

		FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)
Case Reference	:	MI/LON/OOAF/OLR/2013/1265
Property	:	Flat 5, 4 Border Crescent, London SE26 6DF
Applicant	:	Mr A. Harvey (leaseholder)
Representative	:	TJM Law (solicitors) with valuation evidence from Mr W. Bradley MRICS
Respondent	:	Mr R. Barrett (as executor) (missing landlord)
Representative	:	Not applicable
Type of Application	:	Application under section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 to determine the premium payable for the grant of a new lease and for a determination of the terms of that new lease.
Tribunal Members	:	Professor James Driscoll, solicitor (Tribunal Judge) and Mr L. Jarero BSc, FRICS
Date and venue of Hearing	:	26 November 2013 at 10 Alfred Place, London WC2E 7LR (the tribunal made its determinations on the basis of the documents filed and without a hearing.
Date of Decision	:	26 November 2013

DECISION

Summary of the decision

1. The premium payable for the acquisition of a new lease of the subject premises is the sum of £14,900 (Fourteen thousand, nine hundred pounds).
2. A copy of the valuation lodged with this application is attached to this decision.
3. The tribunal approves the terms of the proposed new lease.
4. A copy of the proposed terms is also attached to this decision.
5. Those advising the applicant should send a copy of this decision and a copy of the new lease with the premium (less the applicant's costs as assessed by the Court) to the Croydon County Court (under claim number 3CRO1226) for an officer of the Court to execute the new lease on behalf of the landlord who is missing and cannot be traced).

Background

6. The applicant is the leaseholder of the flat in the subject premises. He seeks the grant of a new lease under the terms of the Act.
7. He was unable to serve notice of claim (under section 42 of the Act) on the landlord. The landlord is deceased and it has proved impossible to trace the deceased landlord's executor.
8. Accordingly application was made to the Croydon County Court under section 50 of the Act seeking an order dispensing with the giving of the section 42 notice of claim, for a vesting order and for an order dealing with the applicant's professional costs.

The Court Order

9. At the hearing of the application (when the applicant was represented by counsel) the Court made a vesting order, it dispensed with the need to give a copy of the section 42 notice and it made an orders under section 50 of the Act allowing for the execution of a new lease once the premium and the terms of the new lease have been determined by the First-tier Tribunal (Property Chamber). This order was made on 16 September 2013. The circumstances giving rise to the application to the Court and full details of why the applicant claims that he has a qualifying lease and is entitled to claim a new lease under the Act are contained in the statements and the

other papers filed in connection with the Court proceedings. It is unnecessary for the tribunal to comment on this further.

The application to the tribunal

10. Following this order those advising the applicant applied to this tribunal on 30 September for a determination of the premium to be paid the other terms of the new lease. Directions were given on 16 October 2013 including a direction that the tribunal would consider the application on the basis of the papers filed without an oral hearing. As the applicant did not seek an oral hearing the tribunal considered the application on 26 November 2013 on the basis of the bundle of papers filed with the tribunal on behalf of the applicant. The papers were well prepared and relatively easy to follow for which we thank those advising the applicant.
11. We considered in particular the valuation report dated 8 November 2013 prepared by Mr Bradley (BSc, MRICS) who was instructed to advise on valuing the new lease. He carried out an inspection of the flat on 25 October 2013. He describes the building containing the flat as one originally built as a house but later converted into five flats. The applicant owns Flat number 5 which is on the second floor of the building. It is a one-bedroom flat with shared access to the rear garden. At the valuation date the lease had an unexpired term of 70.37 years.
12. Mr Bradley noted certain improvements by the leaseholder in the form of the fitting of a new kitchen. He took the valuation date as the date of the application to Court on 15 May 2013 (correctly in our view). He sets out a summary of the how new lease claims are to be valued (under schedule 13 to the Act).
13. He proposes a capitalisation for the valuation of the ground rent that will lost once the new lease is granted at 7.5% (relying on a previous decision of this tribunal). The ground rent income is £50 per annum increasing by £50 for each 33 years of the lease. We consider on the basis of his submissions and our own knowledge and experience that that this the appropriate rate to be applied to such a modest rental income which would have little appeal to investors.
14. Mr Bradley also reviews recent authorities on the deferment rate to be applied to the freehold vacant possession value and he concludes correctly, in our opinion that this should be the rate of 5% (relying in particular on the recent decision of the Upper Tribunal in the case of *Voyvoda v Grosvenor West End Properties* [2013]).
15. He appends a list of sales of similar flats as relevant market evidence (suitably adjusted for factors such as the valuation date by comparison to the date of the relevant transaction). In the end he chose five of these transactions and fairly, in our opinion, concluded that the value of the of the flat with a 'virtual freehold with vacant possession' (paragraph 10.01 of his report) is the sum of £275,000 at the valuation date which he submits should be reduced by £2,500 for the applicant leaseholder's improvements to the flat (referred to in paragraph 12 of this decision, above).

16. As to 'relativity' he takes the average of five published reports summarised in *RICS Leasehold Reform: Graphs of Relativity (2009)* which gives an average to be applied to the unexpired term of the subject lease at an average of 92.73. Mr Bradley supports this analysis by examining a number of transactions which give additional support, he argues to a relativity of 92.73%. We agree with this analysis.
17. This leads him to the conclusion that the price to be paid for the grant of the new lease is the sum of £14,900 (Fourteen thousand, nine hundred pounds).
18. The applicant's bundle also included a copy of the current lease and the terms of the proposed lease both of which we have considered. Under section 56 of the Act these terms shall be a lease in substitution for the existing lease for a term 90 years longer than the current term on payment of a premium and under section 57 the terms shall otherwise be on the same terms as the current lease (subject to certain exceptions not relevant to this application).
19. We are satisfied that the terms of the proposed new lease are appropriate.
20. To conclude the premium to be paid for the grant of a new lease is the sum of £14,900 (Fourteen thousand, nine hundred pounds).
21. Those advising the applicant should now apply to the Court for the appropriate officer to execute on behalf of the missing landlord the grant of the new lease as approved by this tribunal on payment of the net sum representing the premium we have determined less the costs assessed by the Court.
22. A copy of Bradley's valuation is appended to this decision.

Lease Extension - Valuation for Assessment of Premium

Flat 5, 4 Border Crescent, SE26 6DF

Valuation Date (Date of Claim)

15/05/2013

Lease 99 years from 29/09/1984 at an annual rent of £50 £100 £150
 Expiry date 28/09/2083 28/09/2017 28/09/2050 28/09/2083

The flat values are £252,689 subject to the existing lease
 and £272,500
 Relativity 92.73%

LEASE EXTENSION

1. Diminution in value of Landlord's interest.

Ground Rent			£50.00 p.a.	
YP for	4.37 years @	7.5%	<u>3.6129</u>	£180.65
			£100.00 p.a.	
YP for	33.00 years @	7.5%	12.1074	
PV £1 in	4.37 years @	7.5%	<u>0.7290</u>	£882.67
			£150.00 p.a.	
YP for	33 years @	7.5%	12.1074	
PV £1 in	37.37 years @	7.5%	<u>0.0670</u>	£121.73
Reversion to			£272,500	
PV £1 in	70.37 years @	5.00%	<u>0.0323</u>	£8,795.38
				£9,980.43
			Diminution in value, say	

2. Landlord's share of Marriage Value.

Value of tenant's interest under a new	£272,500	
Value of Landlord's new interest	<u>Nil</u>	£272,500
Less:		
Value of tenant's existing lease	£252,689	
Value of Landlord's existing interest	<u>£9,980</u>	
		<u>£262,670</u>
Marriage value		£9,830
Landlord's share @ 50%		<u>£4,915</u> £14,896
	say	£14,900

Date of Lease

2013

LR2	Title number(s)	LR2.1 Landlord's title number SGL277923 LR2.2 Other title numbers SGL429142
LR3	Parties to this Lease	Landlord Ricky Barry Aubrey Garrett as Executor of the Estate of George Leonard Reginald Garrett of last known address Oakfield Farm, Rushett Lane, Epsom, Surrey, KT18 7TR Tenant Adam James Harvey of Flat 5, 4 Border Crescent, London, SE26 6DF
LR4	Property	In the case of a conflict between this clause and the remainder of the lease then, for the purposes of registration, this clause shall prevail Flat 5, 4 Border Crescent, London, SE26 6DF as more particularly described in Part 3 of the Schedule of the Original Lease
LR5	Prescribed Statements etc	LR5.1 Statements prescribed under rules 179 (dispositions in favour of a charity), 180 (dispositions by a charity) or 196 (leases under the Leasehold Reform, Housing and Urban Development Act 1995) of the Land Registration Rules 2003 This Lease is made pursuant to s.50 (1) of the Leasehold Reform Housing and Urban Development Act 1993. LR5.2 This Lease is made under, or by reference to, provisions of: None
LR6	Term for which the Property is leased	The term as specified in this Lease at Clause 1.3
LR7	Premium	£
LR8	Prohibitions or restrictions On disposing of this lease	This Lease does not contain a provision that prohibits or restricts dispositions
LR9	Rights of acquisitions etc	LR9.1 Tenant's contractual rights to renew this Lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land None LR9.2 Tenant's covenant to (or offer to) surrender this lease None

		LR9.3 Landlord's contractual rights to acquire this lease
		None
LR10	Restrictive Covenants given in this lease by the Landlord in respect of land other than the Property	None
LR11	Easements	LR11.1 Easements granted by this lease for the benefit of the property
		As per the Clause 1 of the Original Lease
		LR11.2 Easements granted or reserved by this lease over the Property for the benefit of other property
		As per the Clause 1 of the Original Lease
LR12	Estate rentcharge burdening the Property	None
LR13	Application for standard form Restriction	None
LR14	Declaration of trust where there is more than one person comprising the Tenant	N/A

HM LAND REGISTRY
LAND REGISTRATION ACT 2002
LEASE

County/District or London Borough : Bromley
Title Number (Freehold) : SGL277923
Title Number (Leasehold) : SGL429142
Property : Flat 5, 4 Border Crescent, Sydenham,
London, SE26 6DF

THIS LEASE is made the day of **TWO THOUSAND AND THIRTEEN**
BETWEEN:

- 1 Ricky Barry Aubrey Garrett as Executor of the Estate of George Leonard Reginald Garrett of last known address Oakfield Farm, Rushett Lane, Epsom, Surrey, KT18 7TR ("the Lessor")
and
- 2 Adam James Harvey of Flat 5, 4 Border Crescent, London, SE26 6DF ("the Lessee")

NOW THIS LEASE WITNESSETH as follows:

1 DEFINITIONS AND INTERPRETATIONS

In this Lease:

- 1.1 By a lease dated 17 January 1985 and made between (1) Peninah Wangari Ngugi and (2) Brian John Caundle and Adelle Kathleen Wilshier ("the Original Lease") the residue of the term created by the Original Lease is now vested in the Lessee and the reversion expectant upon the determination of the Original Lease remains vested in the Lessor
- 1.2 "the Term" means the term of years granted by the Original Lease

- 1.3 "the Substituted Term" means the term of 189 years commencing on 17 January 1985
- 1.4 "the Premises" means the premises described in and demised by the Original Lease
- 1.5 "the Rent" means the rent reserved by the Original Lease
- 1.6 "the Substituted Rent" means the sum of one peppercorn per annum
- 1.7 The "Lessor" where the context so admits includes the person for the time being entitled to the reversion immediately expectant on the determination of the Substituted Term
- 1.8 The "Lessee" where the context so admits includes the Lessee's successors in title
- 1.9 Words importing one gender shall be construed as importing any other gender
- 1.10 Words importing the singular shall be construed as importing the plural and vice versa
- 1.11 Where any party comprises more than one person the obligations and liabilities of that party under this deed shall be the joint and several obligations and liabilities of those persons

2 RECITALS

- 2.1 The Premises are now vested in the Lessee for all the unexpired residue of the Term subject to the payment of the Rent and to the Lessee's covenants and conditions contained in the Original Lease title to which is registered at H M Land Registry with Title Absolute under the Title Number mentioned above.

2.2 The reversion immediately expectant on the Term is now vested in the Lessor and the title to the reversion is registered at H M Land Registry with Title Absolute under the Title Number mentioned above.

2.3 The Lessee has served a Notice under s.42 of the Leasehold Reform Housing and Urban Development Act 1993 and has requested the Lessor vary the terms of the Original Lease as follows

3 VARIATIONS

3.1 In consideration of the sum of £ (receipt of which the Lessor hereby acknowledges) the Lessor agrees to replace the Term with the Substituted Term

3.2 The Lessor agrees to replace the Rent with the Substituted Rent with effect from the date hereof

4 COVENANTS

The Lessor and the Lessee mutually covenant that they will respectively perform and observe the several exceptions reservations covenants provisos and stipulations contained in the Original Lease as if they were repeated in full in this deed and as if the names of the parties to this deed were respectively substituted for those of the lessor and the lessee in the Original Lease

5 PROVISIO

It is agreed that if the Term is determined under the proviso for re-entry contained in the Original Lease this deed shall become absolutely void

6 The Lessee agrees to apply to the Chief Land Registrar for notice of this deed to be entered on the Register of the Lessor's title

7 There is no agreement for Lease to which this deed gives effect