



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER (RESI-  
DENTIAL PROPERTY)**

<b>Case Reference</b>	:	<b>LON/OOAW/OLR/2014/1520</b>
<b>Property</b>	:	<b>Flat 4, 1 Queensberry Place, London SW7 2DL</b>
<b>Applicant</b>	:	<b>Mr E. Sanna (leaseholder)</b>
<b>Representative</b>	:	<b>Ms N. Muir of counsel</b>
<b>Respondent</b>	:	<b>Mr G. Baldelli, Mr E. Aydintasbas, Mr A. Allum and Mr R Erenstein (joint landlords)</b>
<b>Representative</b>	:	<b>Mr J. Davies of counsel</b>
<b>Type of Application</b>	:	<b>Under section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 ('the Act')</b>
<b>Tribunal Members</b>	:	<b>Professor James Driscoll (Judge) and Duncan Jagger MRICS (Valuer member)</b>
<b>Date and venue of Hearing</b>	:	<b>The application was heard at 11 Alfred Place, London on 10 February, 2015</b>
<b>Date of Decision</b>	:	<b>10 March, 2015</b>

## DECISION

### Summary of the decision

1. The premium to be paid by the applicant leaseholder to the respondent landlords for the grant of a new lease under the provisions in the Act is the sum of £77,500 (seventy thousand and five hundred pounds).
2. No order for costs is made under Rule 7 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

### Introduction

3. This is an application made on behalf of the leaseholder of a flat under section 48 of the Act. The respondents to the application are four joint landlords who together own the freehold of the building containing the flat.
4. It follows a notice claiming a new lease under section 42 of the Act given to the landlords and dated 15 January 2014. Those advising the landlords gave a counter-notice under section 45 of the Act dated 31 March 2014 admitting the claim but demanding a premium higher than the one proposed on behalf of the leaseholder.
5. As the parties could not agree on the premium the leaseholder applied to the tribunal seeking a determination of the premium under section 48 of the Act. The application is dated 26 September 2014. Directions were given on 21 October 2014.
6. Each of the parties had instructed a valuer (a Mr R. Greenness for the leaseholder and a Mr C. Newell for the landlords). The leaseholder has throughout been represented by Griffiths Ings Property Lawyers whilst the landlords were originally represented by Bowers & Bailey LLP, solicitors but they notified the tribunal in a letter dated 5 February 2015 sent by fax that they were no longer instructed by the landlords. Mr Davies of counsel who appeared on behalf of the landlords on 11 February 2015 told us that he had been instructed directly by three of the four landlords.
7. The tribunal notified the solicitors for the parties on 17 December 2014 that a hearing had been scheduled for 10 and 11 February 2015. On 9 February 2015, that is the day before the hearing was about to start, the tribunal received a letter sent by fax from the leaseholder's solicitors enclosing a short statement signed on behalf of the leaseholder by his solicitors and by Mr Da-

vies of counsel acting for three of the four landlords (that is excluding Mr Eerenstein). Also attached is a statement signed by Mr Greenness and Mr Newell the valuers advising the parties stating that they agreed that the 'value of the a statutory lease extension...is £77,500'. This communication also proposed that the tribunal made a determination on the basis of the papers and we were informed that 'in the interests of costs' they would not be attending the tribunal.

8. The tribunal considered the papers on 10 February 2015 we noted the joint statement claimed that the remaining three landlords claim that they have not heard from Mr Eerenstein since 10 December 2014. They were of the impression that he was not happy with the premium that the valuers had agreed. They have no forwarding address for him and he has not replied to their emails.
9. As we were unhappy making a determination without further information and because we considered that under Rule 13 of the 2013 Rules requires the tribunal to hold a hearing unless each party has agreed to a decision being made without a hearing. The case officer contacted the parties representatives and asked them to appear before the tribunal on 11 February 2015.

### **The hearing**

10. At that hearing Ms Muir appeared on behalf of the leaseholder whilst the three landlords were represented by Mr Davies. Ms Muir submitted that under Rule 14(4) it is to be assumed that where a party has appointed a representative that such a representative remains authorised and that documents can be sent to that representative.
11. Mr Davies told us that he agreed with that submission. He confirmed that after Bowers & Bailey LLP ceased to act for any of the landlords that he had been instructed directly on behalf of three of them (that is excluding Mr Eerenstein).
12. In answer to our questions both counsel appeared confident that the three landlords would on receipt of the premium have the legal capacity to grant the new lease on behalf of the four landlords and to hold Mr Eerenstein's share on trust for him. Counsel reminded us that the landlords hold the title on a trust for sale.

### **Reasons for our decision**

13. We note that when the tribunal notified the representatives of the parties on 17 December 2014 of the hearing dates that this was sufficient notice to all of the parties concerned including Mr Eerenstein (in accordance with Rule 14(4)). Those advising the landlords did not notify the tribunal until 5

February 2015 that they were no longer acting. Consequently the tribunal is satisfied that Mr Eerenstein was made aware of the hearing. It is also evident that he has not played any role in these proceedings since December 2014. If he is unhappy with the premium agreed by the valuers he should have notified the other landlords and the leaseholder and he could have arranged for an alternative valuation report to be made.

14. Accordingly as we are satisfied that all relevant parties were made aware of the hearing dates and with the benefit of a signed valuation we consider it proper and sensible to determine that the premium payable for the grant of the new lease is the sum of £77,500.

### **Costs**

15. We were not asked to make any other determinations though Ms Muir submitted that an order for costs should be made under Rule 13 against the respondents as a hearing could have been avoided. This submission was also supported by a letter received from the leaseholder's solicitors on 19 February 2015 enclosing Ms Muir's fee note in the sum of £900 (exclusive of VAT) and their own costs in the sum of £500 (exclusive of VAT).
16. We do not consider that such a costs order should be made in the circumstances of this case. In particular we could not have made a determination without a hearing since under Rule 31(2) such a course of action can only be taken if all of the parties consent to this. This did not happen in this case.
17. We have some sympathy with the parties being put to the additional expense of legal costs. What is unusual about this case is that one of the four landlords appears to have disappeared and our procedures for proceeding where a landlord cannot be found clearly do not apply in this case. As it was a short hearing could not have been avoided because we are required to hold a hearing unless all the parties agree that a hearing need not take place.

**Signed: James Driscoll, Duncan Jagger**

**Dated: 10 March, 2015**