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

Case Reference : **LON/00AC/OLR/2016/0307**

Property : **14 Lyttelton Court, Lyttelton Road,
London N2 0EB**

Applicant : **Ms Thelma Ingham**

Representative : **Trainer Shepherd Phillips Haynes
LLP**

Respondent : **Brickfield Properties Limited**

Representative : **Wallace LLP**

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

Tribunal Members : **Judge John Hewitt
Mr Luis Jarero BSc FRICS**

**Date and venue of
Determination** : **27 April 2016
10 Alfred Place, London WC1E 7LR**

Date of Decision : **28 April 2016**

DECISION

Decisions of the tribunal

1. The tribunal determines that:
 - 1.1 As matters stand at the present time the tribunal has jurisdiction to determine the terms of acquisition in dispute;
 - 1.2 The proceedings shall be stayed pending further order; and
 - 1.3 The respondent shall by **5pm 27 May 2016** inform the tribunal whether or not court proceedings have been commenced seeking a declaration that the subject notice of claim dated 19 March 2015 is not a valid notice of claim, and if such proceedings have been issued, the respondent shall file with the tribunal a copy of the claim form.
2. The reasons for our decisions are set out below.

Procedural background

3. The applicant is the long lessee by assignment of the Property.
4. By a notice of claim dated 19 March 2015 and given pursuant to section 42 Leasehold Reform, Housing and Urban Development Act 1993 (the Act) the applicant sought to exercise the right to a new lease. The notice was addressed to Hampstead Way Investments Limited and was expressed to have been copied to Fencott Limited. In paragraph 3 of the notice the premium proposed for the grant of the new lease was expressed to be "£48,88.00".
5. By a counter-notice dated 27 August 2015 and given pursuant to section 45 of the Act by "*Brickfield Properties Limited (the Landlord)*" the respondent admitted the tenant had on the relevant date the right to acquire a new lease of the flat.
6. That counter-notice was given by Wallace LLP on behalf of the respondent under cover of a letter dated 27 August 2015 the material parts of which read:

"The Counter-Notice is served without prejudice to the contention that the Notice of Claim is invalid and of no effect for the following reasons:

1. *The Notice of Claim has not been given to the Competent Landlord in accordance with ... Section 42(2)(a) of the [Act]. The Competent Landlord is Brickfield Properties Limited by virtue of its Lease dated 18 December 2014 for a term of 999 years from 18 December 2014. The Notice of Claim has been given to Hampstead Way Investments Limited.*
2. *The Notice of Claim does not comply with Section 42(3)(c) of the Act because the Notice of Claim does not specify sufficiently the*

premium that you propose to pay for the grant of the new Lease. The Notice of Claim offers £48,88.00.

In the above circumstances please confirm that you accept that the Notice of Claim is invalid and of no effect.

Yours...”

7. It is not known what, if any, reply was given to that letter.
8. On 19 February 2016 the tribunal received an application form from the applicant pursuant to section 48 of the Act. The applicant sought a determination of the terms of acquisition which were in dispute. The application form indicated that it was an application to determine the premium. In reply to the question whether any application had been made to the court to determine any question relating to the matter, the answer was ‘No’.
9. The application form was duly processed and the standard letters sent to the parties. In response Wallace LLP for the respondent wrote a letter dated 1 March 2016 raising the question of validity of the notice of claim and attached a copy of the letter dated 27 August 2015 referred to above. The letter raised the question whether the tribunal had jurisdiction to determine the application.
10. By letter dated 18 March 2016 the parties were notified that the tribunal would consider the jurisdiction issue. The applicant was to file written submissions by 1 April and the respondent was to file written submissions in answer by 15 April 2016. The parties were also notified that the tribunal proposed to determine the application on the papers during week commencing 25 April 2016 unless a hearing was requested by 15 April 2016. The tribunal has not received a request for a hearing.
11. The applicant has not filed any submissions, and in those circumstances the respondent’s solicitors stated that they had nothing further to add and invited the tribunal to determine that it did not have jurisdiction in view of the invalidity of the notice of claim.

The material statutory provisions

12. The material statutory provisions of the Act are:

42.— Notice by qualifying tenant of claim to exercise right.

(1) A claim by a qualifying tenant of a flat to exercise the right to acquire a new lease of the flat is made by the giving of notice of the claim under this section.

(2) A notice given by a tenant under this section (“the tenant's notice”) must be given—

- (a) to the landlord, and
- (b) to any third party to the tenant's lease.

(3) The tenant's notice must—

24. Even if a landlord considers or suspects a claim notice might not be a valid notice he is not obliged to take the point and may choose not to do so and to proceed on the basis that the notice is a valid notice.
25. However, where a landlord wishes to challenge the validity of a claim notice and/or the tenant's right to a new lease the place for that challenge is the court.
26. So far as we are aware the respondent has not yet sought to challenge the validity of the subject notice in court proceedings. Unless and until any such challenge is made and succeeds this tribunal is vested with jurisdiction to determine the matters raised in the application form.

The way forward.

27. If a serious challenge is to be made to the subject notice of claim the respondent ought to proceed with purposeful progress, if it not out of time to do so. It is sensible to avoid any unnecessary costs being incurred.
28. We have therefore stayed the proceedings for a short while to give the respondent and its advisers the opportunity to reflect on this decision and to decide whether or not to issue court proceedings.
29. If such proceedings are issued we envisage extending the stay until the conclusion of them. If proceedings are not issued, we envisage giving further directions so that the terms of acquisition in dispute may be determined by the tribunal.

Judge John Hewitt
28 April 2016

ANNEX - RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.

4. 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.