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

**Case Reference** : **LON/00BJ/OLR/2013/0912**

**Property** : **107b Oakhill Road, Putney, London  
SW15 2QL**

**Applicant** : **M J Sheehan and S J Murphy**

**Representative** : **Ms K Helmore of Counsel**

**Respondent** : **M H Lawson**

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

**Type of Application** : **A determination of the terms of an  
extended lease renewal section  
48(1) Leasehold Reform, Housing  
and Urban Development Act 1993  
(the "Act")**

**Tribunal Members** : **Judge J Pittaway  
Mr D Jagger**

**Date and venue of  
Hearing** : **10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **12 December 2013**

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**DECISION**

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## **Decision of the Tribunal**

### **The Tribunal determines**

1. That the extended lease should be in the form proposed by the Applicants; and
2. That there be no order for costs against the Respondent pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 (the "**2013 Rules**").

## **Background**

1. The Applicants have applied to the Tribunal to determine the terms of an extended lease of the Property.

The Notice of Claim to Exercise this Right (made by Mr M J Sheehan) is dated 14 November 2012, and was admitted by the Respondent by way of Counter Notice dated 18 January 2013. The Property was transferred to, and the claim for the extended lease assigned to, Mr M J Sheehan and Mr S J Murphy on 18 April 2013.

The Applicants applied to the Tribunal on 9 July 2013 for the determination of the terms of the extended lease.

2. The Tribunal issued Directions on 31 July 2013.

## **Matters to be determined**

1. The form of the proposed lease.
2. Whether costs should be awarded against the Respondent on the basis that he had acted unreasonably.

## **Evidence and Submissions**

1. At the Hearing the Tribunal had before it
  - 1.1 two draft leases prepared by William Sturges, solicitors, on behalf of the Respondent, drafted in a different format to the existing lease (but with reference to a lease of the other maisonette in the building which had been granted by the Respondent on 25 March 2006); and
  - 1.2 a draft lease prepared by the Applicants' solicitors, drafted by reference to the existing lease of the Property.
  - 1.3 opening submissions on behalf of the Applicants; and
  - 1.4 The Respondent's arguments on the issues.
2. For the Applicants Ms Helmore submitted that the burden was on the Respondent to justify any change in the format of the lease and that, in the absence of agreement by the parties, the Tribunal's jurisdiction to determine the exclusion or modification of lease terms was limited to

the circumstances referred to in Section 57 (6) (a) (defects) and Section 57 (6) (b) (a change in circumstances) and that neither of these applied to the existing lease. Ms Helmore referred to the Lands Tribunal decision in *Gordon v Church Commissioners for England* which states that the starting point is to be the terms of the existing lease, submitting that a lease in a different form is not a lease in the "same terms". She submitted that the task before the Tribunal was a statutory exercise, not a conveyancing exercise.

3. In reply Mr Lawson argued that the existing lease was defective in that it split the obligations to repair and insure between the two maisonettes rather than putting the obligation on the landlord, arguing a possible breach of the requirements of the Council of Mortgage Lenders Handbook; and that the Deed of Covenant that the existing form of lease required was unsatisfactory in that it required the co-operation of the Landlord and the tenant of the other maisonette.. He pointed to the fact there was no current Deed of Covenant in place between the Applicants and the Lessee of the upper maisonette.
4. Insofar as the Applicants costs were concerned Ms Helmore submitted that the Respondents' approach was supported by neither statute nor authority and that he had acted unreasonably in requiring the matter to go to a Hearing.
5. Mr Lawson did not accept that he had acted unreasonably; he achieved no personal gain by seeking to have the form of lease altered and that that was a factor that should be taken into account.

### **Reasons for the Tribunal's determination**

1. Section 57(1) provides for the lease to be, "*on the same terms as those of the existing lease*".

The Tribunal consider that the starting point for the format of the extended lease is the existing lease. If the Respondent does not provide a draft lease in that format it is open to the Applicants to draft a lease in that format and submit it to the Respondent. There is no reason why the extended lease should not be by reference to the existing lease, but would recommend that a copy of the existing lease was attached to the extended lease, as the Applicants proposed to do here.

2. The Tribunal understand why Mr Lawson wanted to change the format of the extended lease (and indeed had some sympathy as to why he wanted to do this, from a conveyancing perspective), but they only have jurisdiction to modify the terms of the existing lease if the parties agree, it is defective, or changes since the existing lease was granted affected the suitability of the provisions of the lease.

Given the contractual requirement for the mutual Deed of Covenant, whether or not one had been entered by the current tenants of both maisonettes, the Tribunal were not persuaded by Mr Lawson's

submission that the current form of lease was defective and he had not provided any evidence of changes since the existing lease was granted such as to substantiate a change of format on that ground.

The Tribunal note that the lease of the upper maisonette in fact continues the arrangement contemplated by the existing lease until such time as the format of the existing lease might be changed; and also took into account the fact that both leases were currently mortgaged as supporting the contention that the existing lease is not in breach of the requirements of the Council of Mortgage Lenders Handbook.

3. The Tribunal consider that the Respondent had an arguable case and that it was therefore not unreasonable for him to bring the matter before them at the Hearing. They therefore do not consider an order for costs for unreasonable conduct to be appropriate.

### **The Law**

The relevant statutory provisions are set out in the Appendix to this decision.

**Name:** Judge Pittaway

**Date:** 12 December 2013

## APPENDIX

### LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993

#### “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 distress, re-entry or otherwise 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."

## 2013 Rules

### 13. Orders for costs, reimbursement of fees and interest on costs

(1) The Tribunal may make an order in respect of costs only—

(a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;

(b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—

(i) an agricultural land and drainage case,

(ii) a residential property case, or

(iii) a leasehold case; or

(c) in a land registration case.

- (2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.
- (3) The Tribunal may make an order under this rule on an application or on its own initiative.
- (4) A person making an application for an order for costs—
  - (a) must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and to the person against whom the order is sought to be made; and
  - (b) may send or deliver together with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal.
- (5) An application for an order for costs may be made at any time during the proceedings but must be made within 28 days after the date on which the Tribunal sends—
  - (a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or
  - (b) notice of consent to a withdrawal under rule 22 (withdrawal) which ends the proceedings.
- (6) The Tribunal may not make an order for costs against a person (the “paying person”) without first giving that person an opportunity to make representations.
- (7) The amount of costs to be paid under an order under this rule may be determined by—
  - (a) summary assessment by the Tribunal;
  - (b) agreement of a specified sum by the paying person and the person entitled to receive the costs (the “receiving person”);
  - (c) detailed assessment of the whole or a specified part of the costs (including the costs of the assessment) incurred by the receiving person by the Tribunal or, if it so directs, on an application to a county court; and such assessment is to be on the standard basis or, if specified in the costs order, on the indemnity basis.
- (8) The Civil Procedure Rules 1998(a), section 74 (interest on judgment debts, etc) of the County Courts Act 1984(b) and the County Court (Interest on Judgment Debts) Order 1991(c) shall apply, with necessary modifications, to a detailed assessment carried out under paragraph (7)(c) as if the proceedings in the Tribunal had been proceedings in a court to which the Civil Procedure Rules 1998 apply.
- (9) The Tribunal may order an amount to be paid on account before the costs or expenses are assessed.