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		FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)
Case Reference	:	**LON/OOAY/OLR/2014/0273**
Property	:	**Flat 1A, Dumbarton Road, London SW2 5LT**
Applicant	:	**MS. J. Slattery (leaseholder)**
Representatives	:	**Mr J. Spence, solicitor with Bolt Burdon (solicitors) with valuation evidence from Mr J. Oliver of Anderson, Wilde and Harris (chartered surveyors)**
Respondent	:	**Missing landlord**
Representative	:	**N/A**
Type of Application	:	**Applications for the determination of the premium payable and the determination of the terms of a new lease in a claim made under section 48 Leasehold Reform, Housing and Urban Development Act 1993 (the 'Act') for the grant of A new lease.**
Tribunal Members	:	**Professor James Driscoll, solicitor (Tribunal Judge) and Mr Neil Martindale FRICS (Tribunal Member)**
Date and venue of Hearing	:	**16 April 2014**
Date of Decision	:	**11 May, 2014**

DECISION

Summary of the decision

1. The premium payable for the grant of a new lease is the sum of £21,933.

2. No order is made under section 57 of the Act varying the demise of the lease of the flat.

3. The proposed terms of the new lease (with the current demise which excludes the cellar) are approved.

Introduction

4. The applicant is the leaseholder of one of the two flats in the subject premises which was built as a house and later converted into two flats each held on a long lease. She has the lease of the ground floor flat which she purchased in 2004. We will refer to her as the 'leaseholder'. She seeks a new lease under the provisions in the Act.

5. However, the a claim notice could not be given under section 42 of the Act as the landlord could not be traced. Accordingly, an application was made to the Lambeth County Court under sections 50 and 51 of the Act on 22 November 2013 for an order dispensing with the giving of the notice. On 14 February 2014 the Court ordered a dispensation with giving the notice and, as it was satisfied that the leaseholder is entitled to a new lease under the Act, it ordered a transfer of the claim to this tribunal to determine the premium payable and the proposed terms of the new lease.

6. Following this transfer the tribunal gave directions. As the tribunal was not satisfied that it had jurisdiction to make a determination relating to the extent of the demise, and also because it had concerns that the existing valuation report was deficient in some respects, an additional direction was given on 3 April 2014 and a hearing was set for 16 April 2014.

7. The leaseholder's solicitor prepared a bundle of documents and later produced an additional valuation report and skeleton submissions.

The hearing

8. The leaseholder was present at the hearing held on 16 April 2014 and she was represented by Mr Spence her solicitor. He addressed us on various issues and the leaseholder was able to answer questions on her claim. We were told that the demise of her flat includes the front garden and part of the area of the rear garden.

9. Mr Spence addressed us first on the issue of the scope of our jurisdiction to vary the demise in the existing lease. The problem to be corrected is that within the flat there is a cellar with an entrance and steps into the cellar from inside the flat itself. However, the cellar is not included in the demise of the lease, nor referred to in the lease plan which shows only the entrance to the cellar.

10. The leaseholder told us that she has the exclusive access to the cellar which can only be accessed from inside her flat. She has had this exclusive access since she purchased the flat in 2004. Included in the bundle is a statement made by the previous leaseholder that she had the exclusive use of the flat for several years before she sold it to the leaseholder in 2004. The leaseholder told us that she was advised by Mundays, solicitors when she purchased her flat. They told her that it was doubtful if the lease demised the cellar area and this led her to obtaining the statement from her seller on its use.

11. Mr Spence agreed with us that she may have possessory title to that area and that she could apply to the Land Registry for a determination that she has acquired ownership of the cellar area (under the Land Registration Act 2002). However, he contended that we have jurisdiction to determine that the demise clause of the existing lease should be varied under section 57 of the Act. A mistake was made, he contended, when the existing lease was first granted by not referring explicitly to the cellar and this is a matter where we can exercise our discretion to alter the terms of the existing lease.

12. Turning to the proposed terms of the existing lease, Mr Spence has produced two versions, one with the amended demise, the other without it. Apart from the demise the terms of the new lease will be the same as the existing lease except that no ground rent will be payable and the new term will be 90 years longer than the existing unexpired term.

13. We turned then to the valuation which had been updated by a later report with details of comparable sales to assist in arriving at the market value of the flat at the valuation date. Mr Spence agreed with us that in missing landlord cases the valuation date is the date of the application to the court under section 50 of the Act (see section 51(3)). This means that the valuation date in this case is 22 November 2013.

14. We told Mr Spence that we had reservations about the report. These reservations are that the report is written as a report to the leaseholder and not as expert evidence for the tribunal. We were also concerned that it was unclear how the valuer arrived at the price per square foot to be applied to the subject flat. Nor were we convinced of his conclusions on relativity as he refers to the RICS research report but he fails to explain how he has applied the analysis to this case. Nor has he accounted for the additional value of the cellar access.

Additional written submissions

15. Mr Spence agreed to arrange for additional written submissions to be sent to us. We received these on 23 April 2014. They were sent by the leaseholder's solicitors who forwarded an additional report from the valuer Mr J. Oliver of Anderson, Wilde and Harris (chartered surveyors). Later that day Mr Oliver sent us copies of three decisions of the tribunal which he relies on.

Reasons for our decision

16. Our decisions are summarised at the start of this decision. Dealing first with the demise issue, we are firmly of the view that we have no jurisdiction under section 57 of the Act (or under any other provision in the Act) to alter the extent of the demise. We consider that the starting point when considering the terms of the new lease is that in the usual case the terms of the new lease should be those of the existing lease except, as explained above, no ground rent is payable and the term is 90 years longer the unexpired term of the current lease (see section 57 of the Act). We have considerable sympathy with the leaseholder who will now have to consider applying to the Land Registry seeking possessory title to this part of the property based on her exclusive occupation and that of her predecessor. She may, however, draw some comfort that she should be able to obtain title to that part of the property by dint of her occupation. If it formed part of the current demise this would have produced a higher premium which she would have to pay.

17. We turn now to the valuation report. In the supplemental report the valuer concedes that the reference to the upper flat having access to the cellar was incorrect. He also noted the unexpired lease length from the valuation date being the date of the start of the county court proceedings. He added that the addition of the cellar in the demise would not add much value to the flat.

18. The tribunal has some concerns over the relativity selected by the valuer for the applicant, between the values of short and long leaseholds, the unexpired term here being a little over 66 years and the relativity selected being 93.65%. The valuer provides no direct evidence of sales of short leaseholds but instead refers the tribunal both to the RICS graph of graphs and to three other earlier decisions of the tribunal. The graphs show a range from 88.5% to 92% for an unexpired term of a little over 66 years, whilst the decisions referred to show include figures of 93% for a 66.6 year term, 94.5% for a 77 year term and 04% for a 79 year term in the respective decisions. This tribunal is of course not bound by other tribunal decisions and in the absence of any direct comparable short lease sales evidence, it prefers the guidance that may be derived from the graphs and it adopts a relativity of 90.5%.

19. Using the same evidence of sales of long leasehold flats provided in the valuation report we have concluded a figure of £320,000 for the freehold and £316,800 for the long leasehold values at 22 November 2013 rather than those adopted by the valuer, at £315,000 and £295,909 respectively. Applying the relativity of short to long leaseholds of 90.5% produces a value

for the short leasehold of £286.704. The final premium due for the lease extension is therefore £20,795.

20. To summarise, the premium payable for the grant of the new lease is the sum of £20,795. No change can be made to the property demised by the current lease. The terms of the proposed lease (without the cellar demised) are approved. This matter will now be returned to the Lambeth County Court for completion of the grant of the new lease and any costs order the leaseholder might seek from the Court. A copy or our valuation is appended to this determination.

Professor James Driscoll - Judge

GF Flat No.1 Dumbarton Road
London SW2 5LT

FLAT - Lease Extension

Long Leasehold value (improved)	n/a
Long Leasehold value (unimproved) 99% of FH	£316,800
Valuation Date	22-Nov-13
Expiry of existing lease	24-Jun-80
Existing Term unexpired	66.587
Capitalisation rate	7.00%
Deferment rate	5.00%
Relativity	90.50%
Short Leasehold value (unimproved) before extension	£286,704
Freehold value unimproved	£320,000

Dimimution of Landlords Interest

Landlords Present Interest

First Term				
Fixed Present GR		£30		
YP for 0.349 years @ 7%	0.3367		£10	
Second Term				
Fixed Present GR		£70		
YP for 33 years @ 7%	12.754			
PV £1 in 0.349 years @ 7%	0.9764		£872	
Third Term				
Fixed Present GR		£150		
YP for 33 years @ 7%	12.754			
PV £1 in 33.349 years @ 7%	0.1047		£200	
				£1,082
Reversion to value of Freehold in possession		£320,000		
Deferred 63.349 years	0.0393			
				£12,576
Landlords Present Interest TOTAL				**£13,658**

Marriage Value

Tenants Proposed Interest		£316,800	
Less Tenants Present Interest	£286,704		
Less Landlords Present Interest	£13,658		
Less Total		£300,362	
Marriage Value		**£16,438**	
50% share of marriage value landlords share			**£8,219**
Lease Extension Premium		**TOTAL**	**£20,795**