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**HM Courts  
& Tribunals  
Service**



**Residential  
Property  
TRIBUNAL SERVICE**

**Case Reference: LON/00AJ/OLR/2011/0836**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON A  
PRELIMINARY ISSUE OF JURISDICTION WITH DIRECTIONS**

**SECTION 48 OF THE LEASEHOLD REFORM, HOUSING & URBAN  
DEVELOPMENT ACT 1993**

Applicant: Kaveh Dadfar

Represented by: TJM Law

Respondent: Fairway Property Investments Ltd

Represented by: BACI Solicitors

Premises: 149 Dehavilland Close  
Northolt  
UB5 6RU

Leasehold Valuation Tribunal: Mrs V T Barran  
Mr A Andrew

Date of Decision 23 September 2011

## Background

1. This is a determination of a preliminary issue: whether the Tribunal has jurisdiction under section 91 of the Leasehold Reform, Housing & Urban Development Act 1993 (the Act) to determine the premium to be paid and terms of a new lease under section 48 of the Act.

2. The applicant the tenant, is represented by TJM Law who have submitted written representations following directions issued by the Tribunal dated 8 August 2011.

3. The respondent, the landlord Fairway Property Investments Ltd is represented by BACI Solicitors. They have not send in any representations on the preliminary issue.

4. The issue for the Tribunal is whether or not an application was made in time. Section 48 of the Act is applicable:

### 48 Applications where terms in dispute or failure to enter into new lease.

(1)Where the landlord has given the tenant—

(a) a counter-notice under section 45 which complies with the requirement set out in subsection (2)(a) of that section, or

(b) a further counter-notice required by or by virtue of section 46(4) or section 47(4) or (5),

but any of the terms of acquisition remain in dispute at the end of the period of two months beginning with the date when the counter-notice or further counter-notice was so given, a leasehold valuation tribunal may, on the application of either the tenant or the landlord, determine the matters in dispute.

(2)Any application under subsection (1) must be made not later than the end of the period of six months beginning with the date on which the counter-notice or further counter-notice was given to the tenant.

(3)Where—

(a) the landlord has given the tenant such a counter-notice or further counter-notice as is mentioned in subsection (1)(a) or (b), and

(b) all the terms of acquisition have been either agreed between those persons or determined by a leasehold valuation tribunal under subsection (1),

but a new lease has not been entered into in pursuance of the tenant's notice by the end of the appropriate period specified in subsection (6), the court may, on the application of either the tenant or the landlord, make such order as it thinks fit with respect to the performance or discharge of any obligations arising out of that notice.

(4)Any such order may provide for the tenant's notice to be deemed to have been withdrawn at the end of the appropriate period specified in subsection (6).

(5)Any application for an order under subsection (3) must be made not later than the end of the period of two months beginning immediately after the end of the appropriate period specified in subsection (6).

(6)For the purposes of this section the appropriate period is—

(a) where all of the terms of acquisition have been agreed between the tenant and the landlord, the period of two months beginning with the date when those terms were finally so agreed; or

(b) where all or any of those terms have been determined by a leasehold valuation tribunal under subsection (1)—

(i) the period of two months beginning with the date when the decision of the tribunal under subsection (1) becomes final, or

(ii) such other period as may have been fixed by the tribunal when making its determination.

(7) In this Chapter "the terms of acquisition", in relation to a claim by a tenant under this Chapter, means the terms on which the tenant is to acquire a new lease of his flat, whether they relate to the terms to be contained in the lease or to the premium or any other amount payable by virtue of Schedule 13 in connection with the grant of the lease, or otherwise.

## Facts

5. By notice dated 17 November 2010 the applicant exercised his right to claim a new lease under section 42 of the Act. The respondent admitted the claim, within the time specified, by counter-notice dated 19 January 2011 under section 45 of the Act. There were two counter-proposals relating to the premium and to the terms of the new lease. It is not apparent to this Tribunal when the counter-notice was given by landlord to the tenant. The chairman issuing Directions was of the view that on the assumption that the counter-notice was given on 19 January 2011 any application to this Tribunal to determine the terms of acquisition should have been made by 18 July 2011. These dates have not been disputed by either party.

6. On Wednesday July 13 2011 TJM Law sent an e-mail to a generic e-mail address for the London Rent Assessment Panel. The e-mail simply said

*"Dear Sirs, please see attached. Yours faithfully."*

The time of the e-mail was stated to be 4.24pm and it was noted by the Panel as received from the internet and scanned by the Government Secure Intranet anti-virus service. The attachments were an application under section 48 of the Act, the notice under section 42 and the counter-notice under section 45. No reply was sent by the Panel by email or otherwise.

7. By e-mail dated Tuesday 2 August 2011 TJM Law sent to the Case Officer (with copy to the generic e-mail address) a copy of the application stated to have been sent on 3 July. The Case Officer e-mailed TJM Law back on the same day saying that he could find no record of a posted copy of the application and he pointed out that their e-mail recorded that their original e-mail was sent on 13 July and not 3 July. The Case Officer stated that the application lacked a copy of the lease and was therefore incomplete. The Case Officer also stated:

*"For your information the London Panel do not accept e-mail copies of applications, and will therefore only acknowledge hard copy postal documents and as previously stated we appear not have received a hard copy".*

8. TJM Law acknowledged their mistake in that the e-mail application was sent not on 3 July but on 13 July. A hard copy of the application was received by the Tribunal on 3 August 2011 and this was described by the chairman issuing Directions as appearing to be out of time.

9. The preliminary issue is determined without a hearing, in accordance with Regulations 13 of the Leasehold Valuation Tribunals (Procedure) (England)

Regulations 2003 (the Procedural Regulations). No request for a hearing has been received.

### **Written representations**

10. TJM Law asserted that their application was made by e-mail because the Tribunal's e-mail address is stated on their letterhead along with all their other methods of contact. There is no indication on the letterhead that service of an application is not accepted by e-mail and so they cannot have been expected to have knowledge of the Tribunal's policy in this respect.

11. Furthermore they had not included a copy of the lease as they did not appreciate one was required or formed part of the application or had an impact on the validity of the application. They referred to the Tribunal telephoning them on other cases asking for a copy of the lease and thereupon they had done so by e-mail and this had not been disputed or impacted on the invalidity of their previous application(s).

12. TJM Law asked the Tribunal to note that as soon as they became aware that their application had not been received they submitted a further (hard copy) copy on the same day and similarly with the lease.

12. They argued that legislation states that an application to the Tribunal should be made. Their e-mail is evidence of this having been done, albeit not received. They consider therefore they had complied with the legislation. They had acted in good faith and did not believe their client's position should be prejudiced by their choice of serving the application via e-mail, having no knowledge of the Tribunal's e-mail policy.

13. No representations were received from the respondent.

### **Determination**

#### **(a) Was the application made in time?**

14. This Tribunal can only have jurisdiction if the application was made not later than the end of the period of six months beginning with the date on which the counter-notice was given to the tenant (see s.48 (2) of the Act above). As pointed out in Directions, on the assumption that the counter-notice was given on 19 January 2011 the application should have been made by 18 July 2011. Even if the counter-notice was given some two days later, being the time allowed for example by Civil

Procedure Rules, it should have been received earlier than 3 August 2011 which was the date of receipt of the hard copy application.

15. Accordingly the Tribunal can only have jurisdiction if delivery of the application by e-mail means that the application had been *made*. The procedural Regulations referred to above are silent on the issue. However there is provision in Regulation 23, where the Tribunal is required to give or send notices or documents to others, that there shall be sufficient compliance if it is sent by fax "*or other means of electronic communication which produces a text of the document*". However by Regulation 23(2) a notice or other document may only be sent in that way if the person receiving it, or his agent, has given consent.

16. There are considerable practical difficulties for the Tribunal in accepting applications by e-mail. Because of the vagaries of the internet and the sophisticated firewall protection for a GSI site, receipt of e-mail communications is not guaranteed.

17. It is not disputed that the Tribunal did receive the e-mail from TJM Law on 13 July 2011. Regrettably because this was sent to a generic e-mail address, and not to a Case Officer, no reply was sent to this e-mail and certainly no communication was made within the time critical period to the effect that the Tribunal did not accept applications by e-mail. That policy was only communicated in this case by the Case Officer on 2 August 2011. By this time it was clearly too late for an application to be submitted within the time frame of section 48 of the Act. We take the view that we should consider Regulation 23(2) as analogous and by failing to reply to the generic e-mail the Tribunal could perhaps be deemed tacitly to have given consent.

18. We step back to consider the wider implications and the overriding objective to deal with cases justly and fairly. The consequence of a late application is that the tenant would be deemed to have withdrawn his claim for the acquisition of the new lease. Not only would he still be liable for costs incurred by the landlord, but he would be prevented from renewing his claim for at least one year. The lease will then be one year shorter and the market may have changed, so the premium to be paid *could* be higher. Indeed in a case such as this where the term granted was 99 years from 1 January 1992 there could be an argument as to whether or not marriage value is payable. Thus there will be severe prejudice to the tenant if the application is out of time. The respondent has not submitted any representations and the outcome of our acceptance of jurisdiction will be that it receives a premium for a new lease. We are informed that 'informal terms outside the legislation have been agreed'. Any prejudice to the landlord is not made out.

19. On balance therefore albeit with some reluctance, we conclude that the Tribunal does have jurisdiction in the exceptional circumstances of this case to determine the premium and terms of the acquisition of a new lease for this property. This decision should not be relied on in general to indicate that applications can be sent by e-mail to the Tribunal.

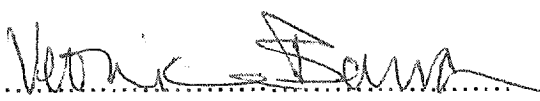
**(b) Was the failure to enclose the lease fatal to the application?**

20. Regulation 3 of the Procedural Regulation details the particulars to be included in application. Applications for extended leases are covered by Para 1 to Schedule 2 of the Regulations and provide that a copy of the lease shall be included with the application. We do not accept TJM Law were unaware of the need to enclose the lease. By their own admission in their previous contact with the Tribunal on other cases they had been made aware of this and as solicitors they should be alert to the detail of the Regulations.

21. However in the absence of representations to the contrary, we consider that the requirement to enclose the lease at the same time as the application can and should be relaxed in this case. Regulation 3(8)<sup>1</sup> applies and the fact that the lease was sent a week or so after the application is not fatal to the application and no prejudice is likely to be caused to the respondent who was well aware of the terms of the lease.

**Directions**

22. Within 28 days of the date of these directions, **both** parties shall write to the Tribunal indicating whether they have settled. If the matter is not settled the Tribunal will issue Directions, with listing questionnaire, for a full hearing.

Chairman 

Mrs V T Barran

Date: 23 September 2011

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<sup>1</sup> Any of the requirements in the preceding paragraphs may be dispensed with or relaxed if the Tribunal is satisfied that –  
(a) the particulars and documents included with an application are sufficient to enable the application to be determined; and  
(b) no prejudice will, or is likely to, be caused to any party to the application.