flat at a peppercorn rent for a term expiring 90 years after the term date of the existing lease.

(2) In addition to any such premium there shall be payable by the tenant in connection with the grant of any such new lease such amounts to the owners of any intermediate leasehold interests (within the meaning of Schedule 13) as are so payable by virtue of that Schedule.

(3) A tenant shall not be entitled to require the execution of any such new lease otherwise than on tendering to the landlord, in addition to the amount of any such premium and any other amounts payable by virtue of Schedule 13, the amount so far as ascertained—

(a) of any sums payable by him by way of rent or recoverable from him as rent in respect of the flat up to the date of tender;

(b) of any sums for which at that date the tenant is liable under section 60 in respect of costs incurred by any relevant person (within the meaning of that section); and

(c) of any other sums due and payable by him to any such person under or in respect of the existing lease;

and, if the amount of any such sums is not or may not be fully ascertained, on offering reasonable security for the payment of such amount as may afterwards be found to be payable in respect of them.

(4) To the extent that any amount tendered to the landlord in accordance with subsection (3) is an amount due to a person other than the landlord, that amount shall be payable to that person by the landlord; and that subsection has effect subject to paragraph 7(2) of Schedule 11.

#### **Schedule 11 para 10**

10(1) Where a lease is executed under section 56 or 93(4) or in pursuance of any order made under this Chapter, then (subject to sub-paragraph (3)) that instrument shall have effect for the creation of the tenant's new lease of his flat, and for the operation of the rights and obligations conferred and imposed by it, as if there had been a surrender and re-grant of any subsisting lease intermediate between the interest of the competent landlord and the existing lease; and the covenants and other provisions of that instrument shall be framed and take effect accordingly.

(2) Section 57(2) shall apply to the new lease on the basis that account is to be taken of obligations imposed on any of the other landlords by virtue of that or any superior lease; and section 59(3) shall apply on the basis that the reference there to the tenant's landlord includes the immediate landlord from whom the new lease will be held and all superior landlords, including any superior to the competent landlord.

(3) Where a lease of the tenant's flat superior to the existing lease is vested in the tenant or a trustee for him, the new lease shall include an actual surrender of that superior lease without a re-grant, and it shall

accordingly be disregarded for the purposes of the preceding provisions of this paragraph.

Judge F J Silverman as Chairman

**Date 26 January 2023**

## **RIGHTS OF APPEAL**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to [rplondon@justice.gov.uk](mailto:rplondon@justice.gov.uk).
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.