



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

<b>Case References</b>	:	<b>LON/00AC/OLR/2018/0195 &amp; LON/00AC/OC9/2018/0053</b>
<b>Property</b>	:	<b>2 Oaktree Court, Meadway, Barnet, Hertfordshire EN5 5LF</b>
<b>Applicant</b>	:	<b>Mr Richard Leslie Mason FRICS</b>
<b>Representative</b>	:	<b>In person</b>
<b>Respondent</b>	:	<b>Ms Doreen Carr</b>
<b>Representative</b>	:	<b>In person</b>
<b>Type of Application</b>	:	<b>Applications under section 48 and 91 of the Leasehold Reform, Housing and Urban Development Act 1993</b>
<b>Tribunal Members</b>	:	<b>Mr Jeremy Donegan – Tribunal Judge Miss Marina Krisko FRICS – Valuer Member</b>
<b>Date and venue of Hearing</b>	:	<b>19 June 2018 10 Alfred Place, London WC1E 7LR</b>
<b>Date of Decision</b>	:	<b>09 July 2018</b>

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**DECISION**

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## **Decisions of the Tribunal**

- a) **The premium payable by the applicant under schedule 13 of the Leasehold Reform, Housing and Urban Development Act 1993 ('the 1993 Act'), on the grant of a new lease of 2 Oaktree Court, Meadway, Barnet EN5 5LF ('the Flat') is £6,484 (Six Thousand, Four Hundred and Eighty-Four Pounds).**
- b) **The costs payable by the applicant under section 60 (1) of the 1993 Act are:**
- **Legal costs (section 60(1)(a) and (c)): £1,165 (including VAT); and**
  - **Valuation fees (section 60(1)(b): £960 (including VAT).**

## **The background**

1. The applicant is the leaseholder of the Flat, which is a two-bedroom purpose built maisonette with a small garden to the front. The respondent is the freeholder of Oaktree Court
2. On or about 09 June 2017 the applicant gave a notice of claim to the respondent pursuant to section 42 of the 1993 Act, seeking a new lease of the Flat. The notice proposed a premium of £5,000 for the new lease.
3. On or about 15 August 2017 the respondent gave a counter-notice in which she admitted the applicant's entitlement to a new lease but proposed a higher premium of £10,000.

## **The application**

4. The Tribunal received two applications on 05 February 2018; one seeking a determination of the terms of the new lease ('the Terms Application') and one seeking a determination of the section 60 costs ('the Costs Application').
5. The Costs Application stated that the legal costs claimed by the respondent were £1,250 including VAT and the valuation fee was £1,500 plus VAT. The applicant proposed £900 plus VAT for the legal costs and £800 plus VAT for the valuation fee.
6. Both applications were acknowledged by the Tribunal in a letter dated 06 February 2018, which included the following paragraph:

*“The Tribunal also notes your application for determination for the landlord’s reasonable costs. This matter has been registered under case reference LON/00AC/OC9/2018/0053 and is stayed until the substantive application is closed. If at this stage costs have been agreed please ensure that the Tribunal is notified, otherwise directions will be issued for a determination.”*

7. Directions were issued on the Terms Application on 21 February 2018, which included the following:

***“Recoverable costs***

1. *Any application to determine the landlord’s recoverable costs is stayed. Any application to lift the stay must include confirmation that the recoverable costs are in dispute.”*

...

***Valuation***

5. *The parties’ valuers must by **Wednesday, 7 March 2018** exchange valuation calculations and meet to clarify the issues in dispute.*
  6. *The parties must by **Wednesday, 11 April 2018** exchange statements of agreed facts and disputed issues and send copies to the tribunal.*
  7. *The parties must exchange expert reports **at least two weeks before** the hearing date notified to them in accordance with the following directions.”*
8. The Terms Application was subsequently listed for hearing on 19 and 20 June 2018. On 14 June the respondent’s solicitors wrote to the Tribunal, explaining that she would attend the hearing in person. The letter went on to say:

*“We enclose a letter dated 29 March 2018 that our client has asked us to send to you. It sets out certain medical conditions that she suffers from which she would like the tribunal to be aware of, namely that she has difficulty in hearing and suffers from poor vision.”*

The copy letter was from NHS Barnet Community Ear, Nose and Throat Service and gave brief details of the respondent’s hearing difficulties and restricted vision.

### **The existing lease**

9. The existing lease was granted by McManus Childs Limited to Robert Green Ingersoll Wright on 01 August 1958 for a term of 99 years from 24 June 1958. It was varied by a deed dated 13 June 1983 and the term was subsequently extended to 99 years from 25 March 2000 by a deed dated 22 June 2000. The ground rent was also reduced to a peppercorn.

### **The hearing**

10. The hearing took place during the morning of 19 June 2018. The applicant and respondent both appeared in person.
11. By the time of the hearing the wording of the new lease had been agreed. The Tribunal was supplied with a short hearing bundle that included copies of both applications, the directions, notice of claim, counter-notice, existing lease and deeds, the agreed form of new lease and correspondence passing between the parties.
12. The bundle also included two valuations; one from Mr Peter Loziou MRICS of Appraisal Surveyors dated 02 August 2017, on behalf of the respondent and one from the applicant dated 07 April 2018. Neither valuation complied with the requirements of Rule 19(5)(a) and (b) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013.
13. The applicant relied on his own valuation evidence, which clearly was not independent. Mr Loziou's valuation was prepared in response to the notice of claim and gave five different figures for the new lease premium, ranging from £7,110 to £8,647.
14. The failure to produce formal expert reports was a breach of direction 7. Further there, there was no statement of issues, in breach of direction 6. The correspondence in the bundle indicated that the applicant had tried to contact Mr Loziou to discuss their valuations and with a view to preparing a statement of issues, without success.
15. At the start of the hearing, the Judge queried if Mr Loziou would be giving oral evidence. The respondent said she was unaware that his attendance was required. The Judge pointed out the deficiencies in the valuation evidence and the benefits of settling the dispute, given the modest sum in dispute. He proposed a short adjournment for the parties to try and agree the outstanding issues (including section 60 costs). The respondent suggested the applicant was responsible for the failure to agree the premium and also referred to alleged breaches of his lease. The Judge explained that the alleged breaches were not relevant to the applications before the Tribunal.

16. The Tribunal then adjourned for 15 minutes. Unfortunately the parties were unable to agree terms during the break and the Tribunal then proceeded with the hearing, based on the limited valuation evidence available. The Judge suggested that the Tribunal should also determine the Costs Application to avoid the need for further directions and proceedings. Both parties agreed this suggestion and the Tribunal lifted the stay on the Costs Application.
17. Both parties then made oral submissions on the new lease premium and costs. The Tribunal made sure the respondent could hear the submissions, repeating anything that was unclear and allowed her additional time to read the relevant documents in the bundle.
18. Neither party requested an inspection of the Flat and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
19. Having considered the submissions and all of the documents in the hearing bundle the Tribunal has made the determinations set out below.

### **Premium for new lease**

20. Mr Loziou's valuation gave the valuation date as 12 June 2017. As at that date the existing lease had approximately 81.75 years remaining. No marriage value is payable, as the remaining term was over 80 years on the valuation date. The ground rent is a peppercorn, so no compensation is payable for loss of ground rent. This meant the only valuation issue was the freehold value of the Flat.
21. The applicant sought a premium of £6,113. This was based on an improved freehold value of £340,000. He had deducted £10,000 for improvements (double glazing and an improved boiler) to arrive at a unimproved value of £330,000. He had then applied a multiplier of 0.018526, based on the lease term of 81.75 years and a deferment rate of 5%.
22. Mr Loziou gave a range of premiums in his valuation with his preferred figure being £7,879, based on a long lease value of £410,000 (without improvements). He referred to a number of different comparable sales, which the applicant commented on his valuation.
23. The applicant suggested that the best three comparables were 25a Bosworth Road, 2 Blenheim Lodge and 25 Meadway Close, all of which sold close to the valuation date. He had analysed the sale prices of £385,000, £406,000 and £385,000 and calculated the price per square meter at £5,422, £5,120 and £5,980, respectively. Applying a figure of £5,400 gave a long lease value of £340,200, based on a gross internal

floor area for the Flat of 63 square meters. The applicant had not made any adjustments for time and had not inspected the interior of any of the comparables. However, he did confirm that all three comparables had long leases.

24. The respondent relied on three of Mr Loziou's comparables, being the marketing of 3 Meadway Court at £385,000 and 3 Oaktree Court at £370,000, as well as the sale of 25 Meadway Close at £385,000. The applicant also relied on the marketing of a flat Woodville Road at £415,000, not referred to in Mr Loziou's valuation. She did not have any details for this property.

### **The Tribunal's decision**

25. The premium payable under Schedule 13 of the 1993 Act is £6,484 (Six Thousand, Four Hundred and Eighty-Four Pounds).

### **Reasons for the Tribunal's decision**

26. The valuation evidence from both parties was inadequate. There should have been formal reports from independent experts with oral evidence from those experts.
27. Three of the comparables relied on by the respondent (Meadway Court, Oaktree Court and Woodville Road) were marketing rather than sale prices and had no evidential value. Doing the best it could on the limited evidence available, the Tribunal took a mean average of the prices per square meter for 25a Bosworth Road, 2 Blenheim Lodge and 25 Meadway Court. This gave a figure of £5,646, which equates to £355,635 for 63 square meters. The Tribunal accepts there was no need to adjust for time, as all three sales were close to the valuation date.
28. Based on a long lease value of £355,635 and a 1% uplift, the freehold value was £359,191.35. However, there should also be discount for improvements since the existing lease was granted. The Tribunal had limited information on these improvements and took a pragmatic approach, reducing the freehold value to £350,000. It then applied the multiplier of 0.018526, which it checked and found to be correct, to give a present value (on the valuation date) of £6,484.10. This has been rounded down to £6,484.

### **Section 60 costs**

29. The respondent's legal costs, as stated in the Costs Application, were £1,250 (including VAT). The applicant proposed £900 plus VAT (£1,080 inclusive). Given these figures were only £170 apart, the

Tribunal informed the parties that it would adopt the midway point of £1,165 (including VAT).

30. The respondent's valuation fee, as stated in the Costs Application, was £1,500 plus VAT. The applicant proposed £800 plus VAT. In her oral submissions, the applicant stated that Mr Loziou's fee was actually £1,250 including VAT and this was in line with the cost of a previous lease extension valuation that she had obtained, for another flat at Oaktree Court.
31. The Tribunal was not supplied with a copy of Mr Loziou's invoice but did consider his valuation, which consisted of three pages of narrative (most of which was in standard form), one page of calculations, a photograph of the exterior of the Flat and various printouts for the comparables.
32. The valuation was very straightforward, as there was no marriage value and no ground rents to capitalise. It appears that Mr Loziou did not inspect the interior Flat, as there was no description of the interior or internal photographs. The preparation of his valuation, including researching comparables, should have taken no more than 2-3 hours. The Tribunal members are aware, from deciding other lease extension cases that most surveyors charge a fixed fee for lease extension valuations. Based on the members' knowledge and experience, the 'going rate' in outer London is £750-1,000 plus VAT. Given the simplicity of the valuation, a fee at the bottom of the range is appropriate. The Tribunal agrees the applicant's figure of £800 plus VAT, which equates to £960 inclusive.

**Name:** Tribunal Judge Donegan      **Date:** 09 July 2018

### **RIGHTS OF APPEAL**

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application

for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.



## **Appendix of relevant legislation**

### **Leasehold Reform, Housing and Urban Development Act 1993 (as amended)**

#### **42 Notice by qualifying tenant of claim to exercise right**

- (1) A claim by a qualifying tenant of a flat to exercise the right to acquire a new lease of the flat is made by the giving of notice of the claim under this section.

...

- (3) The tenant's notice must -

...

- (d) specify the terms which the tenant proposes should be contained in any such lease;

...

#### **45 Landlord's counter-notice**

- (1) The landlord shall give a counter-notice under this section to the tenant by the date specified in the tenant's notice in pursuance of section 42(3)(f).

...

#### **48 Application where terms in dispute or failure to enter into new lease**

- (1) Where the landlord has given the tenant –
- (a) a counter-notice under section 45 which complies with the requirement set out in subsection (2)(a) of that section, or
  - (b) a further counter-notice required by or by virtue of section 46(4) or section 47(4) or (5),

but any of the terms of acquisition remain in dispute at the end of the period beginning with the date when the counter-notice or further counter-notice was so given, the appropriate tribunal may, on the application of either the tenant or the landlord, determine the matters in dispute.

...

- (7) In this Chapter "*the terms of acquisition*", in relation to a claim by a tenant under this Chapter, means the terms on which the tenant is to acquire a new lease of his flat, whether they relate to the terms to be contained in the lease or to the premium or any other amount payable by virtue of Schedule 13 in connection with the grant of the lease, or otherwise.

**60 Costs incurred in connection with the new lease to be paid by the tenant**

(1) Where a notice is given under section 42, then (subject to the provisions of this section) the tenant by whom it is given shall be liable, to the extent that they have been incurred by any relevant person in pursuance of the notice, for the reasonable costs of and incidental to any of the following matters –

- (a) any investigation reasonably undertaken of the tenant's right to a new lease;
- (b) any valuation of the tenant's flat obtained for the purpose of fixing the premium or any other amount payable by virtue of Schedule 13 in connection with the grant of a new lease under section 56;
- (c) the grant of a new lease under that section;

but this 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.

(2) For the purposes of subsection (1) any costs incurred by a relevant person in respect of professional services rendered by any person shall only be regarded as reasonable if and to the extent that costs in respect of such services might reasonably be expected to have been incurred by him if the circumstances had been such that he was personally liable for all such costs.

...