

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL**

Property : Flat 6
Fairfax Centre
Kidlington
Oxfordshire
OX5 2PA

Applicants : Nicola Kate Stevens &
Richard John Stevens

Respondents : K&O Peros (Oxford) Limited

Case number : CAM/38UB/OCE/2008/0039

Date of Application : 23rd April 2008

Type of Application : To determine the terms of acquisition
and costs of the new lease of the
property pursuant to s48(1) and s60
Leasehold Reform, Housing, and Urban
Development Act 1993

Tribunal:	Mrs. Joanne Oxlade	Lawyer Chairman
	Ms. Marina Krisko FRICS	Valuer Member
	Mrs. S Redmond MRICS	Valuer Member

DECISION AND REASONS

DECISION

The decision of the Tribunal is that the terms of the extended lease shall be the same as the existing lease, save for the concession by the Tenant Applicant as to the cost of registration of assignments being £30 plus VAT (or its equivalent) and doubling every 30 years and the necessary and agreed or Statutory provisions as to premium, term and ground rent.

lease - did not reflect the true costs, and that perhaps £30 plus vat per document, doubling every 30 years, would be appropriate.

10. By contrast, the Lessor sought to substitute the existing lease for an *entirely different* lease, a copy of which was provided.
11. The Act provides, by section 57(1), that "the new lease to be granted to the tenant under section 56 shall be on the same terms as those of the existing lease... but with such modifications as maybe required or appropriate". Accordingly, we invited Mr Jackson to establish the basis on which the existing lease should be varied at all, and particularly as sought by the Lessor.

Submissions

Lessor

12. Mr. Jackson said that the existing lease did not reflect modern practises, that the world had moved on, that in one or two instances the changes would positively benefit the tenant, and that the Lessor's aim was to try to get all of the leases on the same terms. It was said that Flat 5 extended their lease in February 2008 and the Lessees had agreed to the new lease on these terms proposed for Flat 6.
13. Mr. Jackson highlighted the following points:
 - the existing lease did not provide a right of way over the yard at the back, which the Lessees used to access large bins for rubbish disposal, and so the lease should reflect this practise and guarantee the right
 - the yard at the back was in a bad state of repair, and that the provision of a sinking fund would enable that and other works to be executed
 - the old lease fails to make provision for re-instatement in the event of destruction of the building
 - the old lease did not provide that the Lessor could not unreasonably withhold his consent to alterations
 - the lease did not incorporate the Landlord and Tenant Covenant Act 1995
 - a deed of rectification was drawn up in 1996, and that this should be incorporated into the new lease.
14. He was asked to specify what provision in the Act gave the Tribunal jurisdiction to substitute the one lease for the other, but he was unable to do so. He said that the most important points were (a) the sinking fund and (b) the right of way.

Lessee

15. Mr Owens opened his submissions by saying that (a) section 57 of the Act did not provide a generalised opportunity to modernise a lease - which was clearly the Lessor's intent here (b) the jurisdiction under section 57 was very limited in application (c) Flat 3, had signed up to a lease on different terms, and so the "parity of lease argument" was not realistic.
16. He relied on paragraph 32-05 of the Supplement to Hague, which itself referred to **Gordon v Church Commissioners for England (unreported) LRA/110/2006** in which HHJ Huskinson found that section 57(6) did not allow the addition of a wholly new term in the absence of consent, namely a covenant requiring the Lessor to enforce covenants by tenants of other flats.
17. He had prepared a very useful document which provided (in tabular form) the new terms of the proposed lease and compared them to the existing terms. He said that the changes requested did not fall within the Act - save for (a) the concession referred to in paragraph 9 above which, he agreed fell within section 57(2)(b)(i) of the Act, and (b) that if the deed of rectification has been made and was necessary, it would fall within section 57(1)(c). He said in some respects the terms of the proposed lease were manifestly worse or less certain for the tenant: the most obvious example being that the current lease defines the proportion of the tenants liability for service charges to 1/15th - and the proposed lease provides a "proper proportion".
18. Mr Owens highlighted parts of the proposed lease which supported the suggestion that this was a business lease:
 - clause B5 refers to tenants obligations to maintain the service media for the shop front, and decorate the shop every 3rd year
 - clause D3 refers to forfeiture on the event of Bankruptcy, which does not feature in residential leases, and only in commercial leases
 - clause C, refers to the lighting of the common parts only during normal business hours, which would not suit these residential premises.
19. Finally, he made the point that the existing lease did make provision for a right of way across the yard, by paragraph 4 of the First Schedule - and so the lease did not require any rectification in this respect.

Lessor

20. Mr Jackson responded by considering the construction of paragraph 4 of the First Schedule, and asserting that the right of way clause was not clear and so should be rectified. He said that the absence of a

sinking fund prevented any works being done, and that all leases now make such provision.

Findings

21. The jurisdiction of the Tribunal under the Act is limited. The starting point is that the terms of the existing lease will continue - unless the limited circumstances prescribed in section 57(1)(2), and (6) of the Act apply. We remind ourselves that the application was not made pursuant to section 35 of the Landlord and Tenant Act 1987.
22. Mr. Jackson failed to establish that any of the amendments proposed by the Lessor fall within sections 57(1),(2), or (6) of the Act. We reject the Lessor's submission that the new lease must make provision for a new right of way, because we consider that paragraph 4 of the First Schedule of the existing lease makes such provision. It refers to a right of way across a road and from our inspection it seems highly unlikely that it can relate to anything other than the yard over which the tenants do travel to dispose of their rubbish. The clause requires no further modification or amendment.
23. Further, whilst we see the force of the argument that the absence of a sinking fund makes repairs and maintenance more difficult, and accept that new leases often include a sinking fund provision, we do not consider that it can be said that the existing service charge terms are such that it would be "unreasonable" to continue the terms without modification.
24. The Lessor's pursuit of this part of the dispute is wholly misconceived. We consider that the new terms proposed by the Lessor do not fall within the jurisdiction of this Tribunal on the application before us. Further, the proposed lease includes terms wholly unsuited to a residential lease.
25. Whilst the Lessee did not seek their costs of attending the hearing today and considerable time spent by Mr Evans in preparing for and resisting this aspect of the application, the Lessee may wish to do so promptly. If so, directions will be made in due course, if agreement cannot be reached on either the principle of or quantum of costs wasted.
26. It is entirely a matter for the parties to agree amendments of the existing lease, in accordance with the concession made and recorded at paragraph 9. For our part the deed of rectification made on 20th January 1996 seems wholly unnecessary as the Header of the original lease referred to the property as flat 6. Accordingly, any rectification is matter of agreement between the parties.

Conclusion

27. We conclude that the new lease should be granted on exactly the same terms as the current lease, save for the concession made in paragraph 9 of these reasons.



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Joanne Oxlade
Chairman
22nd September 2008