

		PROPERTY CHAMBER (RESIDENTIAL PROPERTY)
Case Reference	:	LON/OOAZ/OLR/2014/1740
Property	:	Basement Flat, 122 Burnt Ash Hill, London SE12 OHT
Applicant	:	Ms J. Hance (leaseholder)
Representative	:	Beverley Morris & Co, solicitors with valuation evidence from Allen Smith, chartered surveyors
Respondent	:	Mr M.Berger (missing landlord)
Representative	:	Not applicable
Type of Application	:	Seeking a determination of the price payable and the terms of a new lease in a claim for a new lease under Part I of the Commonhold and Leasehold Reform Act 1993 following an order made by the Woolwich County Court
Tribunal Members	:	Judge James Driscoll and Mr Richard Shaw FRICS
Date and venue of Hearing	:	The tribunal considered the application on the basis of the papers filed by the applicant.
Date of Decision	:	16 December 2014

DECISION

The Decision summarised

1. The sums payable for the grant of a new lease is £29,000.
2. From this total sum is to be deducted the sum of £4,254 representing the applicant's costs as assessed by the Woolwich County Court.
3. As the applicant admits (tab 10 of the bundle) that the sum of £1,979.81 in unpaid service charges and ground rent is owing this is to added to the sums payable.
4. The total payable is the sum of £26,725.81
5. The terms of the proposed lease are approved (subject to our comments in paragraph 16 below).
6. On payment of the sum of £26,725.81 into the Court the applicant is entitled to execute the new lease.

Background

7. The applicant leaseholder is the registered owner of the subject premises (a flat). He seeks a new lease under the provisions in Chapter 2 of Part I of the Act. The landlord who is named as the respondents cannot be traced.
8. Accordingly, those advising the applicant obtained an order from the Court on 31 October 2014 dispensing with service of a notice claiming a new lease. The Court directed that the premium payable for the new lease and the terms of the new lease should be transferred to this tribunal.

Our decision

9. The tribunal gave directions on 7 November 2014 and proposed that the application be dealt with on a consideration of the papers rather than by a hearing. No request for a hearing having been received the tribunal met on 16 December 2014 to consider the application. We had the benefit of a well-prepared bundle which was produced by the applicant's solicitors. This

included all papers relevant to the Court application, a copy of the existing lease, a copy of the terms of the new lease and a valuation report prepared by the applicant's valuer.

10. Having read and considered the papers we then turned our attention to the valuation report.
11. This was prepared by Ms L. Wilson, B.A., FRICS of Allen & Smith, chartered surveyors. She seems to suggest that the valuation date is the date of vesting order made by the Court. This is incorrect and it should be the date on which the application to the Court was made (see section 51(8) of the Act). However, as the date of the application (28 August 2014) is just a week before the valuation date proposed by Ms Wilson we consider it reasonable to overlook this error and we have made no adjustments to the figures to take account of it.
12. She bases her valuation conclusions on what she describes as a limited inspection of the subject property on 25 November 2014, information given to her by the applicant leaseholder, certain market evidence and other evidence supporting her conclusions on relativity. Her report describes the flat as having a living room, a kitchen, a bathroom, a WC and two bedrooms. The flat is one of four in a building that was originally constructed as a house and later converted into flats. The subject flat has a gross internal floor area of 63.5 metres.
13. Ms Wilson proposes that the deferment rate of 5% and a 7% capitalisation rate for valuing the ground rent that will be lost when the new lease has been granted. We agree with these submissions. As to relativity, she simply proposes a figure of 86% which she claims is within the 'parameters' of the 'graphs of relativity' (presumably a reference to the research report published by the RICS in 2009). However, we conclude that this is not warranted. Based on our reading of the RICS research report we have concluded that the appropriate way to calculate relativity is at a rate of 83% for a lease with an unexpired term of 56.1 years.
14. As to market evidence she relies on the sale prices achieved for four sales. These are all flats in the same street as the subject property. However, her report contains little analysis of this evidence and we were not provided with any information on which we could make adjustments to make sure that the evidence is truly comparable and relevant. The sale prices varied from £250,000 to £307,820. All the sales were within a few weeks of the valuation date. Doing the best we can with this information we conclude that the evidence supports a price of £250,000 to which we have made the conventional addition of adding 0.5% to arrive at a freehold value of £251,250. Applying a relativity of 83% produces a figure of £208,538 for the existing value of the lease.
15. We attach our valuation. We have valued the premium to be paid at a price of £29,000. Allowing for payment of the applicant leaseholder's costs

the net sum of £24,746 should be paid into court as ordered. Once this has been done the leaseholder can execute the new lease.

16. At the end of the bundle (tab 10) there is some information on unpaid ground rent and service charges. This statement is far from clear but it appears to state that the leaseholder owes the sum of £1,979.81 in service charges and ground rent. This should be paid in accordance with section 51(5)(c) of the Act.
17. This brings us to the proposed terms of the new lease. Section 56 of the Act provides that a leaseholder is entitled to a new lease (in substitution for the existing lease) at a peppercorn rent for a term 90 years after the term date of the current lease. Under section 57 of the Act the terms of the new lease are usually those of the existing lease except for the term and the ground rent.
18. Having examined the terms of the proposed lease (tab 9 of the bundle) we are satisfied that they are appropriately drafted though they are not a finished product. In the most general of terms the proposed new lease has been drafted with section 57 of the Act in mind but the existing draft has a number of gaps which need to be completed (see, for example, the schedule at page 98 of the bundle). These will have to be completed before the leaseholder executes the new lease.

Appendix 1

New Lease Claim

Present Lease 99 years from 29 September 1971

Valuation date 28 August 2014 56.1 year unexpired

Long lease value £250,000 Freehold value +0.5% = £251,250

Existing lease value (relativity 83%) = £208,538

PV =

YP = 7%

5%

Diminution in value of Landlord's interest

Value before grant of new lease

Term

Rent	£40 pa	
YP 7% for 23 yrs	11.272	451

Rent	£60 pa	
YP 7% for 33 yrs	12.754	
Deferred 23 yrs @ 7%	0.211	161

Reversion

Flat value (F/H)	251,250	
Deferred 56.1 yrs @ 5%	0.0648	16,281

16,893.00

LESS value after grant of new lease

Term

New Lease at a peppercorn rent		0
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Reversion

Flat value (F/H)	251,250	
Deferred 146.1 yrs @ 5%	0.0008	201 -201

Diminution in value of Landlord's interest

16,692.00

Marriage Value

Aggregate of values of interests after grant of new lease

Landlord's interest	201	
Tenant's proposed interest	250,000	
		250,201.00

Less Aggregate of values prior to grant of new lease

Landlord's interest	16,893	
Tenant's interest	208,538	
		225,431
Marriage value		24,770

50% **12,385**

29,077

Premium say £29,000