

3014



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

**Case Reference** : **LON/00AZ/OLR/2014/1401**

**Property** : **42B Mount Pleasant Road, London  
SE13 6RE**

**Applicant** : **Nigel Charles Beanland**

**Representative** : **Mr Glyn Crews**

**Respondent** : **Ground Rents (Regis) Limited**

**Representative** : **Ms Laura Cleasby**

**Type of Application** : **Lease extension**

**Tribunal Members** : **Judge Tagliavini  
Mr R Shaw FRICS**

**Date and venue of  
hearing** : **10 Alfred Place, London WC1E 7LR  
27 January 2015**

**Date of Decision** : **28 January 2015**

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**DECISION**

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- (1) The tribunal determines that the two variations of the extended lease proposed by the Applicant are not permitted.
- (2) There are no orders for costs made pursuant to rule 3 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

### **The hearing**

1. Mr Crews represented the Applicant at the hearing and Ms Cleasby represented the Respondent.

### **The background**

2. At the start of the hearing the parties identified the relevant issues for determination as follows:
  - (i) Whether either or both of the Applicant's suggested amendments should be included in the grant of the extended lease pursuant to the provisions of the Leasehold Reform Housing and Urban Development Act ("the 1993 Act").
3. The property, which is the subject of this application, is a flat for which the Applicant seeks a lease extension. All of the terms of the acquisition were agreed between the parties except for the (extended) lease terms. The Applicant sought two amendments to the lease namely:
  - (i) the inclusion at clause 6(b) reference to clause 5(vii) before the words "the First Schedule"; and
  - (ii) the omission of reference to 15 per cent in clause 9 and the addition of the words "4 per cent over Barclays Bank Plc.'s base rate from time to time."
4. The tribunal was provided with a lever arch file of documents for the hearing and heard the oral submissions for both parties from their legal representatives. Mr Crews contended that the omissions were necessary as (i) the lease was defective if there was no requirement on the lessor to ensure that not only were the covenant in the First Schedule adhered to but also the requirement that tenant's insure their demised premises. Without the amendment there would be no guarantee to this lessee that other lessees taking leases in the future would insure their properties. Therefore section 57(6)(a) of the Leasehold Reform Housing and Urban Development Act 1993 was made out. However, in answer to questions from the tribunal, Mr Crews conceded that the insurance provisions as currently contained in the existing lease were adequate and the lease was not, therefore, defective.

5. Mr Crews also submitted that the economic landscape had changed considerably since the grant of the original lease in 1986 and the reference to a payment of 15% late charges fees was punitive and not in line with the current economy or the likely economy in the near to mid-term future. Mr Crews conceded this did not amount to a defect but submitted that the current term was unreasonable. Mr Crews relied on section 57(6)(b) to support his argument as to why the proposed variation should be made. On questioning by the tribunal Mr Crews conceded that the proposed variation could prove to be both advantageous and disadvantageous to the tenant over time.
6. Ms Cleasby opposed the application and submitted that insurance coverage was adequately provided for in the lease, and any future lease extensions would incorporate the old insurance clauses pursuant to section 57 of the 1993 Act i.e. the current lease terms prevailed unless there were reasons to amend. Therefore, the current Applicant lessee would be protected by the requirement of all future lessees to take out insurances in respect of their demised premises.
7. Ms Cleasby submitted that the amendment to the rate of 15 per cent was unnecessary and could not be construed either as a "defect" or did not affect the suitability on the relevant date the suitability of the lease.
8. Having heard the submissions from the parties and considered all of the relevant documents provided, the tribunal has made determinations on the issue as follows.

### **The tribunal's decision and reasons**

9. The tribunal determines that the current lease adequately provides for insurance by all lessees of their demised premises. Although, rather unusually, the lease does not provide for the lessor to be responsible for the building's insurance the tribunal was satisfied that the current clause at 5(vii) provided both current and future lessees adequate insurance provisions. Therefore, as there was no defect in the lease section 57(6)(a) of the 1993 Act was not satisfied.
10. The tribunal was not persuaded that continued reference to an interest rate of 15 per cent in respect of any unpaid sums, rendered the lease at the time of the relevant date, unsuitable. That in the present climate the rate of 15 per cent may appear on the high side, it was conceded by the Applicant's representative that at some point in the future the figure of 15 per cent may be advantageous to the lessee. The tribunal is of the view that it is not unreasonable in the circumstances to include the existing provisions in the lease having regard to the likely fluctuating nature of the economy over the lifetime of the lease and its extension.

11. At the end of the hearing, the Applicant made an application for costs pursuant to rule 13 of the 2013 Rules. Ms Cleasby argued that costs in the sum of £800 plus VAT are payable as Mr Cleasby had unreasonably required the Respondent's response and at the tribunal when the Respondent had previously taken a conciliatory stance to the application for a lease extension. Mr Crews opposed this application and asserted he was entitled to come to the tribunal and argue these points, as they were neither fanciful nor doomed to failure.
  
12. The tribunal is of the opinion that despite its decision, the applicant and his representative have not conducted themselves in a way that can be properly regarded as "unreasonable". Although Mr Crews has been unsuccessful in his arguments the Tribunal regards the points that he took were properly put before the tribunal for its determination. Therefore the application for costs is refused.

Signed: Judge Tagliavini

Dated: 28 January 2015