

RESIDENTIAL PROPERTY TRIBUNAL SERVICE LEASEHOLD VALUATION TRIBUNAL

Property : Flat 5 King Edward VII Mansions,
Shepherds Bush Road,
London NW10 3JG

Applicant(s) : John Royston Faridian
Represented by Rooks Rider

Respondent(s) : (1) Shahpour Jafarabad
(2) Mahnaz Ostad
Represented by MED Solicitors
(3) Gheev Changizi
Represented by Parviz Changizi

Case number : CAM/22UH/OLR/2005/0020

Date of Application : 27th May 2005

Type of Application : To determine the terms of a lease extension in
respect of the enfranchisement of the property
(Section 48 Leasehold Reform, Housing and Urban
Development Act 1993 ("the 1993 Act"))

DECISION OF THE TRIBUNAL WHICH MET ON 15TH SEPTEMBER 2005

Introduction

1. On the 24th September 2004, the applicant served notice on the Respondents giving notice that he wished to extend his lease of the property. A counter notice was served by the 1st and 2nd Respondents on the 7th December agreeing to the lease extension.
2. On the 3rd December, a counter-notice was written on behalf of the 3rd Respondent. It is reasonable to infer from that notice that a lease extension is agreed but all the terms are in dispute.

3. The Lease in question is dated 10th October 1980 and was made between Lewinbond Limited (1) and William Arthur Trower and Theresa Catherine Kavanagh (2) wherein the property was demised for a period of 99 years from the 29th September 1979. The benefit of that lease was assigned to the Applicant on the 18th July 1996.
4. The freehold is held by the 1st and 2nd Respondents as successors in title to Rigidcity Ltd. On 3rd December 1982 Rigidcity Ltd. granted a lease of 2 flats, including the subject property for a term of 150 years from 29th September 1979 to Lewinbond Limited. Thus, Lewinbond Limited became the intermediate landlord. It sold its interest to the 3rd Respondent who is the present intermediate landlord.

The case between the Applicant and the 1st and 2nd Respondents

5. By letter dated 13th September 2005 to the Tribunal from MED Solicitors representing the 1st and 2nd Respondents it is clear that all terms are agreed between their clients and the Applicant save for the apportionment of the premium of £7,100.00 between their clients and the 3rd Respondent.

The case between the Applicant and the 3rd Respondent

6. By letter dated 18th August 2005, the 3rd Respondent purports to appoint Parviz Changizi to represent him in these proceedings.
7. By letter dated 25th August 2005 from Mr. Changizi to the Tribunal, it is clear that the 3rd Respondent's position appears to have changed from when the counter-notice was served. It is now denied that the Applicant is entitled to enfranchise. Mr. Changizi also states that he is not going to attend the hearing but does not seek an adjournment.
8. By letter dated 13th September Mr. Changizi states that he has not agreed anything with the 2nd and 3rd Respondents but he did agree with the tenant Applicant that the 3rd Respondent would accept a premium of £4,850.00 for a 40 year lease extension.

The Tribunal's task

9. Section 40(2) of the 1993 Act says:-

"Where ... the immediate landlord under the lease of a qualifying tenant of a flat is not the landlord in relation to that lease for the purposes of this Chapter, the person who for those purposes is the landlord in relation to it shall conduct on behalf of all the other landlords all proceedings arising out of any notice given by the tenant with respect to the flat under Section 42"

10. Schedule 11, paragraph 6 goes on to say:-

"Without prejudice to the generality of Section 40(2) ...any determination of a Leasehold Valuation Tribunal under this Chapter in proceedings between that landlord and the tenant shall be binding on the other landlords and on their interests in the property demised by the tenant's lease or any other property; but in the event of dispute the competent landlord or any of the other landlords may apply to the court for directions as to the manner in which the competent landlord should act in the dispute"

11. It is quite clear that it is no part of the Tribunal's task to resolve jurisdictional problems relating to the validity of the initial notice or any counternotice or any dispute between landlords. These will have to be resolved by the court and someone, if necessary, will have to apply to the court to resolve any problem raised on behalf of the 3rd Respondent. Having said that, the Tribunal respectfully suggests to the 3rd Respondent that he immediately seeks advice from an expert in the subject of enfranchisement because he clearly seems to have misunderstood the legislation.
12. The issue between the Respondents is said by the solicitors to be the apportionment of the premium. However, it is clear that the actual amount of the premium is not agreed by the 3rd Respondent and the Tribunal therefore has the task of assessing both the amount of the premium and the apportionment.

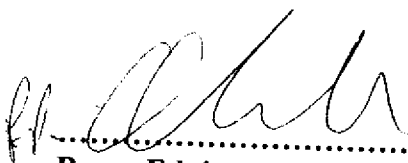
13. The amount of the premium is calculated in accordance with Part II of Schedule 13 of the 1993 Act.
14. As there is no 'minor intermediate lease' in accordance with Schedule 13 paragraph 8(3) the value of the intermediate interest is assessed in accordance with paragraphs 3(2)-(6) of that Schedule as applied by paragraph 8(1)

The Hearing

15. The Applicant was represented at the hearing by Ms. Nicola Stewart who attended with the Applicant's surveyor, Mr. Michael Tims FNAEA.
16. None of the Respondents chose to attend or be represented.
17. Mr. Tims informed the Tribunal that he had not heard from any expert on behalf of the Respondents until he had a recent communication from Wenlock & Taylor, on behalf of the freeholders, and a 2 page valuation at pages 212 and 213 in the bundle. He spoke to them and an agreement was reached on the total enfranchisement price somewhere between the respective valuers' valuations.
18. Turning to the question of the split between the 1st and 2nd Respondents on the one hand and the 3rd Respondent on the other hand, Mr. Tims said that his initial view was that this should be 92% to the intermediate landlord (3rd Respondent) and 8% to the freeholder (1st and 2nd Respondent). However, it was acknowledged on behalf of the Applicant that he did not really care what was payable to whom. He was obviously only interested in the total figure he would have to pay.
19. In a letter to the Tribunal from MED Solicitors dated 13th September, they urge the Tribunal to adopt the figure of £4,850.00 agreed between the 3rd Respondent and the Applicant as being the intermediate landlord's proportion of the premium leaving £2,250.00 to be payable to the freeholder.

The Decision

20. As to the total premium, the Tribunal considered the helpful and fully particularised valuation supplied by Mr. Tims and the somewhat brief valuation supplied on behalf of the 1st and 2nd Respondents at pages 212 and 213. Unfortunately the 3rd Respondent decided not to have an expert valuation.
21. As has been said on many occasions, valuation is not an exact science because it depends heavily on opinion based on the variables set out in the Act. The tribunal made its own calculations and decided in broad terms to accept the figure arrived at by the 2 valuers used as being a fair and reasonable premium based on the valuation principles set out in the Act.
22. However, as far as the split between the freeholders and the intermediate landlord is concerned, the Tribunal took the view that the figure 'agreed' by the 3rd Respondent was not based on any recognised valuation method and seemed to be based on the impression that the lease would only be extended by 40 years which is not, of course, the case.
23. The Tribunal therefore had to use its own expertise to value the split and the respective figures are set out in the attached Schedule.
24. One final point. Whilst the terms of the extended lease have been agreed between the Applicant and the 1st and 2nd Respondents, the intermediate landlord has made it reasonably clear that he has not agreed anything. The Tribunal has proceeded on the basis that the only real issue is the amount of the premium and the split as stated above. If the 3rd Respondent needs the Tribunal to consider any further disputed term apart from the premium, he will have to contact the Tribunal on or before the 31st October 2005 and the hearing will then be re-opened. Once again, it is suggested he seeks advice.


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Bruce Edgington
Chair
15.09.05