



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

Case reference : **LON/00AJ/OLR/2018/0825**

Property : **GFF, 12 Glebe Court, Church Road,
Hanwell, London, W7 3BY**

Applicant : **Richard Dennis Dermott**

Representative : **Mr Granby of Counsel**

Respondent : **Townsmede Properties Ltd**

Representative : **Did not attend and was not
represented**

Type of application : **Section 48 of the Leasehold
Reform, Housing and Urban
Development Act 1993**

Tribunal members : **Judge I Mohabir
Mr P Casey FRICS**

**Date of determination
and venue** : **6 November 2018 at
10 Alfred Place, London WC1E 7LR**

Date of decision : **6 November 2018 (drafted)
4 February 2019 (issued)**

DECISION

Background

1. This is an application made by the Applicant leaseholder pursuant to section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) for a determination of the terms and the premium to be paid for the grant of a new lease of the Ground Floor Flat, 12 Glebe Court, Church Road, Hanwell, London, W7 3BY (the “property”).
2. By a notice of a claim, served pursuant to section 42 of the Act, the Applicant exercised the right for the grant of a new lease in respect of the subject property.
3. The Respondent freeholder served a counter-notice admitting the validity of the claim.
4. On 19 June 2018, the Applicant applied to the Tribunal for a determination of the premium and the terms of the new leases.

The issues

5. The Tribunal was told that the premium had been agreed for the new lease, but not the lease terms. The disputed terms are dealt with below.

Relevant Law

6. Section 57(1) of the Act provides that the terms of a new lease are, prima facie, to be the same as the existing lease as they apply on the date when the notice of claim under section 42 was given.
7. The parties are free to agree the terms of the new lease. In the absence of agreement, there is only limited scope to modify the terms of the existing lease. Under section 57(6) of the Act, any existing term may be excluded or modified on two grounds:
 - (a) If it is necessary to do so in order to remedy a defect in the existing lease. Although neither “necessary” nor “defect” is defined in the Act, it seems they have been construed strictly and given a narrow interpretation. Therefore, the use of this provision to attempt to modernise the terms generally, if opposed, is not permitted.
 - (b) It would be unreasonable in the circumstances to include, or include without modification, the term in question in view of changes occurring since the date of commencement of the existing lease which affect the suitability on the relevant date of the provisions of the lease.

Decision

8. The hearing in this matter took place on 6 November 2018. The Applicant was represented by Mr Granby of Counsel. The Respondent did not attend and was not represented. Prior to the start of the hearing the Tribunal made enquiries with the Respondent's Solicitor as to the non-attendance. The Tribunal was informed that the Respondent's Solicitor had no instructions to attend. The hearing, therefore, proceeded on the basis of the unchallenged submissions made by Counsel for the Applicant.
9. Unless stated otherwise, the references in this decision are to the Applicant's typed annotations annexed to this decision, which are approved by the Tribunal, and the draft lease in the hearing bundle. It had been hoped that the Applicant's solicitors could provide an amended draft lease showing the necessary tracked changes. However, this has not proved possible despite the Tribunal's enquiries and has led to the delay in issuing this decision.
10. The perpetuity period referred to in clause 1.11 has to be defined in the same terms as the existing lease.
11. The typographical amendments in red in clauses 2 and 4 are to be made.
12. The right at paragraph 6 in the Second Schedule in relation to the refuse bin or dustbin is to be included because it is a right expressly granted in the original lease.
13. The Tribunal accepted the Applicant's submission that the revisions to the Fourth and Eighth Schedules on the basis that the Respondent's proposed terms are more onerous than provided for in the original lease and it is seeking better terms. The terms in the original lease do not reveal any defect nor is this suggested by the Respondent.

Service Charge

14. The Tribunal accepted the Applicant's submission that the Tribunal does not have jurisdiction to amend the service charge provisions in the existing lease. The Respondent has not been able to demonstrate that the existing provisions fall within section 57(6) of the Act. Arguably, therefore, sections 57(2)(a) and (b) are not engaged because the service charge terms of the new lease, by repeating those of the existing lease, does not create any new obligation on the Respondent.

Sixth Schedule

15. Paragraph 1-3 are agreed.

16. Paragraph 6 is agreed up to the words 'common parts'. The remainder of paragraph 6 and the remaining paragraphs in the Schedule are not allowed as not falling within sections 57(6)(a) or (b) of the Act and the Respondent does not contend otherwise. Specifically, paragraphs 8 and 10 seek to introduce better terms than those appearing in the existing lease.

Seventh Schedule

17. The entire Schedule is struck out for the reasons given at paragraph 13 above.

Name: Tribunal Judge I Mohabir **Date:** 6 November 2018
4 February 2019 (issued)

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

CASE REFERENCE: BG/LON/00AJ/OLR/2018/0825

IN THE PROPERTY CHAMBER
LONDON RESIDENTIAL PROPERTY
FIRST-TIER TRIBUNAL

BETWEEN:
RICHARD DENNIS DERMOTT
APPLICANT/TENANT
AND
TOWNSMEDE PROPERTIES LIMITED
RESPONDENT/LANDLORD
TYPED ANNOTATIONS TO THE TRAVELLING DRAFT LEASE

References to page numbers are as per the Tribunal bundle.

Page 102-103:

Please note, we look forward to hearing from you further in this matter – your client is

seeking to introduce an extensive array of new more onerous obligations/clauses into the

statutory lease which is not permitted under the 1993 Act. A statutory lease extension is not

an opportunity for your client to issue an entirely different lease. Further discussion is

required and you will please need to have your client advance clear reference to specific

provisions in the 1993 Act which permit the amendments being sought.

Further, please ensure that the statutory lease extension contains the Landlord's covenants

as per clause of the existing lease regarding enforcement of covenants.

Your client will undoubtedly be aware/have been made aware that if proceedings are issued

at the FTT each party shall bear their own costs in relation to those proceedings and thus

negotiations pertaining to this lease, if dealt with under FTT directions, cannot arguably be

claimed by your client under Section 6 of the 1993 Act. Your client cannot use the statutory

lease extension process to impose an entirely new lease upon our client.

Page 106-107:

The words (if any) added to clause 1.8

At clause 1.11 – reference to the perpetuity period is made in the existing lease definition at

1.21 but no such definition is included here. We note that the lease in respect of 1 Glebe

Court dated 15 July 2016 also refers to perpetuity period. For consistency please advise how

the perpetuity period will be dealt with in this lease/provide a definition at 1.21.

Page 108:

1.21 see earlier comments re perpetuity period

At clause 2 – dated 9 December 198 and made between (1) Dexile Company Limited and (2)

Muriel Elizabeth Dermott

Page 112:

A 6th clause to be added to say:

The right to place a dustbin or refuse bin outside the Premises

(note: as per clause 2(7) of the existing lease)

Page 113:

At clause 4 – in accordance with the terms and as required for the purpose of this lease

Page 114-115:

Note re clause 4 – to mirror the existing lease, the 1993 Act does not permit the Landlord to

impose more onerous obligations and therefore the amendments are not accepted as they

do not fall within the 1993 Act. An argument by the Landlord that it wishes to have leases in

similar form does not permit the Landlord to impose more onerous obligations and will not

hold ground at a Tribunal.

Clause 5 – on the first line the words ‘in the third year of the Term and’ to be deleted and

‘third’ to be replaced with ‘seventh’, on the second line the words ‘three months’ to be

deleted and replaced with ‘year’ and ‘in such colours and patterns as the Landlord may

reasonably require and’ to be deleted and on the sixth line the words ‘such decorations to

be carried out to the reasonable satisfaction in all respects of the Landlord’ to be deleted

Clause 7 – on the first line the word ‘one’ to be replaced with ‘three calendar’

Clause 8 – on the first line the words ‘proper costs charges and’ be deleted and replaced

with ‘as per 3(16) of existing lease and clause 8.1 to be added on to the end of clause 8

Clauses 8.2-91 to be deleted: not contained in existing lease. You are seeking to impose

more onerous provisions. Please point to the specific piece of legislation that permits the

Landlord to seek more onerous clauses than those already present in the lease

Page 116:

Clause 9.2 to be deleted: not permitted amendment under 1993 Act and not contained in existing lease.

Clause 9.4 – on the eighth line ‘by the Landlord’ to be removed and replaced by ‘by current legislation’

Clause 10 to be deleted: please amend to reflect clause 3(11) which permits alterations on licence. This is more onerous than clause 3(11). The tenant will accept a clause that mirrors 3(11) but not one that is more restrictive or onerous. The Landlord is not entitled to this under the 1993 Act.

Clause 11 – the words ‘in the occupation of a single household’ to be removed. Please see clause 3(12) of existing lease.

Page 118-119:
23.1, 23.2 and 23.3 to be deleted – Premises i.e. the flat are for tenant to insure, Landlord insures building
24 to be deleted
26.1-28 to be deleted: you are seeking to impose much more onerous obligations than presently exists under our clients lease. Please point to the specific clause or sub-clause in the legislation that permits this to enable us to further consider the same.

Page 123:
Clause 2 - The words ‘to specifically serve the flats presently constituted in the Building’ to be added after ‘Building’ and before ‘(other than those exclusively...)’

Clauses 5-9: taking clients instructions
Clause 10 to be deleted
Clauses 11-14: taking clients instructions
Clause 15 to be deleted: this goes far beyond what presently exists. Landlord should/shall need to enter into proper processes with Tenant for such matters.

Page 126-128:
All clauses to be deleted as the provisions proposed do not mirror existing lease and in fact go extensively beyond what the 1993 Act permits by way of amendments to the lease.
Please put forward your reasoned arguments for seeking to include provisions that are so vastly different and much more onerous than provisions in existing Tenant’s lease.

Page 129-130:
Clause 1 to be deleted

Clause 2 – ‘and to have the boiler (if any) properly cleaned when necessary’ to be deleted

Clause 4 to be deleted

The word ‘reptile’ to be removed from clause 6

Clauses 8, 9 and 10 to be removed