



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

Case reference : **LON/00AC/OLR/2018/1444**

Property : **6 Clarence Court, The Broadway,
London NW7 4RP**

Applicant : **Mr K Janani**

Representative : **In person**

Respondent : **H Stain Ltd**

Representative : **Mr A Tibber, solicitor**

Type of application : **(1) For the determination of the
premium to be paid in connection
with a new lease pursuant to s.56(1)
Leasehold Reform, Housing and
Urban Development Act 1993 (“the
1993 Act”).
(2) For the determination of the
terms on which a new lease is to be
granted pursuant to s.57 of the 1993
Act.
(3) For the determination of the
costs to be paid in connection with
a new lease pursuant to s.60 of the
1993 Act.**

Tribunal members : **Judge S Brilliant
Mr I Holdsworth FRICS**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **19 March 2019**

DECISION

Decision of the tribunal

The tribunal determines:

- A. The premium to be paid for an extended lease of the flat is £8,235.
- B. Clause 3(6) of the new lease is to be varied so that the phrase “six months notice” in lines 16 and 17 is replaced by the phrase “one months notice”.
- C. The applicant is to pay the respondent costs of £2,025.00, made up as follows:
 - (1) Solicitors’ costs of drafting counter-notice and lease extension: £500.00.
 - (2) Solicitors’ attendance on client: £250.00
 - (3) Solicitor’s emails with applicant/applicant’s solicitors: £187.50.
 - (4) Solicitor’s other emails: £150.00.
 - (5) VAT on solicitors’ costs: £217.50
 - (6) Surveyor’s costs: £600.00 plus VAT of £120.00, totalling £720.00.

The application

- 1. The applicant seeks determinations:
 - (a) For the determination of the premium to be paid in connection with a new lease pursuant to s.56(1) Leasehold Reform, Housing and Urban Development Act 1993 (“the 1993 Act”).
 - (b) For the determination of the terms on which a new lease is to be granted pursuant to s.57 of the 1993 Act.
 - (c) For the determination of the costs to be paid in connection with a new lease pursuant to s.60 of the 1993 Act.

Directions

- 2. On 30 November 2018, directions were given. Application (c) above was stayed. We lift that stay.

Background

3. The applicant is the tenant of 6 Clarence Court, The Broadway, London NW7 4RP (“the flat”) under a lease dated 25 August 1977 as varied by a deed of variation dated 22 August 2011 (“the lease”).

4. The service charge provision is to be found in clause 6(3) of the lease.

5. It is an unusual and cumbersome clause. Essentially it can be divided into two components: (1) expenditure actually incurred (**past expenditure**) and (2) expenditure to be paid (**advance expenditure**). Advance expenditure has itself two components: (1) a contribution in advance (such as a payment towards a pending precise set of works) and (2) a contribution to a sinking fund (a payment towards cyclical work to be planned and carried out at a future date).

6. It is provided that, if the tenant wishes, the amount of **advance expenditure** is to be certified and not less than six months’ notice of such payment is to be given to the tenant.

7. On 28 March 2018, the applicant served notice claiming to exercise the right to extend the lease. He offered to pay a premium of £7,300. On 24 May 2018, the respondent served a counter-notice asking for a premium of £10,000.

The premium

8. The applicant’s valuer, Mr Kaye, gave a range of £7,600 to £8,700, depending on the freehold reversion value (£315,000 to £360,000). The respondent’s valuation is £8,235, with a freehold reversion value of £350,000.

9. Mr Tibber says there is an agreed figure of £8,200. He relies on an email exchange (Mr Kaye to Mr Conway 21 November 2018 at 09:14 and Mr Conway to Mr Kaye 21 November 2018 at 11:32). But these emails were not just *without prejudice* but also *subject to contract*. So there is no enforceable agreement within these emails.

10. We have not had the benefit of an expert’s report compliant with the professional requirements of such a report, nor have we had oral expert evidence.

11. We note that the mid point of Mr Kaye’s bracket is £8,150. This differs very little from the respondent’s valuation of £8,235. We accept this valuation based on a freehold reversion value of £350,000.

The terms of the new lease

12. Mr Tibber says that the parties have agreed to reduce the six months' notice period in clause 6(3) of the lease to one month's notice.

13. He relies upon an email exchange (AS Tibber & Co to Percy Short & Cuthbert 10 May 2018 at 10:29 and Percy Short & Cuthbert to AS Tibber & Co 17 May 2018 at 16:27.

14. This exchange was *without prejudice* but not *subject to contract or lease*.

15. The 17 May email reads:

Our client agrees in principle to amend the lease to provide for one month's notice of the interim service charge ...

16. The reference to *interim* is a clear mistake for *advance*.

17. In our judgment the parties have reached a binding agreement for reducing the notice period.

Costs

18. The valuer's costs are claimed at £600.00 plus VAT. We consider this a reasonable fee for the work undertaken.

19. Mr Tibber has charged out at £250.00 per hour as a grade A fee earner.

20. He has charged two hours (£500.00) for drafting the counter notice and lease extension. This is reasonable, and we allow it. We also allow one hour's attendance on his client (£250.00).

21. Costs of arguing or negotiating the claim are not allowed. As far as emails with the applicant and his advisers are concerned, we do not allow for emails in, and allow £187.50 for emails out. As far as other emails are concerned, we allow £150.00.

22. The solicitors' costs therefore total £1,087.50, to which VAT must be added. The total is £1,305.00.

Postscript

23. Mr Tibber says the new lease will not be executed until arrears of service charge are paid: see s.56(3) of the 1993 Act. However, there is a

dispute over the amount service charges payable which will be before the tribunal on 15 April 2019.

Name: Simon Brilliant

Date: 19 March 2019

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).