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

Case Reference : LON/00AY/OLR/2013/0343

Property : 12 CLEVEDON COURT
CLIVE ROAD
LONDON SE21 8BT

Applicant : COLIN MCRAE ADAMSON

Representative : THE MCDONALD PARTNERSHIP

Respondent : (1) RICKY JEFFREY GIBBS
(2) CAROL ANN GIBBS

Representative : JUDGE & PRIESTLEY LLP
(Solicitors)
MR P LAST (of Counsel)

Type of Application : An Application for determination
of the terms of a new lease granted
under the Leasehold Reform
Housing & Urban Development Act
1993

Tribunal Members : TRIBUNAL JUDGE: S SHAW
MR J BARLOW FRICS

**Date and venue of
Hearing** : 2nd July 2013
10 Alfred Place, London WC1E 7LR

Date of Decision : 31st July 2013

DECISION

Introduction

1. This case involves a dispute which has arisen between the parties in respect of the terms of a new lease to be granted pursuant to the provisions of the Leasehold Reform, Housing & Urban Development Act 1993 ("the Act"). Since all other matters have been agreed between the parties, it is not necessary to set out the background in any further detail save to say that the Application was made to the Tribunal by the Applicant on or about 11th March 2013. The Applicant is Mr Colin McRae Adamson who is the long leasehold owner of 12 Clevedon Court, Clive Road, London SE21 8BT. The property comprises a first floor two bedroom flat. The Respondents are the freehold owners of the building of which the property forms part.

2. The dispute between the parties is essentially in respect of a particular clause which the Respondents through their Solicitors wish to have included in the new lease. The clause, as varied but now proposed on behalf of the Respondents is:

"Save for any implied rights created at the grant of the lease dated 6th November 1991, neither the grant of this lease nor anything in it confers any right over neighbouring property nor is it to be taken to show that the tenant may have any right over neighbouring property, and Section 62 of the Law of Property Act 1925 does not apply to this lease."

3. The proposed inserted provision therefore is to the effect that Section 62 of the Law of Property Act 1925 shall not benefit or avail the Applicant leaseholder, save for any implied rights created at the grant of the lease which precedes the new lease. As is well known Section 62 deals with general words implied in conveyances, and in principle provides that conveyances of land shall be deemed to include and by virtue of the Act operate to convey, various privileges easements rights and advantages connected with the land at the time of the conveyance. The proposed clause as referred to above which would have been clause 6 in the new lease, thus is intended to deprive the Applicant leaseholder of that benefit, subject to the saving words in the first part of the proposed new clause.

4. The Applicant through his solicitors has resisted that exclusion, hence the hearing before the Tribunal which took place on 2nd July 2013.
5. At the hearing the Applicant represented himself and the Respondent freeholders were represented by Mr P Last of Counsel, instructed by Mr M Oakley of Solicitors Judge & Priestley LLP.
6. Mr Last explained to the Tribunal that the reason for the insertion of the proposed new clause was to put beyond doubt an exclusion of the rights effectively equivalent to those afforded by section 62 of the 1925 Act, given that those rights were already, on Mr Last's contention, curtailed or excluded by an existing clause 3 in the lease. Clause 3 of the lease provides:

“Provided always and it is hereby agreed and declared that notwithstanding anything herein contained the lessor shall have power without obtaining any consent from or making any compensation to the lessee to deal as the lessor may think fit with any of the land or premises adjoining or contiguous to or in the neighbourhood of the flat and to erect or suffer to be erected on any such adjoining or contiguous or neighbouring land and premises any building whatsoever, whether such building shall or shall not affect or diminish the light or air which may now or at any time during the term hereby granted be enjoyed by the lessee or the tenant or occupiers of the flat.”

7. Mr Last contended that the proper construction of clause 3 was in effect to neutralise the effect of section 62 of the 1925 Act. The Tribunal makes no findings upon whether or not this is the case but, asked by the Tribunal why, if this were the case it would be necessary to insert the new proposed clause 6, Mr Last replied to the effect that it would be better to put the position beyond doubt by this clarifying new clause 6.
8. Mr Adamson, as indicated, representing himself, simply said that there was, so far as he was aware, no legislation to say that he has to compromise his rights in this way. The way the matter has been put in correspondence on his behalf by his solicitors is:

“Our client is not seeking to introduce any new rights in the lease extension over or to the detriment of your client’s neighbouring or adjoining property. Our client is simply concerned to preserve any existing rights, either expressly or in the existing lease or impliedly that he may have acquired thereover over the course of time. Our client is simply not prepared to compromise those rights by the exclusion of section 62 of the Law of Property Act 1925 and the legislation does not mandate that he do so. Therefore, clause 6 of the draft lease must be excluded and your amended clause is not agreed.”

9. That position as articulated on behalf of the Applicant seems to the Tribunal to be entirely reasonable. Not only is it reasonable for the Applicant not to have to agree to a curtailment of his rights in the way proposed by the new clause 6, but it is not entirely consistent with section 57 of the 1993 Act which provides that:

“Subject to the provisions of this chapter ... 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 ...”

10. Section 57 is qualified by allowing modifications required or appropriate in particular circumstances, none of which apply or were argued to apply in this case.

Conclusion

11. There seems to the Tribunal no reason why the proposed clause 6 should be included in the new lease, nor is it consistent with section 57 of the Act for the reasons indicated above. The Tribunal makes no finding as to whether or not the existing clause 3 is such as to neutralise section 62 of the Law of Property Act 1925, which may or may not be a matter for determination in some other forum at some other time. For present purposes it seems to the Tribunal that the lease should reflect the terms of the existing lease and should be, as the Act provides, *“on the same terms as those of the existing lease ...”*. Accordingly the determination of the Tribunal is that the proposed clause 6 as advanced on behalf of the Respondent should not be a term of the new lease under the Act.

Tribunal Judge: S Shaw

Dated: 31st July 2013