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Case Reference : **CAM/38UB/OLR/2013/0098**

Property : **Flats 3, 5 & 6 Gosford Hill Court, Bicester Road, Kidlington, Oxfordshire OX5 2XP**

Applicants : **Mr David Rahill, Flat 3
Ms Samantha Jayne Cragg, Flat 5
Ms Ethel Ivy Alberta Perry, Flat 6**

Representative : **Mrs Julia Kent, Franklins Solicitors**

Respondent : **T H Kingerlee & Sons Limited**

Representative : **Mrs Caroline Clift of Derby Solicitors LLP**

Type of Application : **Application for determination of premium or other terms of acquisition remaining in dispute under Section 48(1) of the Leasehold Reform, Housing and Urban Development Act 1993**

Tribunal Members : **Mr A A Dutton (Judge)
Mr D D Banfield FRICS
Mrs H C Bowers MRICS**

Date and venue of Hearing : **Oxford Magistrates Court, The Court House, Speedwell Street, Oxford OX1 1RZ
18th October 2013**

Date of Decision : **1st November 2013**

DECISION

DECISION

The Tribunal refuses the request by the Applicants to include in the new leases altered provisions for insurance of the three flats for the reasons set out below.

The Tribunal declines to make an order for costs against the Applicants for the reasons set out below.

BACKGROUND

1. On 29th July 2013 the Applicants each made applications to the Tribunal for a determination as to the premium payable and other terms of acquisition under Section 48(1) of the Leasehold Reform Housing and Urban Development Act 1993 (the Act) in respect of each of their flats.
2. Much to the credit of the parties many of the matters had been resolved before the case came before us for hearing on 18th October 2013. We were told that the premiums had been agreed at £14,000 for Flat 5, £16,000 for Flat 6 and £17,000 for Flat 3. In addition, the legal costs had been agreed at £700 excluding VAT for each transaction and surveyors fees at £550 again for each transaction without VAT.
3. The only matter, therefore, that remained an issue was the terms of the new lease and that dispute related solely to the proposed insurance arrangements.
4. Mrs Kent, acting for the Applicants confirmed that if we were not minded to agree a variation to the lease to alter the insurance arrangements, the new lease should be in the form prepared by the Respondent's solicitors which appeared at tab 8 in the bundle before us.
5. It was Mrs Kent's case that a form of 'collateral agreement' had been entered into which she said should be carried forward into the new lease. The collateral agreement we were told came into existence in 2007 and we were referred to a letter from the Respondent to Axis Management Limited dated 10th September 2008 which says as follows: *"This is confirm that we are happy for the block insurance policy for the above flats to be put in the name of T H Kingerlee and Sons Limited as landlord."*
6. We were told that Axis Management Limited had commenced management of the property is around 2007. It seems that around that time they had also formed a company called Gosford Hill Court which was intended to be the management company dealing with the building in which the three flats were to be found. This company has, it was accepted, no legal status insofar as the lease is concerned. The original lease makes no mention of any additional management company. The only parties to the original lease are the Respondents and the lessee. We were told, however, that all leaseholders can

be members of Gosford Hill Court, although it was not possible to say whether they were, or indeed whether the Applicants were in fact members. It was said, however, by Mrs Kent that this was a binding collateral agreement as it had been entered into on behalf of the existing leaseholders by Axis Management who was their agent. This present arrangement meant that the landlord provided cover under a block policy and that leaseholders contributed towards these costs presumably payable at the same time as other service charge expenses were met. This is in contrast to the terms of the lease which provides at Clause 3(k)(i) that the tenant will ensure at his or her own expense and at sub-paragraph (ii) such insurance is to be placed with the Royal Insurance Group or some other office appointed in writing by the Lessors.

7. Mrs Kent confirmed that she did not seek to make variations to the lease relying on the provisions of Section 57(6)(a) and (b). There was a suggestion that sub-section (6)(b) might assist Mrs Kent's argument but her primary submission was that this was a collateral agreement which should be incorporated into the terms of the new lease.
8. Mrs Clift for the landlord had written to Franklins and sent a copy of that letter to the Tribunal on 17th October 2013 setting out the reasons why the landlord did not consider the variation to the lease, as suggested by the Applicants, should proceed. She told us that the current arrangements were convenient, a temporary arrangement for providing insurance on a block policy basis. The correct way forward, she said, would be for all leaseholders to make a joint application to change all leases relying on the provisions, if it were open to them, of Section 37 of the Landlord and Tenant Act 1987. She did not deny that the arrangements whereby the landlord insured was perhaps a better way of handling the matter, but the suggestion by the Applicants that there should be some piecemeal variation would expose the landlord to inconsistency and potential problems should other leaseholders decide to adhere to the terms of their lease. We had of course read Mrs Clift's letter of 17th October 2013 which had been received by Mrs Kent.
9. In addition, Mrs Clift asked that she should be able to recover the costs of attending before us on 18th October. She said that it was unreasonable for the issue to be pursued and that it had been pointed out to the Applicants that it would not be possible to vary the lease to deal with just three properties and that instead that if change were required it should be with the consent of the majority.
10. The costs that she sought to recover were £585 set out in a statement of costs and Mrs Kent confirmed that the quantum of costs was not an issue. She, however, said that it was reasonable to ask for the terms of the new lease to reflect what was actually happening in practice.

THE LAW

11. The law applicable to the variation of leases is contained in Section 57 of the Act. The Applicants are entitled to the grant of the new lease pursuant to Section 56 of the Act and by reference to Section 57 such lease should be

granted on the same terms of the existing lease but with such modifications as are set out in Sections 57(1)(a), (b) and (c). Section 57(2) provides for matters that need to be considered by us and includes the consideration of incorporating any conditional agreements as may exist. At sub-section 6(a) and (b), there is provision for the exclusion or modification of terms in the existing lease.

FINDINGS

12. There is provision for any collateral agreement to the existing lease being continued, with suitable adaption, into the new lease. However, there appears to be no particular guidance on what type of collateral agreement is considered to be capable of inclusion. It does seem to us, however, that a collateral agreement must be an agreement made between the parties to the application before us, or one reached by predecessors in title, which is binding on the present parties. On the submissions made to us by Mrs Kent, it seems that the parties to any such alleged agreement to provide for the changed insurance arrangements, were the landlord and either Axis Management or Gosford Hill Court. There was no evidence before us that any of the Applicants are or were members of Gosford Hill Court nor was any written agreement, other than the letter from the landlord, produced to show that any binding arrangement had been reached between anyone. The landlord, through Mrs Clift, states that such 'agreement' is not binding and had been followed only as a matter of convenience. There is no doubt that the terms of the existing lease make suitable provision for the insurance of the flat. There is an obligation on the leaseholder to insure his or her flat, which is not uncommon. There does not seem to us, therefore, any need to make any alterations to the existing lease as considered by Section 57(6)(a) and (b) and in that regard we bear in the mind the judgment of his honour Judge Huskinson in the case of *Donald Cameron Gorgon vs Church Commissioners for England LRA/110/2006* which was put to the parties at the Hearing. Furthermore piecemeal changes whereby three leaseholders have insurance through the landlord via the lease and the remainder who do not, is a recipe for problems. It was noted that in another case where the lease was extended under the Act no such amendment was sought or made.
13. Whilst we think that it is perhaps helpful to arrange for the flats to be covered on a block policy and indeed the costs may be lower to the individual leaseholders, we cannot see that it is appropriate to do so on a piecemeal basis. The fact that the existing residents may have accepted this arrangement for insurance since 2007/08 does not mean that a new resident to the property could not seek to proceed on the basis of the terms of the lease which would cause difficulties for all concerned. Accordingly we are not prepared to agree that the draft lease should be varied to include the insurance provisions as argued for by the Applicants. Instead, as agreed, it should proceed on the basis of the draft lease included behind tab 8 in the bundle before us.
14. Insofar as the costs are concerned, we are not minded to award those to the Respondent. It was reasonable enough to raise the question as to whether or not some form of collateral agreement existed. Furthermore, the costs of

proceedings before a Tribunal do not fall within the costs considered payable by the Applicants pursuant to Section 60 of the Act and we do not think it can be said that the Applicants have acted in such a way that we should visit upon them the repercussions of rule 13 of the Tribunal Procedures (First Tier Tribunal) (Property Chamber) Rules 2013.

Andrew Dutton

Tribunal Judge

Date: 1st November 2013