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**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
NORTHERN RENT ASSESSMENT PANEL**

**Leasehold Valuation Tribunal
Ref: MAN/00CG/OLR/2009/0001**

Decision of a Leasehold Valuation Tribunal on an application
for the determination of the price payable under Section 48
of the Leasehold Reform Housing and Urban Development Act 1993

Applicant: Christopher Anderson and Julie Linda Anderson
c/o Taylor & Emmett Solicitors, 20 Arundel Gate,
Sheffield, South Yorkshire, S1 2PP

Respondent: Charles Pinter and Malka Hadassah Pinter of
23 St. Andrews Grove, London, N16 5NS

Property: 23 Cross Street, Sheffield, South Yorkshire, S13 7JQ

Date of Application: 8th May 2009

Type of Application: To determine the price payable for a lease extension
pursuant to Section 48 of The Leasehold Reform
Housing and Urban Development Act 1993

Date of Direction: 19th June 2009 and 26th April 2010

Date of Hearing: 23rd June 2010

Members of Leasehold
Valuation Tribunal: Mrs. J.E. Oliver (Chairman)
Mrs. S. Kendall - Valuer

Decision

1. The premium to be paid is £3,500.
2. The new Lease is to be for a term expiring 90 years after the existing term namely on 28th September 2153 subject to the payment of a peppercorn rent.
3. The Lease is to be in the form prepared by the Applicant's Solicitors as annexed hereto.
4. The arrears of ground rent and insurance premiums, payable by the Applicant upon the completion of the new Lease are as follows:-
 - (i) Any payment of ground rent is subject to compliance with Section 166 of the Commonhold and Leasehold Reform Act 2002. The amount payable in respect of ground rent is limited to a maximum sum of £180.00.
 - (ii) Insurance premiums. This is to be a sum equivalent to 30% of the insurance premiums paid by the Respondent for the period June 2004 to date, such premium to be adjusted to be net of that element of the premium payable for loss of rental income relating to the downstairs commercial premises for which the Applicant is not liable.
5. The Applicant shall pay the Respondent's reasonable legal costs in with the grant of a new Lease, limited to £450.00 plus VAT.
6. The Respondent shall pay the Applicant's costs in the sum of £500.00.

Introduction

7. An application is made by Christopher Anderson and Julie Linda Anderson both of 18 Greengate Road, Woodhouse, Sheffield. Since the filing of the application Mr. Anderson has died and consequently the application is now being pursued by Mrs. Anderson only (the Applicant). The application is for an Order pursuant to Section 48 of the Leasehold Reform Housing and Urban Development Act 1993 (the Act) for an extension of the Lease relating to 23 Cross Street, Woodhouse, Sheffield (the Property).
8. The Property is held under a Lease dated 23rd November 1987 and made between W Anderson & Sons (Woodhouse) Ltd of the one part and Christopher Anderson and Julie Linda Anderson of the other part.
9. The Lease provides for the property to be held for a period of 99 years from 29th September 1964 subject to the payment of ground rent in the sum of £30.00 per annum and a proportion of the insurance premium payable by the Landlord in insuring the property. The Lease is silent as to the proportion to be paid in respect of the insurance premiums.

10. The Respondents hold the freehold interest in the property together with the intermediate leasehold interest.
11. On 13th October 2008 the Applicant served upon the Respondent a Notice pursuant to Section 42 of the Act seeking a new Lease in respect of the property upon the following terms:-
 - (i) a premium payable of £3,500.
 - (ii) a new Lease to be granted on the same terms as the existing Lease subject to the commutation of the yearly rent to a peppercorn rent and an extension to the term for an additional period of 90 years.
12. On 12th January 2009 the Respondent served upon the Applicant a Counter Notice refusing to accept the Applicant's proposals for the grounds of a new Lease and in the alternative, proposing:-
 - (i) a premium payable of £9,000
 - (ii) a ground rent of £100 per year.
 - (iii) a term extension of 54 years.
13. The parties were unable to resolve issues and, by letter dated 8th May 2009 an application was made to the Leasehold Valuation Tribunal for the determination of the application.
14. The Leasehold Valuation Tribunal issued directions on 19^h June 2009 providing for the filing of evidence and listing a hearing on 5th August 2009.

The Leasehold Valuation Tribunal was subsequently invited to adjourn the hearing scheduled for 5th August 2009 upon the basis the parties were in negotiations regarding the issue and terms of a new Lease. Further hearings were fixed but again adjourned to allow time for further negotiations. However, ultimately, no agreement could be reached and the application was listed for a hearing on 23rd June 2010.

Inspection

15. The Tribunal inspected the property on 23rd June 2010 prior to the hearing. It is a first floor flat forming part of commercial premises previously operated as a supermarket which is currently vacant. Access to the flat is by a private enclosed staircase from the ground floor. The flat comprises a kitchen, bathroom, two bedrooms and large living area which is in a fair condition. The property has the benefit of central heating and a parking space.

The Law

16. Section 56 (1) of the Act provides as follows:-

(i) Where a qualifying tenant of a flat has under this Chapter a right to acquire a new Lease of the flat and gives Notice of his claim in accordance with Section 42, then except as provided by this Chapter the Landlord shall be bound to grant the tenant, and the tenant shall be bound to accept:-

- (a) in substitution for the existing Lease and;
- (b) on payment of the premium payable under Schedule 13 in respect of the grant,

a new Lease of the flat at a peppercorn rent for a term expiring 90 years after the term date of the existing Lease.

(ii) In addition to any such premium there shall be payable by the tenant in connection with the granting of any such new Lease such amounts to the owners of any intermediate leasehold interest (within the meaning of Schedule 13) as are so payable by virtue of that Act.

(iii) A tenant shall not be entitled to acquire the execution of any such new Lease otherwise than on tendering to the Landlord in addition to the amount of any such premium and any other amounts payable by virtue of Schedule 13, the amounts so far as is ascertained:-

- (a) of any sums payable by him by way of rent or recoverable from him as rent in respect of the flat up to the date of tender;
- (b) of any sums for which, at that date, the tenant is liable under Section 60 in respect of costs incurred by any relevant person (within the meaning of that Section); and
- (c) of any other sums due and payable by him to any such person under or in respect of the existing Lease; and, if the amount of any such sums is not or may not be fully ascertained, on offering reasonable security for the payment of such amount as may afterwards be found to be payable in respect of them.

Schedule 13 Part II of the Act provides as follows:-

Section 2:-

The premium payable by the tenant in respect of the grant of the new Lease shall be the aggregate of:-

- (a) the diminution in value of the Landlords interest in the tenant's flat as determined in accordance with paragraph 3.
- (b) the Landlords share of the marriage value as determined in accordance with paragraph 4 and;

- (c) any amount of compensation payable to the Landlord under paragraph 5.

Section 3 (1):-

- (i) The diminution of the Landlords interest is the difference between:-
 - (a) the value of the Landlords interest in the tenant's flat prior to the grant of the new Lease; and
 - (b) the value of his interest in the flat once the new Lease is granted.

Section 4(1):-

- (i) the marriage value is the amount referred to in sub paragraph (2) and the Landlords share of the marriage value is 50% of that amount
- (ii) the marriage value is the difference between the following amounts namely:-
 - (a) the aggregate of:-
 - (i) the value of the interest as a tenant under his existing Lease,
 - (ii) the value of the Landlords interest in the tenants flat prior to the grant of the new Lease and;
 - (iii) the values prior to the grant of that Lease of all intermediate Leasehold interest (if any) and;
 - (b) the aggregate of:-
 - (i) the value of the interest to be held by the tenant under the new Lease.
 - (ii) the value of the Landlords interest in the tenant's flat once the new Lease is granted, and;
 - (iii) the values of all intermediate leasehold interests (if any) once that Lease is granted.

Paragraph 5(1):-

- (i) Where the Landlord will suffer any loss or damage to which this paragraph applies, there shall be payable to him such amount as is reasonable to compensate him for that loss or damage.

Section 33 (1) of the Act provides as follows:-

- (i) Where a Notice is given under Section 13 then, subject to the provisions of this section, Section 28(6), 29(7) and 31(5), the nominee purchaser shall be liable, to the extent that they have been incurred in pursuance of the Notice by the reversion or by any other relevant Landlord, for the reasonable costs of and incidental to the following matters, namely:-
 - (a) any investigation reasonably undertaken:-
 - (i) of the question whether any interest in the specified premises or any other property is liable to acquisition in pursuance of the initial Notice or;
 - (ii) of any other question arising out of that Notice;
 - (b) deducing, evidencing and verifying the Title of any such interest;
 - (c) making out and furnishing such Abstracts and copies as the nominee purchaser may require;
 - (d) any valuation of any interest in the specified premises or other property;
 - (e) any conveyance of any such interest.

But, this sub-section shall not apply to any costs if on a sale made voluntarily a stipulation that they were to be borne by the purchaser would be void.

The Hearing

- 17. The Applicant, together with her legal representative, Miss Cook and valuer, Mr. Francis, attended the hearing. The Respondents did not attend and were not represented.
- 18. On 21st June the Tribunal Office received an e-mail from Solicitors instructed on behalf of the Respondents confirming that they had been instructed to deal with the application but would not be representing the Respondents at the hearing scheduled for 23rd June and, instead ask for written submissions to be taken into account.
- 19. The Tribunal considered the application in respect of those written submissions but determined that they would not be taken into account when making a decision. This was upon the basis that the Tribunal had issued directions on 19th June 2009 for the filing of evidence, those directions having been further amended on 26th April 2010. The directions given on that date

provided for the Respondents to file any further submissions in relation to the application by 4.00 p.m on 26th May 2010. These submissions were not received until 21st June 2010 and given the time in which the application had been ongoing it was not considered reasonable that such submissions should be allowed.

20. On behalf of the Applicant it was stated as follows:-

- (i) The premium to be paid upon the new Lease is £3,500. This is a valuation proposed by Mr. Francis. In his evidence he confirmed that the current value of the property, under the existing Lease is in the sum of £45,000 and that the valuation upon the new Lease would be £49,500. It was submitted that the property itself is unique, being a flat within a commercial property and therefore comparable evidence in the Sheffield area is difficult to obtain. One comparable property was given in evidence being a flat above a shop in Hackenthorpe which is on the market for sale at £57,995. It was submitted on behalf of the Applicant that whilst this flat was probably superior to the property, nevertheless it was in a less desirable area. It was for this reason that the valuation had been given at £45,000.

In the matter of relatively, Mr. Francis submitted that this should be 91%. It was submitted that the Beckett & Kay graphs are not relevant other than in Prime Central London and this was confirmed by the decision in the Kelton Court case. It was stated that, the property in itself, is only likely to be of interest to an investor who is not mortgage dependant.

The risk premium was placed at 6% in accordance with the decision in Kelton Court.

The Respondents did not produce any valuation to support any other premium being payable.

- (ii) The Applicant's Solicitors had prepared for the Tribunal's use, a draft of the proposed new Lease providing for an extension to the existing term of 90 years and subject to the payment of a peppercorn rent. The proposed Lease does materially change the provisions for the insurance of the premises from the original Lease. It was submitted that this was because the old Lease was inadequate and the new insurance provisions provide better protection for both the Applicant and the Respondent.
- (iii) The Applicant confirmed that during the Respondent's ownership of the freehold interest within the property, no rent demands had been issued. It was therefore conceded that the ground rent of £30.00 per year is payable but such payments are subject to the Limitation Act and should only be payable for a period of six years, namely in the total sum of £180.00.

- (iv) In respect of the insurance premiums, the same argument was applied, namely that any demand for arrears of insurance premiums should be limited to six years.
- (v) The Applicant conceded that the original Lease was silent upon the level of contribution to be paid in respect of the insurance premiums but it was submitted that a reasonable proportion would be 30%.
- (vi) The Applicant submitted that in respect of the costs payable upon the grant of a new Lease, no amount should be allowed for a valuation fee given that there was no evidence any valuation had been obtained by the Respondents. No such valuation had ever been produced during the course of the proceedings.
- (vii) In respect of the Respondents legal fees, it was confirmed that the Respondent was seeking a contribution of £750.00 plus VAT, the Applicant submitting that a more appropriate figure would be £450.00 plus VAT.
- (viii) The Applicant sought an Order pursuant to Section 10 of Schedule 12 of the Commonhold and Leasehold Reform Act 2002 namely that the Respondents should be ordered to pay the Applicant's costs on the basis that the Respondent's have behaved frivolously, vexaciously, abusively, disruptively or otherwise unreasonably in the conduct of the proceedings. In this respect the Applicants relied upon the history of the proceedings set out in the Witness Statement of the Applicant, dated 14th April 2010.
- (ix) The Applicant sought directions from the Tribunal regarding the position should the Respondent fail to execute the new Lease.

21. In considering the applications the Tribunal determined as follows:-

- (i) The premium payable for the new Lease is £3,500. The Tribunal saw no reason to depart from the valuations placed upon the property both before and after the grant of a new Lease by the Applicants nor in the use of the risk premium at 6% and the relativity of 91%. The calculation in respect of the valuation is as follows:-

Diminution in the value of Landlords Interest

1. Ground Rent	30.00		
YP 55yrs @ 6%	15.9905	£479.72	
2. Reversion to VP value	49500		
pr £1 def. 55yrs @ 6%	0.0405674	<u>£2008.09</u>	
			£2487.81
Landlords share of marriage value			
Value of tenant's interest (New Lease)		£49500	

by the Applicant upon the basis that this is not a risk for which the Applicant is liable under the terms of the Lease.

- (v) When determining the amount of costs payable under Section 33(1) of the Act it determined that no valuation fee would be payable given that no valuation had been produced by the Respondent during the course of the proceedings. Whilst there was evidence that a valuer had been instructed by the Respondent to negotiate upon the application, no formal valuation had ever been undertaken.
- (vi) In respect of the Respondent's legal costs necessary to grant the new Lease, the Tribunal considered that a reasonable amount would be in the sum of £450.00 plus VAT and the Applicant's liability to pay those costs are limited to that amount.
- (vii) The Tribunal considered the application brought by the Applicant for an Order for costs against the Respondent upon the basis that the proceedings had been conducted vexaciously and unreasonably. The Tribunal took note of the history of the matter as given in the Applicant's Statement and determined that the proceedings had been conducted unreasonably. The Respondents had failed to provide their original surveyor with their instructions to enable him to negotiate a new Lease on behalf of the Respondents resulting in the surveyor having to discontinue his instructions. Thereafter the Tribunal had difficulty in obtaining any response from the Respondent and the only contact which was subsequently received was two days prior to the hearing. There had been previously hearings fixed and adjourned to allow ongoing negotiations between the parties and it was apparent from the documentation that those negotiations could not be progressed because of a lack of instructions provided by the Respondents to their surveyor, when appointed and, subsequent to his resignation there was no contact at all. The Tribunal therefore determined that the Respondent should pay the Applicants costs in the sum of £500.00.
- (viii) The Tribunal considered the submissions made on behalf of the Applicant regarding what provisions could be made in the event the Respondent failed to execute the new Lease. The Tribunal determined that paragraph 7 of Schedule 2 of the Leasehold Reform (Collective and Francisement etc) Regulations 1993 provides for the procedure necessary to give effect to a new Lease. The regulations do not, however, make any provision for the execution of the Lease in the event either party fails or refuses to execute the same. The Tribunal does not consider it has jurisdiction to deal with this issue and should the Respondent subsequently fail to execute any new Lease then this would require the appropriate application to the Court.

Dated this *16th* day of *August* 2010

J.E. Oliver
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Mrs. J.E. Oliver