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**First-tier Tribunal
Property Chamber
(Residential Property)**

Case Reference CAM/00KF/OLR/2016/0004

Property : 4 Wesley Road,
Southend-on-Sea,
Essex SS1 2HE

Applicants : Stephen John Desborough and Tracey
Jane Desborough

Represented by Danny Turpin, solicitor

Respondent : David Alan Rubin

Date of Application : 7th January 2016

Type of Application : To determine the 'appropriate sum'
to be paid into court and to approve
the form of Deed of Surrender and
New Lease following a county court
vesting order for a lease extension
where landlord cannot be found
(Section 51 of the Leasehold Reform,
Housing and Urban Development Act
1993 ("the Act"))

Tribunal : Bruce Edgington (lawyer chair)
Stephen E Moll FRICS
Gerard Smith MRICS FAAV

**Date and place
of hearing** : 17th March 2016 at the Court House,
80 Victoria Avenue, Southend-on-Sea
SS2 6EU

DECISION

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1. The appropriate sum to be paid into court in accordance with Section 51(5) of the Act is £11,650.00.
2. The Tribunal approves the wording of the Deed of Surrender and New Lease as appended to this decision with the red amendments and subject to the various dates being completed and any overriding reasonable requirements of the Land Registry.

Reasons

obtain vacant possession of the property from a date in 59.76 years' time to a date in 149.76 years' time (the deferment rate).

15. The first thing one has to do is calculate the difference in value of the leasehold interest as it is now i.e. with 59.76 years remaining approximately, on the basis that there is no right to obtain an extension – often referred to as the 'no-Act world' – and the value after the existing lease has been surrendered and a new lease has been granted at a peppercorn ground rent for the remaining term plus 90 years.
16. This can be very difficult because market evidence of the value of a lease in the no-Act world is obviously going to be difficult to obtain. The fact is that the Act does exist and any buyer of a new lease will know that he or she can get it extended. Where there is little or no evidence, the most usual method of calculating the no-Act world value is to use what is known as a relativity percentage.
17. As to comparable properties, the Tribunal looked at, and accepted, the evidence supplied by Mr. Stapleton following the questions raised at the hearing. There were 2 ways in which the figures could be challenged. The value may in fact be lower than suggested and the deferment rate could be higher because of the damp problem which could both bring the sale value down slightly and increase the management problems. As was mentioned in the well known case of ***Sportelli***, matters such as unusual management problems could have an effect on the deferment rate.
18. However, these are all matters of conjecture. At the end of the day, the value placed on this extended leasehold interest by Mr. Stapleton, even taking into account the minor error referred to above, came within the range of reasonableness determined by this Tribunal and it will therefore not interfere with his conclusion.
19. As far as tenant's improvements are concerned, there was no real evidence as to what they might have been. The term started in 1976. The property had gas central heating with a relatively new 'combi' gas boiler. However, the radiators and windows could possibly date back to 1976. Even if they could be described as tenant's improvements, it is always difficult in these cases to assess improvements as compared with simple updating. On balance, the Tribunal did not consider that any deduction should be made for improvements. If there was any assessable value, it is *de minimis*.

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Bruce Edgington
Regional Judge
21st March 2016

ANNEX - RIGHTS OF APPEAL

- i. 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.
- ii. 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.
- iii. 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.
- iv. 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.