



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

Case Reference : LON/00AZ/OLR/2015/0931

Property : 195a Lewisham Way, London SE4
1UY

Applicant : Mr Mehmet Osman

Representative : Mr Patel

Respondent : Mr Mohammad Shahid

Representative : No appearance

Type of Application : Application under section 48 of the
Leasehold Reform, Housing and
Urban Development Act 1993

Tribunal Members : Mr Jeremy Donegan – Tribunal
Judge
Mr Neil Martindale FRICS – Valuer
Member

**Date and venue of
Determination** : 24 November 2015
10 Alfred Place, London WC1E 7LR

Date of Decision : 02 December 2015

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the premium payable by the Applicant under Schedule 13 of the Leasehold Reform, Housing and Urban Development Act 1993 ('the 1993 Act'), on the grant of a new lease of 195a Lewisham Way, London SE4 1UY ('the Flat') is £47,868 (forty seven thousand, eight hundred and sixty eight pounds).**
- (2) A schedule setting out the tribunal's calculation of the premium is attached.**
- (3) The tribunal determines the terms of the new lease of the Flat, as set out at paragraph 32 of this decision.**

The background

1. The Applicant is the leaseholder of the Flat. The Respondent is the freeholder of 195 and 197 Lewisham Way.
2. On 22 September 2014, the Applicant served a notice of claim on the Respondent pursuant to section 42 of the 1993 Act, seeking a new lease of the Flat. The notice proposed a premium of £15,000 for the new lease.
3. On 26 November 2014, the Respondent served a counter-notice in which he admitted the Applicant's entitlement to a new lease under the 1993 Act. The counter-notice proposed a higher premium of £60,000.

The application

4. The Applicant seeks a determination of the premium to be paid for the new lease and other terms of acquisition, pursuant to section 48 of the 1993 Act.
5. The application was received by the tribunal on 21 May 2015. Directions were issued and sent to the parties on 04 June 2015.
6. Paragraphs 1-7 of the directions are set out below:

Recoverable costs

1. *Any application to determine the landlord's recoverable costs is stayed. Any application to lift the stay must include confirmation that the recoverable costs are in dispute.*

Lease terms

2. *The landlord must by **18 June 2015** submit a draft lease to the tenant for approval.*
3. *The tenant must by **02 July 2015** return the draft lease to the landlord with any amendments shown in red.*
4. *The landlord must by **09 July 2015** provide the tenant with a list of the terms of the draft lease that remain in dispute.*

Valuation

5. *The parties' valuers must by **18 June 2015** exchange valuation calculations and meet to clarify the issues in dispute.*
 6. *The parties must by **[seven weeks from the date of these directions]** exchange statements of agreed facts and disputed issues and send copies to the tribunal.*
 7. *The parties must exchange expert reports **at least two weeks before** the hearing date notified to them in accordance with the following directions.*
7. The Application was subsequently listed for hearing on 09 September 2015. That hearing was attended by the Applicant but not the Respondent and was adjourned, as neither party had complied with the directions. Further directions were issued
 8. The restored hearing took place on 20 October 2015. Once again, the Applicant attended but there was no attendance by the Respondent. The restored hearing was also adjourned, as the Applicant's valuation report was inadequate and further directions were issued.

The existing lease

9. The existing lease of the Flat was an under-lease and granted by Banta Properties on 20 August 1979 for a term of 81 years (less 10 days) from 24 June 1978. The current ground is £50 per annum and increases to £100 per annum from 24 June 2032 until the expiry of the term. As at the date of the claim notice the unexpired term of the lease was 44 years and 5 months.

The hearing

10. The final hearing took place on 24 November 2015. The Applicant attended and was represented by a family member, Mr Patel. There was no appearance by the Respondent.
11. The tribunal were supplied with a hearing bundle that contained copies of the application, directions, section 42 notice, existing lease, draft new leases and other relevant documents. The tribunal were also supplied with a detailed valuation report from the Applicant's surveyor, Mr Stephen Clarke BSc MRICS MFPWA, dated 10 November 2015.
12. At the hearing, Mr Patel explained that a copy of Mr Clarke's report had been sent to the Respondent but there had been no response. The counter-notice was served by London Solicitors on behalf of the Respondent but they subsequently ceased acting. The Respondent has not complied with the various directions and the Applicant has had no recent contact with him. The tribunal was not supplied with any expert valuation evidence on behalf of the Respondent.
13. There was no application to lift the stay in paragraph 1 of the original directions dated 04 June 2015. It follows that the tribunal is unable determine any costs payable to the Respondent under section 60 of the 1993 Act. Mr Patel informed the tribunal that the Respondent has failed to provide any details of his costs.
14. The only issues to be determined by the tribunal are the premium for the new lease and the terms of that lease.
15. Having considered all of the documents in the hearing bundle and the contents of Mr Clarke's report, the tribunal has made the determinations set out below.

Premium for new lease

16. In his report dated 10 November 2015, Mr Clarke valued the premium for the new lease at a total figure of £41,000. Appended to his report were calculations, showing how he had arrived at this figure. At the hearing, Mr Patel confirmed that the Applicant was asking the tribunal to determine the premium at £41,000.
17. Mr Clarke did not attend the hearing and there was no direction requiring his attendance. This meant that the tribunal members had no opportunity to question him on the contents of his report or calculations. The tribunal explained to Mr Patel and the Applicant that it would have regard to the contents of Mr Clarke's report and the members' own knowledge and expertise, when determining the premium.

18. In his report, Mr Clarke used a capitalisation rate of 6.5% and deferment rate of 5%, which are uncontroversial and are accepted by the tribunal. He had used a freehold value of the Flat of £240,000. This was based on Mr Clarke's analysis of three nearby sales at 96 Chipley Street SE14 6HB, the Ground Floor Flat at 171 Lewisham Way and 193A Lewisham Way. He had made adjustments to the sale price to reflect differences in condition, facilities, lease term, location and size but did not provide a breakdown of these adjustments.
19. Following the hearing, the tribunal inspected the Flat in the presence of Mr Patel. It is situated on the first and second floors of 195 Lewisham Way, above a convenience store and on a busy and noisy main road. Access is via a shared first floor walkway at the rear of the building, which is accessed via external steps leading off a communal parking area.
20. The accommodation comprises a small kitchen, storage cupboard and large sitting room on the first floor and three bedrooms (one double and two singles), storage cupboard, bathroom and separate WC on the second floor. There is no private outside space. Generally the condition of the Flat is poor and it could certainly benefit from some updating. The location and access are also poor, which will have a negative impact on the value.
21. The tribunal also inspected the exterior of the three comparable properties put forward by Mr Clarke. 193A Lewisham Way is a particularly good comparable, as it is situated next door (above a kebab shop) and has the same access and accommodation. It was sold in January 2015, for £220,000. In his report, Mr Clarke described this property as being identical to the Flat but for three factors, namely:
 - (a) The lease term was 71 years;
 - (b) The property has a garage; and
 - (c) It was in very poor condition.

Mr Clarke considered that the long lease value of this property was around £250,000.

22. Mr Clarke also referred to a lease extension that he had recently negotiated for 191A Lewisham Way, where a premium of £16,500 had been agreed in early 2015. The lease term was 65 years at the valuation date and Mr Clarke had agreed terms with the freeholder's valuer, based on a capitalisation rate of 7% and a deferment rate of 5%, which had not been challenged.

23. Mr Clarke had used a relativity rate of 78%, which was said to be “*..obtained by reference to a standard graph of relativity as used by the Industry*”. However he did not identify the graph in question and the tribunal is unaware of any standard graph that is “*used by the Industry*”. To the contrary the property industry has been unable to agree a uniform relativity graph. Rather there are a number of different graphs in use, some of which were analysed in the RICS Research Report dated October 2009.
24. In his report, Mr Clarke stated that a relativity rate of 78% was “*..backed up by the sale of the neighbouring maisonette*” but did not explain how. However he did accept that this rate “*..would have been subject to negotiation with an expert employed by the landlord*”.

The tribunal’s decision

25. The premium payable under Schedule 13 of the 1993 Act is £47,868 (forty seven thousand, eight hundred and sixty eight pounds).

Reasons for the tribunal’s decision

26. The relevant date for valuing the lease extension is the date of service of the section 42 notice. It follows that the appropriate valuation date is 22 September 2014.
27. Having regard to the comparable properties put forward by Mr Clarke, particularly 193A Lewisham Road, and using its own knowledge and expertise, the tribunal concluded that the long lease value of the Flat on the valuation date was £220,000. They then used an uplift of 1% to arrive at a freehold value of £222,200.
28. The relativity rate of 78% proposed by Mr Clarke is too low, given that the lease had only 44.38 years left to run at the valuation date. The tribunal adopted a rate of 68.5%, being a mean average of the five relativity graphs for Greater London at South East England in section 2 of the RICS Research Report. The graphs in question were provided by provided by Beckett & Kay, South East Leasehold, Nesbitt & Co, Austin Gray and Andrew Pridell.
29. Having determined the capitalisation, deferment rates and relativity rates at 6.5%, 5% and 68.5% respectively and the freehold value of the Flat at £222,200, the tribunal determines that the lease extension premium is £47,868 (forty seven thousand, eight hundred and sixty eight pounds). The tribunal’s calculations are set out in the attached schedule.

The new lease

30. The hearing bundle contained two draft leases. A copy of the most recent draft is attached, marked "A". Various definitions are set out at clause 1.1 including:

"Term: a term of 171 years from 24th June 1979"

31. At the hearing, the tribunal pointed out that the draft lease does not include the wording required by section 61 of the 1993 Act.

The tribunal's decision

32. The tribunal determines that the terms of the new lease shall be those set out in the draft at Appendix A, subject to the following amendments:

Clause 1.1 - The term of the new lease is 171 years (less 10 days) from 24th June 1979 and the premium is £47,868.

An additional clause 3.3 shall be inserted, reading:

3.3 The landlord may, (a) at any time during the period of 12 months ending on 14 June 2059, and (b) at any time during the period of five years ending on 14 June 2149 apply to the court under section 61 of the Leasehold Reform, Housing and Urban Development Act 1993 for an order for possession of the flat on the ground that for the purposes of redevelopment he intends to demolish or reconstruct, or to carry out substantial works of construction on the whole or a substantial part of any premises in which the flat is contained, and that he could not reasonably do so without obtaining possession of the flat, and the provisions of that section and of Schedule 14 to the Act shall apply accordingly.

Reasons for the tribunal's decision

33. The term of the existing lease is 81 years (less 10 days) from 24 June 1978. The new lease shall be for a term of expiring 90 years after the term date of the existing lease (section 56(1) of 1993 Act).
34. The premium of £47,868 is the sum that has determined by the tribunal at paragraph 25 of this decision.
35. The additional clause 3.3 is required to comply with section 61 of the 1993 Act.

Other matters

36. At the hearing, Mr Patel explained that the Applicant had paid a statutory deposit to the Respondent's solicitors following service of the section 42 notice. The amount of that deposit will need to be deducted from the premium of £47,868, when calculating the sum required to complete the new lease.
37. The Respondent has failed to engage in these proceedings. If he fails to complete the new lease promptly then the Applicant should seek independent legal advice, as it may be necessary to make an application to the County Court under section 48(3) of the 1993 Act.

Name: Judge Donegan

Date: 02 December 2015

Appendix of relevant legislation

Leasehold Reform, Housing and Urban Development Act 1993 (as amended)

Section 56 (1)

- (1) Where a qualifying tenant of a flat has under this Chapter a right to acquire a new lease of the flat and gives notice of his claim in accordance with section 42, then except as provided by this Chapter the landlord shall be bound to grant to the tenant, and the tenant shall be bound to accept –
 - (a) in substitution for the existing lease; and
 - (b) on payment of the premium payable under Schedule 13 in respect of the grant,
 - a new lease of the flat at a peppercorn rent for a term expiring 90 years after the term date of the existing lease

Section 61

- (1) Where a lease of a flat (“the new lease”) has been granted under section 56 but the court is satisfied, on an application made by the landlord –
 - (a) that for the purposes of redevelopment the landlord intends –
 - (i) to demolish or reconstruct, or
 - (ii) to carry out substantial works of construction on,
 - the whole or a substantial part of any premises in which the flat is contained, and
 - (b) that he could not reasonably do so without obtaining possession of the flat,
 - the court shall be order declare that the landlord is entitled as against the tenant to obtain possession of the flat and the tenant is entitled to be paid compensation by the landlord for the loss of the flat.
- (2) An application for an order under this section may be made –
 - (a) at any time during the period of 12 months ending with the term date of the lease in relation to which the right to acquire a new lease was exercised; and
 - (b) at any time during the period of five years ending with the term date of the new lease.
- (3) Where the new lease is not the first lease to be granted under section 56 in respect of a flat, subsection (2) shall apply as if paragraph (b) include a reference to the term date of any previous lease granted under that section in respect of the flat, but paragraph (a) shall be taken to be referring to the term date of the lease in relation to which the right to acquire a new lease was first exercised.
- (4) Where an order is made under this section, the new lease shall determine, and compensation shall become payable, in accordance with Schedule 14 to this Act; and the provisions of that Schedule shall have effect as regards to the measure of compensation payable by virtue of any such order and the effects of any such order where there are sub-leases,

and as regards other matters relating to orders and applications under this section.

- (5) Except in subsection (1)(a) or (b), any reference in this section to the flat held by the tenant under the new lease includes any premises let with the flat under that lease.

Lease extension valuation

195a Lewisham Way SE4 1UY

FLAT - Lease Extension

Virtual Freehold value (unimproved)	£222,200
Long Leasehold value (unimproved)	£220,000
Long Leasehold value (less value of improvements)	£220,000
Valuation Date	28-Jan-15
Expiry of existing lease	14-Jun-59
Existing Term unexpired	44.38
Capitalisation rate	6.50%
Deferment rate	5.00%
Relativity	68.50%
Short Leasehold value (unimproved) before extension	£150,700

Diminution of Landlords Interest

Landlords Present Interest

Term

Fixed Present GR		£50	
YP for 17.375 years @ 6.5%	10.25		£513

Term

Fixed Present GR		£100	
YP for 27 years @ 6.5%	12.575		£421
PV £1 in 17.38 years @ 6.5%	0.335		

Reversion

Virtual Freehold		£222,200	
PV £1 in 44.38 years @ 5%	0.11477		£25,503

Landlords present interest

£26,437

Landlords Proposed Interest

Virtual Freehold		£222,200	
PVE1 in 134.38 years @ 5%	0.00145		£322.19

Diminution

£26,114

Marriage Value

Tenants Proposed Interest

Less Tenants Present Interest		£220,000	
Less Landlords Present Interest	£150,700		
	£26,437		
Total		£177,137	
Marriage Value		£42,863	
50% share of marriage value			£21,432

Lease Extension Premium

£47,868

"A"

AMENDED

Full name: New lease of a flat under the Leasehold Reform, Housing and Urban Development Act 1993

DATED

RENEWAL LEASE BY REFERENCE TO AN EXISTING LEASE

between

MOHAMMAD SHAHID

and

MEHMET OSMAN

CONTENTS

CLAUSE

1.	Interpretation.....	3
2.	Grant.....	4
3.	Leasehold Reform, Housing and Urban Development Act 1993.....	4
4.	Registration of this lease.....	5
5.	Entire agreement.....	5
6.	Landlord and tenant (Covenants) Act 1995.....	5
7.	Contracts (Rights of Third Parties) Act 1999.....	5
8.	Governing law and jurisdiction.....	5

PRESCRIBED CLAUSES

LR1. Date of lease

~~20th August 1979~~

LR2. Title number (s)

LR2.1 Landlord's title number (s) TGL127951

LR2.2 Other title numbers NONE SGL280190

LR3. Parties to this lease

Landlord

Mohammad Shahid of 116-118 Basement Flat, Lewisham Way, London SE4 1UY

Tenant

Mehmet Osman of 195A Lewisham Way, London SE4 1UY

Other parties

None

LR4. Property

In this case of a conflict between this clause and the remainder of this lease then, for the purposes of registration, this clause shall prevail.

See the definition of "Property" in clause 1.1 of this lease and clause 1 of the 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 1993) of the Land Registration Rules 2003.

This lease is granted under section 56 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 1.1 in the definition of "Term".

LR7. Premium

The premium as specified in this lease at clause 1.1 in the definition of "Premium".

LR8. Prohibitions or restrictions on disposing of this lease

This lease contains a provision that prohibits or restricts dispositions.

LR9. Right of acquisition 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 Tenants 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 Easement granted by this lease for the benefit of the Property

The easements included in clause 1.1 of this lease in the definition of Incorporated Terms" and specified in clauses 1(1) and 1(2) of the Lease.

LR11.2 Easements granted or reserved by this lease over the Property for the benefit of other property

The easement included in clause 1.1 of this lease in the definition of Incorporated Terms" and specified in clause 1(1) and 1(2) of the Lease.

LR12. Estate rentcharge burdening the Property

None

LR13. Application for standard form of restriction

None

LR14. Declaration of trust where there is more than one person comprising the Tenant

Not Applicable

THIS LEASE is dated

PARTIES

- (1) Mohammad Shahid of 116-118 Basement Flat, Lewisham Way, London SE4 1UY (Landlord).
- (2) Mehmet Osman of 195A Lewisham Way, London SE4 1UY (Tenant).

BACKGROUND

- (A) The freehold reversion to the Property is vested in the Landlord and is registered at HM Landlord Registry under title number TGL 127951
- (B) The residue of the term of the Lease is vested in the Tenant and is registered at HM Land Registry under title number SGL 280190
- (C) The Tenant requires the Landlord to grant a new lease of the Property in accordance with the Tenant's right under the Leasehold Reform, Housing and Urban Development Act 1993 and the Landlord has agreed to do so.

AGREEMENT TERMS

1. INTERPRETATION

1.1 The definitions and rules of interpretation set out in this clause apply to this lease.

Annual Rent: a peppercorn, if demanded.

Incorporated Terms: all of the terms, requirements, covenants and conditions contained in the Lease except to the extent that they are inconsistent with the clauses written in this lease and with such modifications as are necessary to make them applicable to this lease and the parties to this lease:

- (a) including:
 - (i) the definitions and rules of interpretation in the Lease;
 - (ii) the agreements and declarations contained in the Lease;
 - (iii) the rights granted and reserved by the Lease (including the right of re-entry and forfeiture);
 - (iv) the third party rights, restrictions and covenants affecting the Property.
- (b) but excluding any terms of the Lease which are specifically excluded by the terms of this lease or substituted by the terms of this lease.

Landlord's Covenants: the obligations in this lease, which include the obligations contained in the Incorporated Terms, to be observed by the Landlord.

Lease: the lease by virtue of which the Tenant holds the Property, which is dated 20th August 1979 and made between Banta Properties Ltd (1) and Anthony Robert Wicks (2) for a term of 81 years from 24th June 1979 and registered at HM

Land Registry under title number .

Premium: ~~£10,000~~ (~~ten~~ thousand pounds).

Property: the property known as 195A Lewisham Way, London SE4 as described in the Lease.

Tenant's Covenants: the obligation in this lease, which include the obligations contained in the Incorporated Terms, to be observed by the Tenant.

Term: a term of 171 years from 24th June 1979

1.2 For the purposes of this lease only, references to the Landlord and tenant in the Lease shall be read as references to the Landlord and Tenant in this lease and matters in the Lease requiring the consent or approval of the landlord shall also require the consent of the Landlord on the same terms under this lease.

2. GRANT

2.1 In consideration of the Premium, the Landlord lets with full title guarantee the Property to the Tenant for the Term at the Annual Rent

2.2 The matters excepted and reserved by the Lease for the benefit of the Landlord are excepted and reserved for the benefit of the Landlord by this lease

2.3 This grant is made on the terms of this lease which include the Incorporated Terms as if they were set out in full in this lease.

2.4 The Tenant covenants with the Landlord that it will comply with the Tenant's Covenants.

2.5 The Landlord covenants with the Tenant that it will comply with the Landlord's Covenants.

3. LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993

3.1 This lease is granted under section 56 of the Leasehold Reform, Housing and Urban Development Act 1993.

3.2 No long lease created immediately or derivatively by or sub-demise under this lease shall confer on the sub-tenant, as against the Landlord, any right under chapter II of the Leasehold Reform, Housing and Urban Development Act 1993 to acquire a new lease. For this purpose, "long lease" shall be construed in accordance with section 7 of the Act.

4. REGISTRATION OF THIS LEASE

Following the grant of this lease, the Tenant shall without delay apply to register this lease at HM Land Registry. The Tenant shall ensure that any requisitions raised by HM Land Registry in connection with that application are dealt with promptly and properly. The Tenant shall send the Landlord official copies of the Tenant's title within one month of the registration being completed.

5. ENTIRE AGREEMENT

5.1 This lease constitutes the whole agreement between the parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between them relating to its subject matter.

5.2 Each party acknowledges that in entering into this lease it does not rely on any representation or warranty made by the other, unless made in writing by the other or their solicitors, but this does not exclude liability for fraud or negligence.

6. LANDLORD AND TENANT (COVENANTS) ACT 1995

This lease creates a new tenancy for the purpose of the Landlord and Tenant (Covenants) Act 1995

7. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

A person who is not a party to this lease shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999

8. GOVERNING LAW AND JURISDICTION

8.1 This lease and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

8.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle and dispute or claim that arises out of or in connection with this lease or its subject matter or formation (including non-contractual disputes or claims).

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Signed as a deed by Mohammad Shahid in
the presence of:

Witness

Signature:

Name:

Address:

Signed as a deed by Mehmet Osman in
the presence of:

Witness

Signature:

Name:

Address: