LONDON RENT ASSESSMENT PANEL

FULL REASONS FOR THE DECISION OF THE RENT ASSESSMENT PANEL SITTING ON 24TH APRIL 2006 IN RESPECT OF 21 HECTOR STREET, PLUMSTEAD, LONDON SE18 1QT

File reference:	LON/00AL/MLT/2006/001
Landlord:	Hurstway Investment Co Ltd, Mountview House, 151 High Street, Southgate, London N14 6EW
Tenant:	Ethel Cranfield
Application:	Landlord's application to determine the terms of an assured tenancy pursuant to Schedule 10 to the Local Government and Housing Act 1989
Tribunal:	Adrian Jack (Chairman) Ms M Krisko FRICS Mrs S E Baum
Hearing:	24th April 2006

Facts and law

1. By a lease dated 25th October 1900 Henry George Cox granted a term of 99 years from 25th December 1897 at a ground rent of £10.0s.0d per annum of 21 Hector Street, Plumstead, London SE18 1QT. The lease contained a full repairing covenant by the tenant. Ms Cranfield was registered at Her Majesty's Land Registry as the tenant on 17th November 1969. Hurstway Investment Co Ltd was registered as the freeholder on 30th June 1970.

2. The lease was a long tenancy at a low rent, within the meaning of section 2 of the Landlord and Tenant Act 1954. By section 3 of that Act the lease continued after Christmas 1996, when it would otherwise have ended by effluxion of time. The landlord did not serve a notice under section 4 of the Act to terminate the lease so it was not terminated. The effect is that Ms Cranfield did not become a tenant protected by the Rent Act 1977, as she would have become under section 1 of the 1954 Act if the landlord had (prior to 15th January 1999) served a notice of termination under section 4 of the 1954 Act.

3. Section 186 of the Local Government and Housing Act 1989 introduced a change in respect of leases falling within Part I of the 1954 Act which were still in existence on 15th January 1999. Previously the effect of a landlord serving a notice of termination of the long tenancy was to make the tenant a regulated tenant under the Rent Act 1977. Now the effect was to make the tenant an assured tenant under the Housing Act 1988. Schedule 10 to the 1989 Act sets out the relevant procedure for the determination of the terms of an assured tenancy.

4. By a notice dated 21st October 2005 under paragraph 4(1) of Schedule 10 the landlord gave the tenant notice terminating her tenancy of 21 Hector Street on 30th April 2006. The notice proposed a rent of £650 per month with an initial three month rent-free period whilst certain essential repairs were carried out the property, the tenant to be responsible for all outgoings, the tenant to be fully responsible for all repairs to the property in accordance with the 1900 lease, the property to be used as a private dwelling-house only with no sub-letting and the tenant to make no alterations or additions to the property.

5. By a notice dated 20th December 2005 the tenant served a counternotice in which she disputed the landlord's proposal that she be fully responsible for repairs. Instead she proposed that the landlord be fully responsible for all repairs to the property. She also sought a term that she have the right to assign the tenancy to either of her two sons.

6. By application dated 15th December 2006 the landlord referred the dispute as to the terms to the Rent Assessment Committee.

7. A report submitted in evidence by the landlord from Mr D N Williamson FRICS MCIArb attaches a schedule of works prepared by Davis Brown Building Surveying Services in August 2005. From these it is clear that the property is in a state of substantial disrepair and is likely to be virtually uninhabitable for the duration of the works. The works are expected to last at least 3 months, but in the light of the extensive schedule of works could, the Committee considers, take longer. It is unclear whether the tenant will voluntarily vacate the property to allow works to be carried out.

Hearing and request for adjournment

8. The landlord was represented at the hearing on 24th April 2006 by Ms Alison Oakes of counsel. The tenant did not appear. Instead by letter of 30th April 2006 Mr Nick Potts of Greenwich Council's Housing Aid Centre sought an adjournment of the case.

9. Mr Potts submitted that Ms Cranfield was a regulated tenant under the Rent Act 1977. He complained that the landlord had failed to act timeously in serving a notice under section 4 of the 1954 Act. In consequence Ms Cranfield (as explained above) became an assured tenant rather than a Rent Act regulated tenant upon the landlord following the 1989 Act procedure. The landlord, he submitted, should be estopped from benefiting from its delay. He requested an adjournment of the hearing so that arguments regarding jurisdiction can be settled.

10. The landlord objected to any adjournment.

11. The Committee decided to refuse the request for an adjournment. Firstly the matter had been outstanding since the end of 2005, so that the tenant had had ample opportunity to obtain advice and make submissions. Secondly the matter was urgent because the assured tenancy was due to commence on 1st May 2006. Thirdly the Committee saw no basis for

establishing the suggested estoppel. It is true that the effect of the landlord not serving a notice under section 4 of the 1954 Act was that Ms Cranfield never became a Rent Act regulated tenant, but this is a result of the scheme of the 1989 Act. In order to establish an estoppel against the landlord in this case it would be necessary to show that the landlord (a) made a representation (b) on which the tenant relied (c) to her detriment. None of the three elements is established. Fourthly, if (contrary to the Committee's view) the Committee did not have jurisdiction, then Ms Cranfield would have other remedies.

Law

12. Paragraph 11(3) of Schedule 10 to the 1989 Act provides:

> "If the rent assessment committee decide that there are disputed terms, they should determine whether the terms in the landlord's notice, the terms in the tenant's notice, or some other terms, dealing with the same subject matter as the disputed terms are such as, in the committee's opinion might reasonably be expected to be found in an assured monthly periodic tenancy of the dwelling-house (not being an assured shorthold tenancy)—
>
> (a) which begins on the day following the date of termination;
>
> (b) which is granted by a willing landlord on terms which, except so far as they relate to the subject matter of the disputed terms, are the undisputed terms; and
>
> (c) in respect of which possession may not be recovered under any Grounds 1 to 5 in Part I of Schedule 2 to the 1988 Act
>
> and the committee shall, if they consider it appropriate, specify an adjustment of the undisputed terms to take account of the terms so determined and shall, if they consider it appropriate, specify an adjustment of the rent to take account of the terms so determined and, if applicable, so adjusted."

Submissions

13. Ms Oakes accepted that the issue for the Committee was to determine what terms "might reasonably be expected to be found in an assured monthly periodic tenancy". The Committee expressed a preliminary view that it was virtually unknown for an assured tenancy to contain a term whereby the tenant was wholly responsible for repairs. Ms Oakes, after taking instructions, then indicated that the landlord would be willing to accept a "half way house" whereby the landlord had the duties imposed by section 11 of the Landlord and Tenant Act 1985 and the tenant had the internal repairing covenants.

14. Initially Ms Oakes suggested that, if landlord's repairing covenants were to be incorporated, then the monthly rent should be higher. She pointed out that the current state of delapidation was caused by the tenant's breach of her repairing obligations under the 1900 lease, so that it would be only fair that she should therefore pay a higher rent.

15. She suggested in reliance on the report of Mr Williamson that a figure of £725 per month would be appropriate. The Committee pointed out that there was a problem with this in that the premises in their current state might well be capable of being let only at a substantially reduced amount, even with the landlord's repairing covenant and the three month rent-free period. Any breach by the tenant of her obligations under the 1900 lease would give the landlord a cause of action for damages, but was not relevant to the rent payable under a new assured tenancy under which the landlord assumed the relevant repairing obligation.

16. After further consideration, Ms Oakes accepted that, even with a landlord's section 11 covenant, a figure of £650 per month from 1st August 2006 would be appropriate.

17. Ms Oakes accepted that, if the proposed works overran, the landlord may be concerned as to whether the rent-free period should be extended.

18. Ms Oakes submitted that under section 15 of the 1988 Act there was a prohibition on assignment without the landlord's consent. Accordingly she suggested that it was inappropriate to include a term permitting Ms Cranfield to assign her tenancy to either of her sons.

Decision

19. In the Committee's judgment a modern assured tenancy would ordinarily contain a term whereby the landlord assumed the repairing duties implied by section 11 of the Landlord and Tenant Act 1985 and a term imposing a duty on the tenant otherwise to keep the interior of the premises in good decoration and repair. Applying the provisions in paragraph 11(3) of Schedule 10 to the 1989 Act, the Committee so determines.

20. Ordinarily a lease with a landlord's repairing covenant would command a higher rent than a lease without a landlord's repairing covenant. In the light of Ms Oakes' concession that the landlord did not seek a higher rent on this basis, the Committee does not adjust the rent from £650 per month to reflect the change in the terms of the lease.

21. The Committee considered whether an adjustment lower might be appropriate. From its own knowledge of market conditions and the comparables provided by Mr Williamson, it is aware that the market rent, if the property were in good repair, would be higher than £650 per month. In the current dilapidated state of the premises the rent might be lower. The proposed rent of £650 per month is intended to be the rent payable once the repairs are completed (and as indicated below, if the repairs were not completed, the tenant may have a claim to set-off). In these circumstances there seemed no likelihood of the Committee fixing a rent lower than £650 per month. For these reasons too the Committee considered that there was no purpose the Committee inspecting the property.

22. The Committee notes that the landlord proposed to complete the works of repair by 1st August 2006. The Committee considers that this may well be optimistic. If the landlord (without fault on the part of the tenant) fails to complete the works by then, the tenant may well be entitled to off-set a claim for disrepair against the rent payable by her from 1st August. This is, however, not a matter for the Committee to determine.

23. The Committee agrees that a prohibition on assignment and sub-letting is normal in a modern assured tenancy. Accordingly the Committee rejects the tenant's application for a term permitting assignment to either of her two sons.

24. The landlord has prepared a draft tenancy agreement, which is at Tab 6 in the bundle prepared for the hearing. The Committee determines that the following alterations should be made in the draft to reflect its decision above:

(a) clause 2(10) (keep the drains etc clear), clause 2(11) (maintain fire insurance), clause 2(12) (keeping the structure and exterior etc in repair), clause 2(13) (keeping installations for the supply of water etc in repair etc) should be omitted and the subsequent sub-clauses renumbered;

(b) proviso (b) to clause 5(1) (the landlord is not required to rebuild or reinstate the property the property if it is destroyed or damaged by fire flood or any other inevitable accident) should be omitted and proviso (c) relettered;

(c) a fresh clause 5(2) should be added in these terms:

"(2) that the landlord shall:

(a) keep in repair the structure and exterior of the Property (including drains, gutters and external pipes),

(b) keep in repair and proper working order the installations in the dwelling-house for the supply of water, gas and electricity and for sanitation (including basins, sinks, baths and sanitary conveniences, but not other fixtures, fittings and applicances for making use of the supply fo water, gas or electricity), and

(c) keep in repair and proper working order the installations in the Property for space heating and heating water."

Adrian Jack

..... Adrian Jack (Chairman)

24th April 2006

JB MK