



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

Case reference : **LON/00AZ/OCE/2021/0058**

HMCTS code : **V: VIDEO**

Property : **30 Pepys Road London SE14 5SB**

Applicant : **30 Pepys Road Freehold Limited**

Representative : **Amphlett Lissimore, solicitors**

Respondent : **Assethold Limited**

Representative : **Mr R Gurvits**

Type of application : **Section 24(1) Leasehold Reform
Housing and Urban Development Act
1993**

Tribunal members : **Judge Pittaway
Ms M Krisko FRICS**

Date of hearing : **14 December 2022**

Date of decision : **19 December 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been not objected to by the parties. The form of remote hearing was V: CVPREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents before the tribunal at the hearing were;

1. A bundle of 154 pages
2. An application by the Respondent dated 13 December 2022 to postpone the Hearing
3. Official copies of the entries on the registered freehold title

Mr Gurvits stated that he did not have a copy of the bundle and this was emailed to him so that he had it before the Tribunal heard the submissions of the parties on the substantive issue.

The bundle did not contain the valuations of the parties' respective valuers, nor did it contain any witness statements.

Summary of the tribunal's decision

1. The Tribunal determines that the premium for the first floor flat should be determined on the basis of a lease term of 127 years from 29 September 2015.
2. The Tribunal determines that the premium for the first floor flat should be determined on the basis that the rent payable for the first floor flat did not increase retrospectively from 29 September 1987.
3. Accordingly, in light of the agreement between the parties, a premium of £15,948 is payable for the first floor flat and the total premium for the whole freehold is £26,848.

The Application

4. The application was made by the Applicant for a determination pursuant to section 24 (1) Leasehold Reform Housing and Urban Development Act 1993 ("**the 1993 Act**") of the terms of acquisition remaining in dispute on the collective enfranchisement of 30 Pepys Road London SE14 5SB (the '**Property**')
5. By a notice of claim dated 27 August 2020, served pursuant to Section 13 of the 1993 Act, the Applicant gave notice of a claim to exercise the right to collective enfranchisement of the freehold of the Property and proposed to pay a premium of £9,145 for the premises to be acquired pursuant to s1(1) of the 1993 Act (the '**Specified Premises**') and £250

for the premises to be acquired pursuant to s1(2)(a) of the 1993 Act (the '**Additional Freehold**').

6. On 1 October 2020 the respondent landlord served a counter-notice admitting the validity of the claim and counter-proposing a premium of £45,000 for the Specified Premises and £1,000 for the Additional Freehold.
7. On 26 March 2021 the Applicant applied to the tribunal for a determination of the terms remaining in dispute.
8. The Tribunal issued Directions on 13 September 2021 which contemplated that the application would be heard between 22 November 2021 and 17 December 2021.
9. The Respondent requested an adjournment so that it could apply to the court in relation to the terms of the first floor flat lease. No such application was made so, at the request of the Applicant, the Tribunal issued further Directions on 5 July 2022 to progress the matter to a hearing which was listed to take place on 13 and 14 December 2022.
10. On 13 December it was agreed that the matter would not require two days to be heard and would be heard on 14 December.
11. On 13 December the Respondent applied to the Tribunal for either a variation of the hearing date or for the matter to be determined on the papers, on the grounds that Mr Gurvits had only been passed the matter to deal with the previous week, and that he was ill and was having difficulty speaking. The Tribunal invited Mr Gurvits (and the Applicant if it wished to) to make written representations to it before the hearing. Neither party did.

The hearing

12. The hearing took place on 14 December 2022. Mr O'Doherty of Amphlett Lissimore, solicitors represented the Applicant. Mr Gurvits represented the Respondent. The hearing was also attended by Mr Lee, the Applicant's valuer, Mr R Brown (tenant of the ground floor flat), Mr Waldron (tenant of the second floor flat) and Mr and Mrs Lorusso (tenants of the first floor flat). Mr Renny (tenant of the basement flat) joined during the course of the hearing.
13. The Tribunal considered the Respondent's request for a postponement as a preliminary issue.
14. Mr O'Doherty submitted that the hearing should not be postponed. The application had already taken a lengthy time to reach a hearing. The

Respondent had previously requested and obtained a postponement so that an application could be made to the County Court but no such application had been made. There was only one limited issue before the Tribunal to determine. Mr Gurvits had had the benefit of solicitors acting for the Respondent until a week previously.

15. Mr Gurvits submitted that he would be in a position to submit written representations within a couple of days.
16. The Tribunal retired to consider the request for postponement, or for a decision to be made on papers. It determined that it would not postpone the hearing, but that if Mr Gurvits was unable to address the Tribunal during the hearing due to loss of voice it would allow him to make written representations within a short period after the hearing. In fact Mr Gurvits was able to address the Tribunal during the hearing and agreed that there was no need for him to make subsequent written representations.
17. On the substantive issue the tribunal heard evidence and submissions from Mr O'Doherty acting for the applicant and from Mr Gurvits acting for the respondent. Because of Mr Gurvits' voice loss the Tribunal heard submissions from Mr O'Doherty first, then from Mr Gurvits, with Mr O'Doherty having a right of reply.
18. Neither party asked the tribunal to inspect the property and the tribunal did not consider it necessary to carry out a physical inspection to make its determination.

The issue

19. The bundle included a memorandum of matters agreed by the parties' respective valuers. The following premiums were agreed
 - The premium for the lower flat £200
 - The premium for the ground floor flat £10,250
 - The premium for the second floor flat £200
 - The premium for the Additional Freehold £250
20. The bundle contained the agreed form of transfer of the Property.
21. The premium to be paid for the first floor flat was not agreed. This was because the parties disagreed as to the term of the lease of the first floor flat and the rent payable. These were the only issues before the Tribunal to determine. It was not required to determine the actual premium payable for the first floor flat, only which of the two possible premiums agreed by the parties' surveyors should apply.

22. The parties were agreed that the premium to be paid for the first floor flat was £15,948 if the term of the lease was 127 years from 29 September 2015 and the increased rent of £200, subject to annual increase, commenced to be payable from 29 September 2015.
23. The parties were agreed that the premium to be paid for the first floor flat was £27,900 if the term of the lease was 127 years from 29 September 1987 and the increased rent of £200, subject to annual increase, commenced to be payable from 29 September 1987.

Background

24. The first floor flat was originally demised by a lease dated 18 January 1988 (the '**Lease**') for a term of 99 years at a rent of £75 payable in advance on 25 September in every year.
25. By a Deed of Variation dated 24 August 2016 the lease was varied.
26. The copy of the Deed of Variation in the bundle executed by Mr and Mrs Lorusso (the '**Tenants' Deed of Variation**') refers to the New Term being, '127 years commencing from 29 September 2015'. (It refers to the term of the Lease being 99 years from 27 September 2015).
27. The copy of the Deed of Variation in the bundle executed by Assethold Limited (the '**Landlord's Deed of Variation**') refers to the New Term being, '127 years commencing from 29 September 1987'. (It also refers to the term of the Lease being 99 years from 27 September 2015).
28. Clause 3 of both Deeds of Variation states,
'In consideration of the premium paid by the Lessee to the Lessors, the receipt of which the Lessors hereby acknowledge, and of the provisions hereinafter contained the parties hereto agree that the Lease shall be varied with immediate effect and as hereinafter mentioned:-
 - a) *Every reference in the Lease to the term and the reserved rent shall hereafter mean the New Term and the New Rent as hereinbefore described;'*
29. In both Deeds of Variation the New Rent is defined as, '*£200 per annum rising by £10 per year with the increment doubling every 20 years*'.
30. Entry 2 of the Property Register of the official copies of the leasehold title for the first floor flat in the bundle (dated 1 December 2022) states that the lease under which the land is held is dated 24 August 2016 for a term of 127 years from 29 September 2015 and that it is effected, '*by a Deed of Variation increasing the term of a lease dated 18 January 1988 made between (1) R.Payne (Property Development) Limited and (2) Deborah Ann Davis and thus operating as a surrender of this original lease and the grant of a new lease on the same terms subject to any provision to the contrary in the Deed of Variation.*'
31. Entry 2 of the Property Register shows the date on which the entry was made on the register to have been 25 August 2016.

Evidence and submissions

32. For the Applicant Mr O'Doherty submitted that the premium should be determined on the basis of the term stated at the Land Registry, namely 127 years from 29 September 2015. He submitted that it was illogical for the new rent to be backdated to September 1987 in the Deed of Variation, when it would only be recoverable for the six years before the date of the Deed of Variation. He stated that he had seen the completion statement from when the Deed of Variation was completed (which was not in the bundle) and that it did not recover any extra rent for the period before 24 August 2016. In his submission the New Rent was only payable from 29 September 2015, not earlier. Mr O'Doherty submitted that the Deed of Variation had been registered at the Land Registry since 2016 and the landlord had taken no action to correct the term. Finally he submitted that the Respondent had made no effort to apply to the County Court in connection with the Deed of Variation.
33. For the Respondent Mr Gurvits submitted that he believed that it was the Landlord's Deed of Variation that was originally registered at the Land Registry and that the term had been subsequently changed at the Land Registry to that shown in the Tenants' Deed of Variation. Mr Gurvits stated he had been unable to get any evidence of this change from the Land Registry. Mr Gurvits stated that he had been involved in the original negotiations and that it was a 28 year extension to their existing term that had been offered to the tenants and accepted by them. He agreed that there was no evidence supporting this in the bundle. Mr Gurvits was unable to explain the existence of two different forms of the Deed of Variation. As to the absence of rent apportionments in the completion statement provided when the Deed of Variation was completed Mr Gurvits submitted that this did not mean that rent was not recoverable; just that it was not addressed in the completion statement. Mr Gurvits stated that he had no knowledge of any intention of the Respondent to make an application to the County Court.
34. Mr O'Doherty submitted that there was no evidence that there had been any attempt to amend the term of the lease at the Land Registry since the original registration.
35. The Tribunal heard evidence from both parties as to various sums that had been paid by way of ground rent (in certain instances the sums referred to included service charge and management fees) by the first floor tenants since completion of the Deed of Variation, and from Mr O'Doherty that such ground rent that had been paid had been paid at the higher rate calculated by the Respondent had been paid under protest and as a requirement of Mr and Mrs Lorusso's mortgagees.
36. Mr Gurvits was not able to respond to a query raised by the Tribunal as to why the landlord's counter-notice did not challenge the term of the first floor flat lease stated in the Notice of Claim as being 127 years from 29 September 2016. In reply to the Tribunal's query as to why a premium of £20,000 had been paid for the Deed of Variation Mr

Gurvits stated that the premium had been paid for the lease extension. Mr Gurvits also confirmed that it had not been the Respondent's intention to seek to claim the increase in rent for the period before the Deed of Variation was completed, only to use the rent increase formula to calculate the rent due from the tenants going forward, as if they had been paying at the increased rate since 1987.

37. Mr Gurvits was not able to explain, in response to a query raised by the Tribunal, why the premium would have been paid in 2015 for a short lease extension at a significantly increased ground rent.

Reasons for the tribunal's determination

38. The Tribunal do not understand how there are differing 'New Terms' in the Deeds of Variation executed by the Lorussos and Assethold Limited respectively that are in the bundles. The Official Copies of the first floor flat leasehold title and the freehold title both state that the term is 127 years from 29 September 2016, and that there is nothing in the entries on either title to suggest that there has been any change in that term since the Deed of Variation was registered on 25 August 2016.
39. The Tribunal also note that the Respondent did not challenge the term of the first floor flat lease, stated in the Notice of Claim to be 127 years from 29 September 2015, in its counter-claim.
40. The Tribunal therefore find that for the purposes of calculating the premium payable for the first floor flat the term of the first floor flat lease is 127 years from 29 September 2015.
41. The Tribunal was unable to ascertain the parties' intention in paying a premium of £20,000 for the Deed of Variation. As the Deed significantly increased the rent paid by the tenants it finds it illogical for a premium to be paid only for a very short extension in the term of the lease, which lends credence to the argument that the extension was intended to be for longer than the 28 years suggested by the Respondent.
42. Clause 3 a) of both forms of the Deed of Variation states, '*Every reference in the Lease to.....the reserved rent shall hereafter mean theNew Rent.*' The Tribunal find that the use of the word 'hereafter' means that the New Rent only applies from the date of the Deed of Variation, both in terms of collectability and calculation. The rent payable from completion of the Deed of Variation is '*£200 per annum rising by £10 per year with the increment doubling every 20 years.*'
43. The Tribunal finds that the New Rent formula cannot be applied retrospectively, with the first rent payable after completion of the Deed of Variation being calculated as if the formula had existed since 1987.

The New Rent and its formula for increase can only be applied to rent payable after the date of the Deed of Variation.

44. The parties have themselves agreed that if the Applicant's interpretation is preferred the New Rent shall be treated as payable from 29 September 2015, slightly before the actual date upon which it was increased by the Deed of Variation. The Tribunal therefore adopts the date of 29 September 2015 agreed by the parties.
45. The Tribunal would remind the parties that should the collective enfranchisement proceed to completion any rent that has been paid to the landlord for the period since the valuation date of 27 August 2020 will need to be refunded to the paying tenant.

Name: Judge Pittaway

Date: 19 December 2022

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).

