

4(80)



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

Case Reference : LON/00AE/OLR/2015/1894

Property : GGF Flat 7, 107 Chapter Road,
Willesden, London NW2 5LH

Applicant : Mr Sanjay Vishram Naran

Representative : Mr James Tipler Counsel

Respondent : Mrs Ann Maria Patricia Murphy

Representative : None

Type of Application : Section 48 Leasehold Reform,
Housing and Urban Development
Act 1993 – determination of terms
of acquisition in dispute

Tribunal Members : Judge John Hewitt
Mr Luis Jarero BSc FRICS

**Date and venue of
Hearing** : 26 April 2016
10 Alfred Place, London WC1E 7LR

Date of Decision : 26 April 2016

DECISION

Decisions of the tribunal

1. The tribunal determines that:
 - 1.1 The respondent's application for a postponement of the hearing is refused;
 - 1.2 It will proceed with the hearing in the absence of the respondent pursuant to rule 34;
 - 1.3 It notes the withdrawal of the applicant's application pursuant to rule 9 to debar the respondent from taking any further part in the proceedings;
 - 1.4 The new lease to be granted by the respondent to the applicant shall be in the form of the draft deed appended to this decision save that clause 3.2 of that deed shall read as follows:

"3.2 Clauses 3(i) and 5(1) and (iii)(a) of the Lease shall be deleted"
 - 1.5 The respondent shall by **5pm 31 May 2016** pay to the applicant the sum of £4,542.00 by way of penal costs pursuant to rule 13(1)(b).
2. The reasons for our decisions are set out below.

NB Later reference in this Decision to a number in square brackets ([]) is a reference to the page number of the hearing file provided to us for use at the hearing.

Procedural background

3. The applicant is the lessee by assignment of a long lease of the Property. There was also assigned to the applicant the benefit of a notice of claim to a new lease given pursuant to section 42 Leasehold Reform, Housing and Urban Development Act 1993 (the Act).
4. The respondent landlord served a counter-notice pursuant to section 45 of the Act admitting the entitlement to a new lease.
5. The parties have agreed the premium payable for the new lease.
6. The parties have not been able to agree the terms of the new lease.
7. On 16 July 2015 the respondent's then solicitors served a draft of the new lease on the applicant's solicitors. In 26 August 2015 the applicant's solicitors returned to the respondent's solicitors the travelling draft lease amended as shown in red. On 3 September 2015 the respondent's solicitors requested a draft of the new lease as amended in electronic format and this was provided on 4 September 2015. On 2 and 23 October 2015 the applicant's chased the respondent's solicitors for a response, but to no avail.

8. On 24 November 2015 [1] the applicant made an application to the tribunal for the terms of acquisition in dispute to be determined.
9. Directions were given on 14 December 2015 [10]. Direction 4 required the respondent by 18 January 2016 to provide to the applicant a list of the terms of the draft lease that remain in dispute. The respondent did not and has not complied with that direction.
10. The application was listed for hearing on 22/23 March 2016. On 16 March 2016 the hearing date was postponed on an application by the respondent and was re-listed for hearing on 26/27 April 2016.
11. The respondent dispensed with the services of her solicitors, acted in person for a short while and on or about 12 April 2016 instructed new solicitors, Nabas International Lawyers.
12. At about 18:32 on Monday 25 April 2016 Nabas International Lawyers sent a fax to the tribunal enclosing an application notice seeking a postponement of the hearing. The grounds for the postponement were the alleged ill-health of the respondent. There was attached to the application a brief note from what appears to be the respondent's GP that made mention that the respondent claims to suffer stress, anxiety and palpitations and that she feels too anxious to attend the court. Evidently such anxiety has been going on for some two years.
13. Also on 25 April 2016 the applicant's solicitors filed by fax a witness statement made by Mr Simmons exhibiting a deed of variation in simple form extending the lease term and making minor and consequential amendments to the existing lease. And the applicant's solicitors filed and served an application for a penal costs order pursuant to rule 13(1)(b).
14. The application came on for hearing before us. The applicant was represented by Mr James Tipler of counsel. The respondent did not attend and neither did her solicitors.
15. We first considered the respondent's application for a postponement.
16. The application was opposed by Mr Tipler. Mr Tipler took us through the chronology set out in his skeleton argument. He emphasised that the respondent and her respective solicitors had failed to engage in any part of the process since September 2015, had failed to comply with directions and also had sought and obtained one postponement of the hearing. The only issue before the tribunal was the lease terms and that was more a matter for lawyers rather than the parties personally.
17. We accept the submissions made by Mr Tipler. The medical evidence relied upon was weak and there was no indication that if a postponement was granted the anxiety suffered by the respondent would dissipate.

18. The applicant has a statutory right to a new lease which is admitted by the respondent. He is entitled to make purposeful progress with his application to the tribunal and to have the terms of that new lease determined by the tribunal.
19. For these reasons we refused the respondent's application to postpone the hearing.
20. We considered rule 34. We were satisfied that the respondent had been notified of the hearing because she had made the application for a postponement. We were also satisfied that it was in the interests of justice to proceed with the hearing in the light of the chronology set out above.
21. Accordingly the hearing got underway. Part way through a Mr Hugh Carpenter, who said he was a friend of the respondent, arrived to observe the proceedings.

New lease terms

22. Evidently it had been the applicant's intention to try and negotiate a new lease in modern form with appropriate updating and the travelling draft returned to the respondent's then solicitors in September 2015 reflected that approach.
23. However, given the circumstances and in an effort to keep any controversy to a minimum the applicant's solicitor, Mr Simmons, had drafted a deed of variation which he exhibited to his witness statement dated 25 April 2016.
24. Mr Tipler took us carefully through the deed and answered questions which we put to him. A query arose as to a deletion in the existing lease and following a short adjournment to take instructions from Mr Simmons this query was resolved and clarified too be a typing error.
25. In these circumstances we determine that the terms of the new lease shall be in the form of the deed attached to this decision save as to the one correction mentioned in paragraph 1.4 above.

Section 60 costs

26. Mr Tipler told us that the applicant has agreed to pay to the respondent the costs properly payable pursuant to section 60 of the Act.
27. Evidently the respondent has not yet provided details of the costs to be claimed pursuant to section 60.
28. For avoidance of doubt we make clear that if in due course when the respondent pursues a claim for the section 60 costs, if the amount to be paid cannot be agreed it will be open to either party to make an application to the tribunal for the amount payable to be determined.

Rule 13 Penal Costs

29. The applicant had made a rule 13(1)(b) application for a penal costs order. That application was supported by a schedule of the additional costs incurred and claimed by the applicant.
30. Mr Tippler submitted that the respondent has totally failed and neglected to engage with the tribunal process and to comply with its directions. Moreover the respondent has failed to explain the reasons for the delay and the lack of cooperation. He submitted that such failure amount to unreasonable conduct within the meaning of rule 13 (1)(b).
31. Mr Tipler explained the failure on the part of the respondent has caused the applicant to incur more costs than he would otherwise have done. Further, the applicant has had to prepare for the hearing in the dark and not knowing what issues the respondent might suddenly raise.
32. We went through the schedule of costs carefully with Mr Tipler. The schedule had been prepared on the possibility of a two day hearing. He accepted that adjustments were required to reflect the relatively short hearing that actually took place. He also accepted that some of the work claimed for documents should also be adjusted because that would have been incurred in any event.
33. We accept Mr Tipler's submissions and we find that the respondent has acted unreasonably in defending and conducting these proceedings and that such conduct has caused the applicant to incur more costs than would otherwise have been the case.
34. We have therefore made a penal costs order in favour of the applicant.
35. We have assessed the costs to be paid by the respondent to the applicant as follows:

Solicitors' costs	£1,575.00
Counsel's fees	£2,200.00
Travel expenses	<u>£ 10.00</u>
Sub-total	£3,785.00
VAT at 20%	<u>£ 757.00</u>
Total	£4,542.00

Judge John Hewitt
26 April 2016