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

Case Reference : **VG/LON/00AJ/OLR/2016/1886**

Property : **2A Leeland Terrace, London W13
9HW**

Applicant : **Birinder Singh Kharbanda (1)
Ranbir Kaur Kharbanda (2)**

Representative : **Anthony Holden Crofts & Co
Solicitors**

Respondent : **Stephen Jerome Cornelius Scannell**

Representative : **Unrepresented**

Type of Application : **Determination of terms of new
lease purchase under section 51 of
the Leasehold Reform, Housing
and Urban Development Act 1993**

Tribunal Members : **Mr Jeremy Donegan BSc – Tribunal
Judge
Mr Duncan Jagger FRICS – Valuer
Member**

**Date and venue of
Paper Determination** : **31 January 2017
10 Alfred Place, London WC1E 7LR**

Date of Decision : **31 January 2017**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the appropriate sum to be paid into Court for the grant of a new lease of 2A Leeland Terrace, London W13 9HW ('the Flat'), pursuant to section 51(5) of the Leasehold Reform, Housing and Urban Development Act 1993 ('the 1993 Act'), is £26,100 (Twenty-Six Thousand, One Hundred Pounds).
- (2) The tribunal approves the new lease in the form attached, marked 'A'.

The application

1. The Applicants seek a determination pursuant to section 51 of the 1993 Act.
2. On 11 July 2016 the Applicants issued a Part 8 Claim in the County Court at Brentford under claim number C01BF094, seeking a vesting order under section 50(1) of the 1993 Act. On 07 October 2016 Deputy District Judge Tomlinson made a vesting order, which provided that a new lease of the Flat would be granted to the Applicants upon terms to be determined by this tribunal.
3. On 01 December 2016, the tribunal received an application under section 51 of the 1993 Act. Directions were issued on 06 December 2016, which provided for a paper determination. None of the parties has objected to this or requested an oral hearing. The paper determination took place on 31 January 2017.
4. The Applicants' solicitors supplied the tribunal with a hearing bundle that included copies of relevant documents from the County Court proceedings, Land Registry searches for the freehold and leasehold titles, the existing lease and a draft new lease, a table dealing with any additional sums that might be payable to the Respondent and a valuation report from Mr Richard Stacey MRICS dated 16 January 2017.

The background

5. The Applicants are the joint leaseholders of the Flat. The Respondent is the freeholder of 2/2A Leeland Terrace ('the Building').
6. The Applicants have had no contact with the Respondent since they purchased the Flat on 31 May 1991 and have paid no ground rent. Their attempts to trace him have been unsuccessful and he has not responded to the tribunal proceedings.

The issues

7. The tribunal is required to determine the terms of the new lease pursuant to section 51(3) of the 1993 Act and the appropriate sum to be paid into Court pursuant to section 51(5).
8. The tribunal did not consider that an inspection of the Building or Flat was necessary, nor would it have been proportionate to the issues in dispute.
9. Having studied the various documents in the Applicants' bundle the tribunal has made the determination set out below.

Terms of new lease

10. The draft lease submitted by the Applicant's solicitors is largely approved. However minor amendments were required to recital 5. The tribunal has also inserted two additional clauses, numbered 10 and 11, to comply with sections 57(7)(a) and (b) of the 1993 Act. The approved form of new lease is attached, marked 'A'.

Sum to be paid into Court

11. In his report, Mr Stacey valued the new lease premium at £26,100. This was based on an extended lease value of £425,000, a capitalisation rate of 6%, a deferment rate of 5% and a relativity of 90.82%. Mr Stacey used 11 July 2016 as the valuation date, being the date of the County Court application.

The tribunal's decision

12. The premium payable under Schedule 13 of the 1993 Act is £26,100 (Twenty-Six Thousand One Hundred Pounds).
13. There was no evidence to suggest the Respondent has demanded ground rent or any other amounts from the Applicants. In the absence of such evidence, the tribunal determines that no additional sums are payable under section 51(5) (c).

Reasons for the tribunal's decision

14. The relevant date for valuing the lease extension is the date of the application to the County Court, pursuant to section 51(8)(a) of the 1993 Act. As at that date the lease had 69.46 years unexpired.
15. Having scrutinised the comparables detailed in Mr Stacey's report, the tribunal accepts the extended lease value for the Flat. The tribunal also

accepts the capitalisation and deferment rates, which are uncontroversial.

16. Mr Stacey derived his relativity figure by taking a mean average of the graphs for Greater London, excluding Austin Gray ('AG'), Beckett & Kay ('BK') and South East Leasehold ('SEL'). The tribunal accepts it was reasonable to exclude the AG graph, as this is based on data in the Sussex area (rather than Greater London). Mr Stacey did not give any reasons for excluding the BK and SEL graphs. In the absence of such reasons, the tribunal considers that both graphs should have been included when working out the average relativity for the unexpired term. However this would only increase the relativity marginally to 91.53%, which would have very little impact on the new lease premium. In the circumstances the tribunal accepts the relativity used by Mr Stacey.

Name: Tribunal Judge Donegan **Date:** 31 January 2017

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

'A'

(66)

LR1. Date of Lease	2017
LR2. Title Number(s)	LR2.1 Landlord's title numbers MX410463 LR2.2 Other title numbers Existing Title Number AGL25567
LR3. Parties to this Lease	Landlord Stephen Jerome Cornelius Scannell (address unknown) as hereunder acting by [] Tenant Birnder Singh Kharbanda and Ranbir Kaur Kharbanda both of 17 Hartington Road, Ealing, London, W13 8QL
LR4. Property	In the case of a conflict between this clause and the remainder of this lease then, for the purposes of registration, this clause shall prevail Flat 2a Leeland Terrace, Ealing, London, W13 9HW more particularly described in the Original Lease referred to in recital (1) of this Deed
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 None LR5.2 This lease is made under, or by reference to, provisions of: Section 56 of the Leasehold Reform Housing and Urban Development Act 1993

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LR13. Application for standard form restriction	None
LR14. Declaration of trust where there is more than one person comprising the Tenant	The Tenant is more than one person. The Tenants hold the property upon trust for themselves as joint Tenants

Land Registry

Land Registration Acts

London Borough : Ealing

Title Number : MX410463 Freehold
AGL25567 Leasehold

Property : 2a Leeland Terrace, Ealing, London,
W13 9HW

This Deed of Surrender and Regrant is made the [] 2017 between Stephen Jerome Cornelius Scannell (hereinafter called "the Lessor") of the one part and Birinder Singh Kharbanda and Ranbir Kaur Kharbanda both of 17 Hartington Road, Ealing, London, W13 8QL (hereinafter called "the Lessee") of the other part

Whereas:-

1. By a Lease (hereinafter called "the Original Lease") dated 31st May 1991 made between Stephen Jerome Cornelius Scannell of the one part and the Lessee of the other part ("the Original Lessee") the property known as 2a Leeland Terrace, Ealing, London, W13 9HW and harden ground as registered as above ("the Property") was demised to the Original Lessees for a term of ninety years from 25th December 1986 at a ground rent of £75.00 rising to £250.00 per annum and subject to the covenants and conditions by and in the Original Lease reserved and contained
2. The Original Lease is now vested in the Lessee who is registered at HM Land Registry as proprietor thereof
3. The reversion immediately expectant on the Original Lease is vested in the Lessor and comprised in the title number referred to above

4. In the matter number CO1BF094 The Brentford County Court on 22nd October 2016 ordered that the Lessees should be granted a new Lease pursuant to Section 50 (1) of the Leasehold Reform Housing and Urban Development Act 1993 ("the Act")

5. The ~~Leasehold Valuation~~ ^{First-tier} Tribunal on the ^{31st January}] 2017 determined the terms of this Lease and the consideration to be paid

6. The Court on the [] 2017 ordered that this Lease be executed by [] for and on behalf of the Lessor in pursuant of the above mentioned Order and determinations

This Deed Witnesseth as follows:-

1. In consideration of the sum of £[] paid by the Lessee into Court and of the grant and release hereinafter referred to the Lessee hereby surrenders unto the Lessor and the Lessor hereby accepts the surrender of the Original Lease

2. For the same consideration the Lessor hereby demises unto the Lessee with limited title guarantee the premises as more fully described in the Original Lease as if the terms of the Original Lease were set out verbatim in this Lease save for the amendments thereto set out hereunto

3. The parties apply to the Chief Land Registrar to give effect to this Deed in respect of their respective registered titles

4. The term of the Original Lease shall be extended to a term expiring on 24th December 2175 paying (in exoneration of the rent reserved by the Original Lease) a yearly rent of a peppercorn

5. The Original Lease shall be read and construed as if:-

a. Clause 5 (c) were deleted and the following wording inserted as Clause 3 (6):-

That the Lessee will at all time during the term granted at the expense of this Lessee keep the demised premises insured against loss or damage by fire tempest lighting flood explosion riot civil

commotion or aircraft or articles dropped there from and such other risks usually covered by a ⁽⁷¹⁾ comprehensive policy in some first class insurance office in the full reinstatement value thereof with a further sum equal to ten per cent of the sum, so insured for the professional expenses of the reinstatement and will in case of damage or destruction by fire or otherwise as aforesaid lay out and expend all moneys received under any such insurance and also further sums (if any) as may be necessary out of the Lessee's own money in reinstating rebuilding or fully restoring for occupation and use the buildings erections and fixtures damaged or destroyed

b. Clause 2 (7) were deleted:-

6. The Lessee hereby covenants with the Lessor as follows:-

To observe and perform such of the covenants subject to which this demise is made which are on their part to be observed and performed

7. The Lessor hereby covenants with the Lessee as follows:-

To observe and perform such of the covenants subject to which this demise is made which are on their part to be observed and performed

8. Except as the term of years granted the rent reserved and the additional covenants contained in this Deed this demise is made upon the same terms and subject to the same reservations and to the same covenants on the parts of the Lessors and the Lessee respectively and the same stipulations and conditions as were expressed and contained in the Original Lease as if the same were herein set forth at length

9. The Lease is granted under Section 56 of the Act

10 & 11 SEE RIDER

In witness whereof the Lessee and [] on behalf of the Lessor have executed this

Deed the day and year first before written

RIDER TO NEW LEASE – 2A LEELANDS TERRACE, LONDON W13 9HW

10. No long lease created immediately or derivatively by way of sub-demise under this lease shall confer on the sub-tenant as against the Lessor a right under Chapter II of Part I of the Act to acquire a new lease.

11. The Lessor may, (a) at any time during the period of 12 months ending on 24 December 2085, and (b) at any time during the period of five years ending on 24 December 2175 apply to the court under section 61 of the Act for an order for possession of the Property on the ground for 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 Property is contained, and that he could not reasonably do so without obtaining possession of the Property and the provisions of that section and of Schedule 14 to the Act shall apply accordingly.