

4284



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

Case Reference : LON/00BB/OLR/2016/0658

Property : 482A Katherine Road London E7
8DP

Applicant : Qurban Ali & Seerat Ali

Representative : Mr S Gupta

Respondent : Hiba Nasir Shah

Representative : Ms V Seifert, Counsel

Type of Application : S.48 Leasehold Reform Housing and
Urban Development Act 1993

Tribunal Members : Mrs F J Silverman Dip Fr LLM
Ms M Krisko Bsc (Est Man) BA FRICS

**Date and venue of
Hearing** : 8 June 2016.
10 Alfred Place, London WC1E 7LR

Date of Decision : 8 June 2016

DECISION

The Tribunal determines that the Applicant's application for an extended lease of the property was not received by the Tribunal within the time limits prescribed by s48 Leasehold Reform Housing and Urban Development Act 1993 and the Tribunal therefore does not have jurisdiction to deal with the claim.
The Respondent's application for costs under Rule 13 of the Tribunal Rules of Procedure is refused.

Reasons

1. The applicant seeks a determination pursuant to s.48 Leasehold Reform Housing and Urban Development Act 1993.
2. The hearing of this matter took place before a Tribunal sitting in London on 8 June 2016 at which Mr S Gupta represented the Applicant tenant and Ms V Seifert of Counsel represented the Respondent landlord .
3. The issue which the Tribunal was asked to determine was whether the Tribunal had received the Applicant's application within the time limits prescribed by s48 Leasehold Reform Housing and Urban Development Act 1993 and thus whether or not the Tribunal had jurisdiction to entertain the claim.
4. For the Applicant, Mr Gupta stated that he had posted the application to the Tribunal on 4 March 2016 which was the date shown on the copy of the application form and accompanying letter on the Tribunal file. He produced to the Tribunal a post office receipt dated 25 February 2016 which related to the purchase of a book of first class stamps which the Tribunal declined to accept as proof of posting of the letter in question. He had no other evidence of the date on which the application form was said to have been posted to the Tribunal. He offered to write out a witness statement saying that he had personally posted the letter but the Tribunal declined this evidence as it added nothing to what he had already stated .
5. The envelope relating to the only copy of the application and accompanying letter on the Tribunal file is stamped as having been received by the Tribunal on 20 April 2016 which is outside the time limit prescribed by s48 of the Act which, in this case, expired on 8 March 2016. The postmark on the envelope is not entirely clear but appears to refer to a posting date in mid-April and not in March.
6. For the Respondent , Miss Seifert provided written submissions in which she stated that there were no deeming provisions in the Act, and that the relevant date was 20 April which was the date on which the Tribunal had actually received the application. She stated that the Applicant had provided no evidence of proof of posting an application prior to the one actually received by the Tribunal.
7. Without any evidence from the Applicant that an earlier copy of the application had indeed been posted (eg a certificate of posting) the Tribunal concludes that it only received the Applicant's application after the expiry of the statutory time limit . It was therefore received too late and the Tribunal has no jurisdiction to deal with this matter.
8. The Tribunal considered the Respondent's application for an order for costs under Rule 13 of the Tribunal Rules of Procedure. The Applicant said that he did not consider his conduct to be unreasonable and resisted the Respondent's application. The Tribunal automatically sends out standard Directions upon receipt of an application and did so in this case on 6 May

2016 which may have encouraged the Applicant to believe that the application was in order and had been accepted by the Tribunal. A review of the case papers after that date revealed the late receipt of the application and resulted in the Tribunal deciding to hold a preliminary hearing to decide whether or not it had jurisdiction. In this light of this action by the Tribunal administration and bearing in mind that an award of costs under this Rule is an exceptional measure, the Tribunal does not consider it unreasonable or vexatious for the Applicant to have continued to pursue their application and therefore does not make an award of costs under Rule 13.

9. The Law

S48 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.

S49 Applications where landlord fails to give counter-notice or further counter-notice.

- (1) Where the tenant's notice has been given in accordance with section 42 but—
 - (a) the landlord has failed to give the tenant a counter-notice in accordance with section 45(1), or
 - (b) if required to give a further counter-notice to the tenant by or by virtue of section 46(4) or section 47(4) or (5), the landlord has failed to comply with that requirement,the court may, on the application of the tenant, make an order determining, in accordance with the proposals contained in the tenant's notice, the terms of acquisition.
- (2) The court shall not make such an order on an application made by virtue of paragraph (a) of subsection (1) unless it is satisfied—
 - (a) that on the relevant date the tenant had the right to acquire a new lease of his flat; and
 - (b) if applicable, that the requirements of Part I of Schedule 11 were complied with as respects the giving of copies of the tenant's notice.
- (3) Any application for an order under subsection (1) must be made not later than the end of the period of six months beginning with the date by which the counter-notice or further counter-notice referred to in that subsection was required to be given.
- (4) Where—
 - (a) the terms of acquisition have been determined by an order of the court under this section, but
 - (b) 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 (7),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.
- (5) 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 (7).
- (6) Any application for an order under subsection (4) 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 (7).
- (7) For the purposes of this section the appropriate period is—
 - (a) the period of two months beginning with the date when the order of the court under subsection (1) becomes final, or
 - (b) such other period as may have been fixed by the court when making that order.

S53 Deemed withdrawal of tenant's notice.

- (1) Where—

- (a) in a case to which subsection (1) of section 48 applies, no application under that subsection is made within the period specified in subsection (2) of that section, or
- (b) in a case to which subsection (3) of that section applies, no application for an order under that subsection is made within the period specified in subsection (5) of that section,
the tenant's notice shall be deemed to have been withdrawn at the end of the period referred to in paragraph (a) or (b) above (as the case may be).
- (2) Where, in a case falling within paragraph (a) or (b) of subsection (1) of section 49, no application for an order under that subsection is made within the period specified in subsection (3) of that section, the tenant's notice shall be deemed to have been withdrawn at the end of that period.
- (3) Where, in a case to which subsection (4) of section 49 applies, no application for an order under that subsection is made within the period specified in subsection (6) of that section, the tenant's notice shall be deemed to have been withdrawn at the end of that period.
- (4) The following provisions, namely—
 - (a) section 43(3),
 - (b) section 48(4), and
 - (c) section 49(5),
 also make provision for a notice under section 42 to be deemed to have been withdrawn at a particular time.

The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013

Orders for costs, reimbursement of fees and interest on costs 13.—

‘(1) The Tribunal may make an order in respect of costs only—

(a) (b) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;

if a person has acted unreasonably in bringing, defending or conducting proceedings in— (i) an agricultural land and drainage case,

(ii) a residential property case, or (iii) a leasehold case; or

(c) in a land registration case.’

Judge F J Silverman as Chairman

Date 08 June 2016

Note:
Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.