



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **MAN/36UE/OCE/2017/0001**

Property : **FLAT 3, 46 LEEDS ROAD, HARROGATE
HG2 8BQ**

Applicant : **WILLIAM HAROLD TAYLOR AND
MARGARET TAYLOR**

Respondent : **THOMAS ARTHUR PENNELLS:
MISSING LANDLORD**

**Type of
Application** : **For determination of premium and lease
terms**

Tribunal : **A M Davies, LLB
S A Kendall, BSc, MRICS**

Date of Order : **14 March 2017**

DECISION

ORDER

1. The premium payable for a new lease of Flat 3, 46 Leeds Road, Harrogate is £11,469.
2. The terms of the new lease shall be as attached.

REASONS

BACKGROUND

1. On the 2nd November 2016 Deputy District Judge Cook sitting at Harrogate County Court in proceedings number COOHG166 ordered pursuant to sections 50 and 51 of the Leasehold Reform, Housing and Urban Development Act 1993 that the Applicants' lease of Flat 3, 46 Leeds Road, Harrogate ("the Property") be surrendered and that a new lease be granted to them on terms to be determined by this tribunal.
2. On 7 January 2017 the Applicants applied to this Tribunal for such a determination and supplied a copy of the current lease, a valuation of the new lease prepared by Mr N Plotnek LLB, and a draft of the new lease.
3. The premium payable for the new lease as assessed by Mr Plotnek was £11,524.

INSPECTION

4. The Tribunal inspected the property on 14 March 2017. It is a small second floor flat in a large mid-terrace house on a main road to the south of Harrogate town centre. Access to the flat is via an entryphone system at the front door and stairs. The Applicants have a right of way over the small front garden and a right to use a refuse bin situated in it. They have no rights of access to the rear garden of the property. There is no off-road parking and no parking on Leeds Road.
5. The door to the flat leads directly on to the stairs (which are also the fire escape route) and the premises consist of living room, kitchen, bathroom and two bedrooms – one with a small walk-in under-eaves closet, with a small entrance lobby. All rooms have some element of restricted head height due to the shape of the roof.

6. Improvements carried out by the Applicants are: over-bath electric shower, re-modelling of the kitchen, installation of combi-boiler central heating, and under-floor heating in the bathroom.

THE EXISTING LEASE

7. The lease is dated 20 December 1983 and creates a term of 99 years from that date. The ground rent is reserved at £25 for the first 33 years of the term, £50 for the following 33 years and £100 for the remainder of the term.

8. In the absence of the landlord the three leaseholders in the building have arranged to contribute one third each of maintenance and insurance payments, with a small additional amount to build up a reserve fund. This system has worked well, the leaseholders paying monthly and the ground floor leaseholder accepting responsibility for the garden areas over which he has sole rights.

THE PREMIUM

9. The Tribunal has carefully considered Mr Plotnek's calculation of the premium and diverges from it in some minor respects.

10. Mr Plotnek took the market value of the property as £182,500. The Tribunal considers that the correct market value at the time of the vesting order was £180,000.

11. Mr Plotnek's report inaccurately describes the improvements carried out at the property and values them at £2,500. The Tribunal assesses the value of the improvements as described above at £2,000.

12. The Tribunal does not consider that a "Clarise" deduction is appropriate for this property. Mr Plotnek's figure of 90% for relativity is agreed. However a capitalisation rate for the ground rent is preferred at 7%.

13. For the reasons given in his report, Mr Plotnek's adjustment to the Sportelli deferment rate, from 5% to 5.75% is also accepted.

14. These adjustments result in a premium of £11,469, the full calculation being shown at Appendix 1 to this Order.

THE NEW LEASE

15. The Tribunal has varied the Applicants' proposed terms of the new lease as set out in the document at Appendix 2 to this Order.

APPENDIX 1

**FLAT 3, 46 LEEDS ROAD, HARROGATE HG2 8BQ
VALUATION OF PREMIUM FOR NEW LEASE expiring 19 December 2172**

2 November 2016

Unexpired term	66.13 years	Ground Rent	Years purchase	Years	Present value	£
Capitalisation rate	7%	current	7%		0.1251	3.12
Deferment rate	5.75%	on first review	7%	33.0	12.7537	
Full lease value	£178,000		7%		0.9912	632.06
Relativity	90%	on second review	7%	33.0	12.7535	
Current lease value	£160,200		7%	33.13	0.1062	135.44
Clarise deduction	nil					
Current ground rent	£25	Extended leasehold value 178,000				
GR on first review	£50	Deferment	5.75%	66.13	0.0247	4,396.00
GR on second review	£100		5.75%	156.13	0.00016	(28.48)
Marriage Value		Total				5,138.14
Full lease value	178,000	Marriage Value				6,330.93
less current lease value	160,200	Premium				11,469
	17,800					
Less Landlord's	5,138.14					
	12,661.86					
50%	6,330.93					

APPENDIX 2

DATED

**NEW LEASE OF A FLAT UNDER THE LEASEHOLD REFORM, HOUSING AND
URBAN DEVELOPMENT ACT 1993**

between

THOMAS ARTHUR PENNELLS

and

WILLIAM HAROLD TAYLOR & MARGARET TAYLOR

PRESCRIBED CLAUSES

LR1. Date of lease

LR2. Title number(s)

LR2.1 Landlord's title number(s)

LR2.2 Other title numbers

LR3. Parties to this lease

Landlord

THOMAS ARTHUR PENNELLS, address unknown

Tenant

WILLIAM HAROLD TAYLOR & MARGARET TAYLOR of Flat 3, 46 Leeds Road, Harrogate,
HG2 8BQ

Other parties

None

LR4. Property

In the case of a conflict between this clause and the remainder of this lease then, for the purposes of registration, this clause shall prevail.

See the definition of "Property" in clause 1.1 of this lease and clause 1 of the Lease.

LR5. Prescribed statements etc.

LR5.1 Statements prescribed under rules 179 (dispositions in favour of a charity), 180 (dispositions by a charity) or 196 (leases under the Leasehold Reform, Housing and Urban Development Act 1993) of the Land Registration Rules 2003.

This lease is granted under section 56 of the Leasehold Reform, Housing and Urban Development Act 1993.

LR5.2 This lease is made under, or by reference to, provisions of:

None.

LR6. Term for which the Property is leased

The term as specified in this lease at clause 1.1 in the definition of "Term".

LR7. Premium

£11,469

LR8. Prohibitions or restrictions on disposing of this lease

LR9. Rights of acquisition etc.

LR9.1 Tenant's contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land

None.

LR9.2 Tenant's covenant to (or offer to) surrender this lease

None.

LR9.3 Landlord's contractual rights to acquire this lease

None.

LR10. Restrictive covenants given in this lease by the Landlord in respect of land other than the Property

None.

LR11. Easements

LR11.1 Easements granted by this lease for the benefit of the Property

The easements included in clause 1.1 of this lease in the definition of "Incorporated Terms" and specified in the Second Schedule of the Lease.

LR11.2 Easements granted or reserved by this lease over the Property for the benefit of other property

The easements included in clause 1.1 of this lease in the definition of "Incorporated Terms" and specified in the Third Schedule of the Lease.

LR12. Estate rentcharge burdening the Property

None.

LR13. Application for standard form of restriction

None.

LR14. Declaration of trust where there is more than one person comprising the Tenant

The Tenant is more than one person. They are to hold the Property on trust for themselves as joint tenants.

THIS LEASE is dated

2017

PARTIES

- (1) THOMAS ARTHUR PENNELLS, address unknown (**Landlord**).
- (2) WILLIAM HAROLD TAYLOR & MARGARET TAYLOR OF Flat 3, 46 Leeds Road, Harrogate, HG2 8BQ (**Tenant**).

BACKGROUND

- (A) The freehold reversion to the Property is vested in the Landlord
- (B) The residue of the term of the Lease is vested in the Tenant and is registered at the Land Registry under title number NYK118149
- (C) The Tenant requires the Landlord to grant a new lease of the Property in accordance with the Tenant's rights under the Leasehold Reform, Housing and Urban Development Act 1993
- (D) Pursuant to an order made in the Harrogate County Court on 2 November 2016 in claim number C00HG166 the Tenant is entitled to surrender the Lease and to take a new lease of the Property.

AGREED TERMS

1. INTERPRETATION

The following definitions and rules of interpretation apply in this lease.

1.1 Definitions:

Annual Rent: a peppercorn, if demanded.

Incorporated Terms: all of the terms, requirements, covenants and conditions contained in the Lease except to the extent that they are inconsistent with the clauses written in this lease and with such modifications as are necessary to make them applicable to this lease and the parties to this lease and as specifically varied by clause 3:

- (a) including:
 - (i) the definitions and rules of interpretation in the Lease;
 - (ii) the agreements and declarations contained in the Lease;
 - (iii) the rights granted and reserved by the Lease (including the right of re-entry and forfeiture); and
 - (iv) the third party rights, restrictions and covenants affecting the Property.
- (b) but excepting the term of years demised, the rent reserved and any other terms specifically excluded or substituted by the terms of this lease.

Landlord's Covenants: the obligations in this lease, which include the obligations contained in the Incorporated Terms, to be observed by the Landlord.

Lease: the lease by virtue of which the Tenant holds the Property, which is dated 20 December 1983 and made between Thomas Arthur Pennells (1) and Pauline Walker (2) for a term of years beginning on and including 20 December 1983 and ending on and including 19 December 2082 and registered at the Land Registry under title number NYK118149

Premium: £11,469 (eleven thousand four hundred and sixty nine pounds)

Property: the property known as Flat 3, 46 Leeds Road, Harrogate, HG2 8BQ as described in the Lease.

Rent Payment Dates: 1 January and 1 July

Tenant's Covenants: the obligations in this lease, which include the obligations contained in the Incorporated Terms, to be observed by the Tenant.

Term: a term of years beginning on and including 20 December 1983 and ending on and including 19 December 2172

1.2 For the purposes of this lease only, references to the Lessor and the Lessee in the Lease shall be read as references to the Landlord and Tenant respectively in this lease.

2. GRANT

2.1 In consideration of the surrender of the Lease and payment of the Premium and any other sums due under the Lease, receipt of which the Landlord acknowledges, the Landlord lets with limited title guarantee the Property to the Tenant for the Term at the Annual Rent.

2.2 The matters excepted and reserved by the Lease for the benefit of the Lessor are excepted and reserved for the benefit of the Landlord by this lease.

2.3 This grant is made on the terms of this lease which include the Incorporated Terms as if they were set out in full in this lease.

2.4 The Tenant covenants with the Landlord that it will comply with the Tenant's Covenants.

2.5 The Landlord covenants with the Tenant that it will comply with the Landlord's Covenants.

3. THE ANNUAL RENT

The Tenant shall pay the Annual Rent on or before the Rent Payment Dates.

4. LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993

4.1 This lease is granted under section 56 of the Leasehold Reform, Housing and Urban Development Act 1993.

4.2 No long lease created immediately or derivatively by way of sub-demise under this lease shall confer on the sub-tenant, as against the Landlord, any right under Chapter II of the Leasehold Reform, Housing and Urban Development Act 1993 to acquire a new lease. For this purpose, "long lease" shall be construed in accordance with section 7 of that Act.

4.3 At any time during the period of:

- (a) 12 months ending with the term date of the Lease; or
- (b) five years ending with the term date of this lease,

the Landlord may apply to the court for an order for possession of the Property on the basis that the Landlord intends to demolish, reconstruct or carry out substantial works of construction on the whole or a substantial part of any premises in which the Property is contained, and that the Landlord could not reasonably do so without obtaining possession of the Property. If the court makes such an order, the Tenant will be entitled to compensation from the Landlord for the loss of the Property.

5. REGISTRATION OF THIS LEASE

Following the grant of this lease, the Tenant shall without delay apply to register this lease at the Land Registry. The Tenant shall ensure that any requisitions raised by the Land Registry in connection with that application are dealt with promptly and properly.

6. SECTION 62 OF THE LAW OF PROPERTY ACT 1925

Neither the grant of this lease nor anything in it confers any right over neighbouring property other than those rights contained in the Lease nor is to be taken to show that the Tenant may have any right over neighbouring property, and section 62 of the Law of Property Act 1925 does not apply to this lease.

7. ENTIRE AGREEMENT

7.1 This lease constitutes the whole agreement between the parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between them relating to its subject matter.

7.2 Each party acknowledges that in entering into this lease it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently).

7.3 Nothing in this clause shall limit or exclude any liability for fraud.

8. LANDLORD AND TENANT (COVENANTS) ACT 1995

This lease creates a new tenancy for the purposes of the Landlord and Tenant (Covenants) Act 1995.

9. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

A person who is not a party to this lease shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this lease.

10. GOVERNING LAW

This lease and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

11. JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this lease or its subject matter or formation (including non-contractual disputes or claims).

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as a deed by

on behalf of THOMAS ARTHUR
PENNELLS pursuant to order dated

in the presence of:

Signed as a deed by WILLIAM
HAROLD TAYLOR in the presence
of:

Signed as a deed by MARGARET TAYLOR
in the presence of: