



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

**IN THE COUNTY COURT at  
Worthing, sitting at 10 Alfred Place,  
London WC1E 7LR**

**Case reference  
Claim No.** : **LON/00AQ/OLR/2020/1053  
GooWG206**

**HMCTS code (paper,  
video, audio)** : **P: PAPERREMOTE**

**Property** : **Flat 76 and Garden, Vancouver  
Road, Edgware, Middlesex, HA8 5DF**

**Claimant/Applicant** : **Anastasia Harrington**

**Representative** : **Green Wright Chalton Annis,  
Solicitors**

**Defendant/Respondent** : **Irial Andreas Chung**

**Representative** : **N/A**

**Type of application** : **Section 49(1) Leasehold Reform,  
Housing & Urban Development Act  
1993**

**Tribunal member** : **Tribunal Judge I Mohabir**

**Date of decision** : **26 April 2021**

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**DECISION**

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## **Covid-19 pandemic: description of hearing**

This has been a remote hearing on the papers, which has not objected to by the parties. The form of remote hearing was P: PAPERREMOTE. A face-to-face hearing was not held because no one requested the same and all issues could be determined in a remote hearing on paper. The documents that I was referred to those which have been filed by the Applicant, the contents of which I have noted. The order made is described at the end of these reasons.

Those parts of this decision that relate to County Court matters will take effect from the 'Hand Down Date' which will be:

- (a) If an application is made for permission to appeal within the 28-day time limit set out below – 2 days after the decision on that application is sent to the parties, or;
- (b) If no application is made for permission to appeal, 30 days from the date that this decision was sent to the parties.

## ***Introduction***

1. The Applicant commenced proceedings in the County Court at Worthing for the grant of a new lease under section 49(1) Leasehold Reform, Housing & Urban Development Act 1993 ("the Act") of Flat 76 and Garden, Vancouver Road, Edgware, Middlesex, HA8 5DF ("the property").
2. The claim was transferred to the Tribunal to determine the terms on which the Applicant should acquire the new lease.
3. The Applicant presently holds the leasehold interest in the property pursuant to a lease dated 12th September 1978 made between (1) Karka & Co Limited and (2) Brandon Paul Vitow and Bryony Jane Vitow for a term of 99 years commencing on 24th June 1978 ("the Lease"). The Respondent is the freeholder.
4. On 27 April 2020 the Applicant served on the Respondent a request for a new lease in accordance with the provisions of section 42 of the Act. The Respondent has not served a counter notice on the Claimant opposing the grant of a new lease. The expiry of the statutory period under section 45 of the Act to serve a counter notice was 6 July 2020

5. The Applicant then made this application under section 49(1) of the Act for an order that the terms of acquisition of the new lease should be
  - (a) A term of 90 years from the termination of the current lease.
  - (b) A peppercorn ground rent for the duration of the term of the new lease.
  - (c) In addition to the provisions and terms required by sections 57(7), (8) and (11) of the Act, and save for the duration and the rent the terms to be contained in the new lease should be the same as the existing lease.
6. On 12 November 2020, the Tribunal issued standard lease extension directions. On 20 January 2021, the Tribunal issued supplementary directions for the Applicant to file a witness statement confirming that the requirements in section 49(2) and Part 1 of Schedule II of the Act had been met.
7. On 29 January 2021, the witness statement of Mr Fitzgerald was filed confirming that the requirements of section 49(2) and Part 1 of Schedule II had been met. Mr Fitzgerald is the Solicitor with conduct of this matter on behalf of the Applicant. His witness statement is supported by a statement of truth.
8. It is important to note that, at paragraph 4 of his witness statement, Mr Fitzgerald states that the Respondent apparently remains in occupation of 76a Vancouver Road. It follows from this that this application does not fall to be considered as a “missing landlord” case under section 50 of the Act and the Tribunal is not required to make a vesting order. Under section 49(1), all the Tribunal is required to do, as a matter of jurisdiction, is to make an order dealing with the terms of acquisition for the new lease.

## ***Decision***

9. The Tribunal's determination of the application took place on 26 April 2021 and was based solely on the evidence file by the Applicant.
10. The Tribunal accepted the evidence contained in the witness statement of Mr Fitzgerald that the requirements of section 49(2) and Part 1 of Schedule II had been met. In other words, the Tribunal was satisfied that the Applicant's claim notice had been validly "given" in accordance with paragraph 1 of the Schedule. Therefore, the Tribunal's jurisdiction under section 49(1) was engaged and it is obliged to make an order that the Applicant is entitled to acquire a new lease on the terms set out in her section 42 claim notice in paragraph 5 above. The premium to be paid for the new lease is £27,990.
11. The Applicant has, helpfully, provided a draft of the new lease, which is a new grant on the same terms under section 57 of the Act save for the statutory amendments requirements by section 56. The draft lease is approved by the Tribunal and is annexed to this decision.
12. The Applicant has also made an application for the Tribunal to execute the new lease. Strictly speaking, this should be a separate application under section 49(4) of the Act in the event that the Respondent fails to enter into the new lease. However, given the Respondent's failure to engage at all either by serving a counter notice of in these proceedings, the Tribunal consider it is appropriate to execute the new lease without recourse to him.
13. However, as the Tribunal understands it, the Applicant has made a recent request that her solicitors execute the lease on behalf of the Tribunal. Therefore, the Applicant's solicitors are directed to electronically file a further copy of the approved new lease with an amended execution clause within 7 days of the issue of this decision. In the alternative, the Applicant's solicitors shall confirm if they are content

for the Tribunal to execute the new lease. If so, the executed document shall follow shortly.

### **Costs**

14. The Applicant has also applied for an order that the Respondent pays the costs of these proceedings and has provided a statement of costs in the sum of £2,788 including VAT and disbursements.
15. Having considered the statement of costs, the Tribunal was satisfied that the costs claimed are both reasonable and proportionate and summarily assessed them in the sum of £2,788 and are payable by the Respondent. The costs are to be deducted from the premium payable.

**Name:** Tribunal Judge I Mohabir      **Date:** 26 April 2021

### **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).