



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

Case Reference : LON/00AK/OLR/2013/1004

Property : 10 Brudenell Road, London SW17
8DA

Applicant : Katherine Murphy

Representative : N/A

Respondent : Zerlan Estates Limited

Representative : Mr L Nesbitt of Nesbitt & Co

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

Tribunal Members : Siobhan McGrath
Mr W R Shaw FRICS

**Date and venue of
Hearing** : 5 November 2013 at 10 Alfred
Place, London WC1E 7LR

Date of Decision : 9th December 2013

DECISION

Decision

1. The Tribunal declines to require a variation of Clause 3(vii) of the applicant's lease to include the word "mortgage" after the word "underlease" or to require the deletion of the words "otherwise than by way of mortgage"
2. The Tribunal orders that the final wording of clause 4(vii) as indicated below be removed:
"not to use or permit or suffer the demised premises or any part thereof to be used other than for the purpose of a private residence ~~in the occupation of a single family.~~"
3. The premium to be paid by the applicant to the respondent in respect of the extension of their lease to 10 Brudenell Road, is £36,700.

Reasons

1. This is an application made pursuant to section 48 of the Leasehold Reform Housing and Urban Development Act 1993 ("the Act") for a determination of the terms and the premium to be paid for a new lease.

Background

2. The relevant background facts are as follows:
 - (i) The flat: 10 Brudenell Road, London SW17 8DA
 - (ii) Date of tenant's notice: 29th August 2012
 - (iii) Valuation date: 29th August 2012
 - (iv) Date of application to Tribunal: 2nd May 2013
 - (v) Tenant's leasehold interest:
 - Date of lease: 10th December 1970
 - Term of lease: 99 years from 29th September 1970
 - Ground rent: £21 per annum, rising every 33 years of the term to £42.00 and £63.00 respectively
 - Unexpired term at valuation date: 57.08 years.
 - (vi) Freeholder: Zerlan Estates Limited
 - (vii) Tenant's proposed premium: £32,445.00
 - (viii) Landlord's proposed premium: £51,900.00

Hearing

3. The hearing of this matter took place on 5th November 2013. Ms Murphy, the applicant, is a chartered surveyor and represented herself. The respondent landlord was represented by Mr Laurence Nesbitt, chartered surveyor of Nesbitt & Co. Neither party considered that an inspection of the property or comparables was required in the determination of this matter and the Tribunal agreed this was not necessary.
4. The issues for the Tribunal's determination concerned the lease terms and the premium to be paid for the lease extension.

Lease Terms

5. Section 57 of the Act makes provision for the terms on which a new lease is to be granted. Broadly, the lease is to be on the same terms as those of the existing lease subject to certain statutory considerations. One of those is contained in section 57(6) which provides:
“(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.”
6. In this case, a number of amendments to the lease were agreed between the parties, however there was a dispute in respect of one amendment sought by the respondent landlord and another sought by the applicant.
7. On behalf of the respondent amendments were sought to clause 3(vii) of the lease. This currently provides that:
“Within one month after every assignment, assent, transfer or underlease (otherwise than by way of mortgage) of the demised premises to give notice therefore in writing with particulars thereof to the Landlord and....to pay to the Landlord a registration fee of four guineas in respect of each such assignment, assent, transfer, underlease or devolution.”
8. It was agreed that the reference to a registration fee of “four guineas” should be substituted by a reference to “a reasonable sum for the time being but with a minimum of £50 plus VAT”. However, the respondent also sought a variation to the clause to add the word “*Mortgage*” after the word “*Underlease*” and to delete the words “(otherwise than by way of mortgage)”. The applicant objected to this amendment. She

said that she had no objection to notifying the respondent of mortgage arrangements but could see no justification for making an additional payment. The Tribunal agreed with the applicant. Having regard to section 57 of the Act, the proposal was not justified either to modernise the lease nor to remedy a defect. Therefore the Tribunal declined to order the additional amendment.

9. The applicant sought an amendment to clause 4(vii) of the lease. This provides that the tenant is:
“(vii) Not to use or permit or suffer the demised premises or any part thereof to be used other than for the purpose of a private residence in the occupation of a single family”
Miss Murphy requested the removal of the words “*in the occupation of a single family*”.
10. She submitted that the words were too restrictive and did not reflect the current ways of living in London. She pointed out that she may, for example, want to live with a friend or otherwise let a room to a lodger. She is prevented from doing so by this clause. Mr Nesbitt, acknowledged this point but observed that where there are sharers it is more likely that nuisance and annoyance may be caused to neighbours. Ms Murphy did not agree and suggested that in fact a family might be more noisy and numerous than individual sharers. Both Mr Nesbitt and Ms Murphy agreed that changing the clause would have no impact on valuation.
11. The Tribunal considered that the proposed amendment should be accepted. Since the lease was first granted, the ways in which some property is occupied has changed significantly. Sharing is now very common, in particular in this type of property in this area. Accordingly, the Tribunal orders the removal of the words “*in the occupation of a single family*”.

Valuation

12. The parties had agreed a capitalisation rate of 7% and a deferment rate of 5%. The remaining issues for the Tribunal were therefore the existing lease value and the extended lease value. The valuation date is 29th August 2012.
13. The Tribunal was provided with two valuation reports. Ms Murphy had prepared a report on her own behalf. Although Ms Murphy does not have professional experience acting on lease extension negotiations she stated that she had good valuation experience of analysing comparable data which she employs in her day to day work as a Chartered Surveyor at SMART 4 Ltd. Ms Murphy's report is dated 13th October 2013. Mr Nesbitt provided a report on behalf of the respondents. This is dated 21st October 2013.
14. The property is a purpose built first floor maisonette located on Brudenell Road. It dates from the early 1900s and forms part of a terrace of similar properties. There is one other flat below. The property

is accessed via its own front door leading immediately to stairs up to the first floor landing. There are four rooms and a bathroom located off the landing and a small kitchenette located to the rear. There is an attic accessed through a hatch in the bathroom and a yard to the rear of the property accessed by metal stairs from the kitchenette.

15. The property is located on the west side of Brudenell Road close to its junction with Tooting Road. Brudenell Road is a mainly residential street comprising purpose built maisonettes. However, the property is situated at the northern end of the street and some commercial users are nearby. In particular the subject property is opposite the local job centre. Parking restrictions apply in the street with parking bays reserved for resident permit holders. Transport links include the bus network and Tooting Bec tube station which is on the underground Northern Line.
16. The difference between Ms Murphy and Mr Nesbitt in respect of the existing lease value is not great. The starting point for both is the sum of £249,000 paid for the flat by Ms Murphy just one month after the valuation date. The property had been marketed at an asking price of £329,950 between June 2011 and 18th July 2012. However, it had failed to sell by private treaty and was therefore offered for sale by auction on 20th September 2012. The property did not sell in the room but was sold to Ms Murphy after the auction.
17. In his report, Mr Nesbitt contended that there was no deduction to be made for tenant's improvements and Ms Murphy did not dispute this. It was also common ground that since, at the time the property was purchased, it had the benefit of an assigned section 42 notice, a discount must be made to reflect the no Act world value. Mr Nesbitt put this at 5% for the lease in this case which has 57 years remaining. Ms Murphy contended that the discount should in fact be from 5%-7% having regard to *Nailrite* which discounted 7.5% for a 44 year lease. Ms Murphy also sought to cross check her valuation by reference to relativity graphs.
18. At the hearing Mr Nesbitt observed that Ms Murphy's opinion of the existing leasehold value is £233,333 and his own opinion is that the value is £236,550 – since there was only £3,000 between the two he suggested that the Tribunal should split the difference.
19. For the extended lease value, there was a greater difference of opinion. Ms Murphy contended for a value of £280,381 and Mr Nesbitt for a value of £320,000.
20. Both Ms Murphy and Mr Nesbitt referred to a number of comparable sales and properties:

10 Brudenell Road

The subject property itself had been marketed between June and August 2012. The asking price was £329,950. Ms Murphy stated that

during this time six offers were received, the lowest being £275,000 and the highest at £288,000, however the owners decided not to proceed and therefore no sale took place. Ms Murphy submitted that these offers were a strong indication of demand and the price the market was willing to pay. Mr Nesbitt suggested that the property did not realise the asking price because the lease had only 57 years remaining

12 Brudenell Road

This property is next door to the subject property and is situated on the ground floor. It was sold in September 2009 for £304,000 with 120.04 years remaining on the lease. At the date of sale the property was in an improved condition. Because the sale was somewhat historic both parties made adjustments to the price for comparison purposes. Ms Murphy made an upward adjustment to reflect the rising market over the three years between the transaction and the valuation date. In order to achieve this she referred to the Nationwide House Price index which would indicate a value in September 2012 of £330,722. During the hearing Ms Murphy acknowledged that the index to which she had referred related to the whole of England and that this would not be as accurate as the index for Greater London to which she had not referred. Ms Murphy also suggested a downward adjustment to reflect the superior condition of number 12 and assessed this at 15% or £45,600. In dealing with this property Mr Nesbitt made an upward adjustment by reference to the Land Registry House Price Index for Wandsworth giving an adjusted value of £371,313. He submitted that a downward adjustment should be made in the sum of £30,000 to reflect the difference in condition between the properties.

37 Brudenell Road and 65 Brudenell Road

Ms Murphy also referred to two houses in the same street as the subject property. Number 37 is a three bedroomed house and number 65 a five bedroomed house. Although both were sold in October 2012, the Tribunal did not consider that they were sufficiently similar to the subject property to provide a useful comparison.

4 Ravenfield Road

This property is very similar to the subject property being a first floor 3 bedroom flat. It is larger than the subject property being 894 sq ft compared to 812 sq ft with a lease of 82.39 years. The flat was sold on 3rd August 2012, just a few weeks before the valuation date, for £407,601 in an improved condition. Mr Nesbitt suggested that a downward adjustment of £30,000 should be made for improvements and also an adjustment of 10% to take account of the difference in position giving, he suggested an adjusted value of £339,841. In evidence Ms Murphy pointed out that the flat is contained in a detached property and the garden is twice the size. She also submitted that since the sale included a share in the freehold it would be a more attractive proposition.

Fat C Dafforne Road

This flat is arranged over the ground and first floor and is smaller than the subject flat being 760 square feet. It was sold in February 2012 with the benefit of a lease for 87.89 years. Mr Nesbitt suggested an adjustment of £25,000 for improvements and the size of the kitchen. Applying the Land Registry House Price Index, this gives an adjusted value of £298,550. Ms Murphy submitted that this property was more attractive than her own since it is situated in an ornate house closer to the underground. Furthermore the property was not near the main road and generally was much nicer.

21. In respect of adjustments for condition, Ms Murphy had produced a quotation of £48,060 for upgrading her flat to include new wooden sash windows, rewiring, a new bathroom and tiling, a new kitchen, new central heating boiler, landscaping the garden and redecoration of the whole flat.

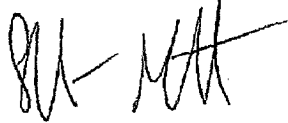
Consideration

22. The Tribunal preferred Mr Nesbitt's assessment of the existing leasehold value and adopted the discount of 5% giving a value of £236,550.
23. So far as the extended lease value is concerned the Tribunal considered that the most helpful comparable was 4 Ravenfield Road. That preference took into account the following: in the history of the sale of the subject flat there were a number of unknown factors; the sale of 12 Brudenell Road was rather historic and flat C Dafforne Road was sufficiently different from the subject flat to be of real assistance. On the other hand, the sale of 4 Ravenfield Road was at a date very close to the valuation date, it is a similar flat and subject to appropriate adjustments provided good comparable evidence.
24. The Tribunal accepted Mr Nesbitt's adjustment of £30,000 for condition and in particular considered that Ms Murphy's quote of £48,000 anticipated a complete and contemporary refurbishment. The Tribunal considered that they had insufficient evidence to reach the conclusion that the condition of the comparative property attained such a high standard. However, the Tribunal decided that an adjustment of 10% to reflect position and the other matters mentioned by Mr Nesbitt was insufficient and instead made an adjustment of 15%.
25. Accordingly it determined that the extended lease value was £407,601 less £30,00 being £377,601 which discounted by 15% gives a figure of £320,960 or a rate of £359.00 per sq ft which when applied to the subject flat gives a long leasehold value of £291,520.

Determination

26. On this basis the Tribunal's valuation is attached and it is determined that the price payable is £36,700.

Chairman:

A handwritten signature in black ink, appearing to be 'SM' followed by a stylized flourish.

Siobhan McGrath, President First-tier Tribunal (Property Chamber)

Appendix 1

New Lease Claim

Present Lease 99 years from 29 September 1970
Valuation date 29 August 2012 - 57.08 years unexpired

Long lease value £291,520
Existing lease value £236,550
YP = 7% PV = 5%

Diminution in value of Landlord's interest

Value before grant of new lease

Term 1

Rent	£42	
YP 24.08 yrs @ 7%	11.4846	482

Term 2

Rent	£63	
YP 33 yrs @ 7%	12.7538	
PV 24.08 yrs @ 7%	0.1961	158

Reversion

Flat value (F/H)	291,520	
PV 57.08 yrs @ 5%	0.0617	17,987

18,627.00

LESS value after grant of new lease

Term

New Lease at a peppercorn rent		0
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Reversion

Flat value (F/H)	291,520	
Deferred 147.08 yrs @ 5%	0.00077	-224

Diminution in value of Landlord's interest

18,403.00

Marriage Value

Aggregate of values of interests after grant of new lease

Landlord's interest	224	
Tenant's proposed interest	291,520	
		291,744.00

Less Aggregate of values prior to grant of new lease

Landlord's interest	18,627	
Tenant's interest	236,550	
		255,177
Marriage value		36,567

	50%	18,284
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36,687

Premium say

£36,700