



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

**Case Reference** : **LON/00AJ/OLR/2022/0626**

**Property** : **Flat D 145 Lynton Road Acton,  
London W3 9HW**

**Applicant** : **Mary Magdaline Lendor**

**Representative** : **Bird & Lovibond Solicitors**

**Respondent** : **Jabbar Kishmir Khan  
Abdel Khalegh Al Sharifi**

**Representative** : **None**

**Type of Application** : **Leasehold Enfranchisement:  
Missing Landlord s50-51  
Leasehold Reform, Housing and  
Urban Development Act 1993**

**Tribunal Members** : **Judge R Cohen  
Mr D Jagger MRICS**

**Date of Paper  
Determination** : **12th December 2022**

**Date of Decision** : **12th December 2022**

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**DECISION**

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## **Decisions of the Tribunal**

- (1) The Tribunal determines that the appropriate sum to be paid into Court for the freehold interest in **Flat D 145, Lynton Road Acton London W3 9HW** ('the property'), pursuant to sections 50 and 51 of the Leasehold Reform, Housing and Urban Development Act 1993 ('the 1993 Act'), is **£7,005** (Twelve thousand and five pounds)

1. This has been a paper decision which has been consented to by the applicant. The documents that were referred to are in a bundle of two volumes which extends to 132 pages prepared by the applicants, plus the Tribunal's directions. In addition, following a letter from Judge Vance dated 3rd October 2022, an 'updated bundle' was prepared containing an updated valuation report together with 4 appendices. The contents of which we have recorded. Therefore, the tribunal had before it an electronic/digital trial bundle of documents prepared by the applicant, in accordance with previous directions and subsequent correspondence.

## **The application**

1. On 4th March 2022, Bird & Lovibond, the solicitors for the Applicant, issued a Part 8 Claim in Willesden County Court seeking a vesting order under section 50(1) of the Leasehold Reform, Housing and Urban Development Act 1993 ('the Act'). This is therefore the date of valuation and we shall return to this matter later in this decision. A subsequent Part 8 Claim Form was made dated the 1st August 2022 under Claim No JOOW1449 which added the name of the second respondent Mr Abdel Khalegh Al Sharifi
2. On 30th July 2022 the Deputy Judge McZenzie made an order in the following terms:
3. *1. The Claimant shall be entitled to a new lease under Section 56 of the Act on such terms as may be determined by the FTT to be appropriate as if the Claimant had, at the date of this claim, given notice under Section 42 of the Act of his claim to exercise the right to acquire a new lease of her flat 2. The Claimants' obligation to serve on the Defendants: a) an initial notice pursuant to section 42 of the 1993 Act; be dispensed with; 3. The Claimants' obligation to serve on the First Defendant: a) this claim; b) the witness statements referred to above; and c) a copy of this order be dispensed with; 4. The question of valuation and terms of the Claimant's acquisition of a new lease of the Property be transferred to and determined by the FTT; 5. By virtue of section 51 of the 1993 Act and this Order there shall be executed by Gary Bennett at Bird & Lovibond solicitors a conveyance which is in a form approved by the FTT and in*

*accordance with section 56( 1) and section 57 of the 1993 Act, and that conveyance shall be effective to grant the Claimant a new lease of the Property, subject to and in accordance with the terms of the conveyance, upon the payment into Court of an amount calculated as follows:- (i) Such amount as may be determined by the FTT to be the price which would be payable in respect of the new lease of the Property in accordance with Schedule 13 of the 1993 Act as if the interest were being acquired in pursuance of a notice under section 42 of the 1993 Act, in accordance with section 51 (3) of the 1993 Act. 6. The 1<sup>st</sup> Defendant shall pay the Claimant's costs of these proceedings (save in respect of the Claimant's application to join Mr Al Sharifi as 2<sup>nd</sup> Defendant in respect of which there shall be no order as to costs) such costs assessed in the sum of £ 11,992.28; 7. The 1<sup>st</sup> Defendant shall pay the 2<sup>nd</sup> Defendant's costs of these proceedings, such costs assessed in the sum of £7,766.30; 8. The Claimant is entitled to deduct from such appropriate sum as the FTT may hereafter determine is to be paid into court under section 51 and Schedule 13 of the 1993 Act (a) the sum specified under paragraph 6 above and (b) such costs as she may hereafter be awarded against the Defendants by the FTT;*

4. The applicants' representatives were unable to locate Jabbar Kishmir Khan and Abdel Khalegh Al Sharifi
5. In accordance with the vesting order the application was submitted to the First-tier Tribunal, Property Chamber and directions were issued on 10th August 2022. These provided that the case would proceed to a paper determination. The applicant has not objected to this or requested an oral hearing. Subsequently on the 3rd of October 2022 Judge Vance sent a letter to all parties stating "The valuation report included in the bundle completely failed to address the requirements set out in paragraphs 5(d) – (m) of the tribunal's directions. This is unsurprising as the report pre-dates the issue of those directions. A replacement valuation report must be provided to the tribunal and to the second Defendant, Mr Abdul Khalegh Al Sharifi by 24 October 2022. The report must comply with all the requirements sent out in paragraphs 5(d) – (m) of the tribunal's directions. In particular is important to note that the valuation date is the date of issue of the claim form, as was made clear in the tribunal's directions. If Mr Abdul Khalegh Al Sharifi has any representations to make in respect of the price payable by the Applicant for the new lease of the Property, including as to the valuation report relied upon by the Claimant; he must make these representations by 18 November 2022. If he wishes to rely upon his own valuation evidence he must provide a valuation report to the tribunal, and to the Claimant, by that date". It is noted by the Tribunal no such representations were received.
6. The paper determination took place on 12th December 2022.

7. In accordance with the directions, the applicants' solicitors supplied the Tribunal with a well prepared and helpful bundle that contained copies of relevant documents from the County Court proceedings, various title documents, the existing and proposed lease and an Expert Witness valuation report prepared by Mr Colin Ross MSc AssocRICS dated 9th November 2021. This was subsequently updated on the 7th November 2022, following a request from this Tribunal.
8. The relevant legal provisions are set out in the appendix to this decision.

### **The background**

9. The leasehold interest in the flat is now registered in name of the applicant by virtue of a transfer for the first floor flat made on 20th May 2003 under Title No NGL377132. The freehold of the building has been registered in the name of the two respondents under title number MX438079 since the 11th December 1979. The freehold is subject to a head lease for a term of 125 years dated 1st January 1979.
10. The property is a first floor converted flat which forms part of a semi detached property located in an established residential area converted to form four self contained flats approached via a communal hallway. The flat has one bedroom located on the first floor. It is assumed the flat has not been subject to any significant internal alterations.

### **The issues**

11. The Tribunal is required to determine the premium to be paid for the extended lease in accordance with the 1993 Act and the appropriate sum to be paid into Court pursuant to section 27(1)-(7) of the Act.
12. The Tribunal is required to consider the proposed terms of the lease.
13. The Tribunal did not consider that an inspection of the flat was necessary under current circumstances, nor would it have been proportionate to the issues in dispute.
14. Having studied the various documents in the applicant's bundle, the Tribunal has made the determination set out below.

### **The sum to be paid into court**

16. We determine that the premium payable under the 1993 Act is **£7,005** (Seven thousand and five pounds) and this is the appropriate sum to be paid into Court under section 27(1). Our reasons are set out as follows.
17. In his report, Mr Ross valued the premium at £9,250 (£3723 for the head lease and £5,527 for the freehold.) This was based on Freehold value of £303,030 (Long lease value £300,000), a capitalisation rate of 1.66%, and a deferment rate of 5%. Mr Ross used the 8th March 2022 as the valuation date. However, the precise date of the Claim form is the 4th March 2022. In view of the fact there is only four days differential this Tribunal accepts the figures in the report.
18. At that date, the lease had an unexpired term of 81.81 years. The Tribunal agrees, in view of the fact that the lease has an unexpired term of greater than 80 years marriage value is deemed not to exist.
19. Having carefully scrutinised the valuation report, including the comparable evidence, the Tribunal agrees the capitalisation rate.
20. Where we do depart from Mr Ross is the Capitalisation rate He has applied a rate of 1.66% in order to calculate the loss of future ground rent. This is considered an inappropriate figure. The Tribunal considers a rate of 5% is the more usual figure, especially given the modest sum together with the single only increase during the term.
21. The Tribunal considered the two comparables provided in the report. The first being 143 Lynton Road, which is a converted one bedroom flat located in the same road. This property is currently for sale, there is no agreed sale and for for this reason cannot be considered for comparable purposes.
22. The second comparable is Flat 17, 7 Lynton Road. This is a purpose built 1980s one bedroom flat. Mr Ross has made a net 10% adjustment and plus applied a house price index to allow for time. Therefore, the Freehold value of the flat is based upon only comparable which is a different flat type. The report contained no agents details or photographs of this flat. This really falls short of the Tribunals expectations and we find it difficult to believe there was no additional evidence available within a 600m radius over the past 12 months. However, despite these misgivings, based upon the comparable evidence and the Tribunals expert knowledge of the area, the Tribunal agrees with the freehold value of £303,030 entered in the valuation. This differs from the value set out in the report which was £300,000
23. There was no evidence of any ground rent or service charge arrears for the Flat. In the absence of such evidence, the Tribunal determines that no additional sums are payable under the 1993 Act. It

follows that the appropriate sum to be paid into Court is **£7,005** in accordance with Appendix A valuation report.

### **Terms of the Transfer**

- 24.** We have considered the draft deed of surrender and re-grant of lease in the bundle. We are satisfied that the terms should be approved as drafted.

**Name:** Mr R Cohen

**Date:** 12th December 2022

### **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

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

#### **Section 50 (1)-(3)**

- (1) Where –
  - (a) a qualifying tenant of a flat desires to make a claim to exercise the right to acquire a new lease of his flat, but
  - (b) the landlord cannot be found or his identity cannot be ascertainedthe court may, on the application of the tenant, make a vesting order under this subsection.
  
- (2) Where –
  - (a) a qualifying tenant of a flat desires to make such a claim as is mentioned in subsection (1), and
  - (b) paragraph (b) of that subsection does not apply, but
  - (c) a copy of a notice of that claim cannot be given in accordance with Part 1 of Schedule II to any person to whom it would otherwise be required to be so given because that person cannot be found or his identity cannot be ascertained,the court may on an application of the tenant, make an order dispensing with the need to give a copy of such a notice that that person.

(3) The court shall not make an order on any application under subsection (1) or (2) unless it is satisfied –

(a) that on the date of the making of the application the tenant had the right to acquire a new lease of his flat; and

(b) that on that date he would not have been precluded by any provision of this Chapter from giving a valid notice under section 42 with respect to his flat.

#### **Section 51**

(1) A vesting order under section 50(1) is an order providing for the surrender of the tenant's lease of his flat and for the granting to him of a new lease of it on such terms as may be determined by the appropriate tribunal to be appropriate with a view to the lease being granted to him in like manner (so far as the circumstances permit) as if he had, as the date of his application, given notice under section 42 of his claim to exercise the right to acquire a new lease of his flat.

- (2) If the appropriate tribunal so determines in the case of a vesting order under section 50(1), the order shall have effect in relation to property which is less extensive than that specified in the application on which the order was made.
- (3) Where any lease is to be granted to a tenant by virtue of a vesting order under section 50(1), then on his paying into court the appropriate sum there shall be executed by such person as the court may designate a lease which –
  - (a) is in a form approved by the appropriate tribunal, and (b) contains such provisions as may be so approved for the purpose of giving effect so far as possible to section 56(1) and section 57 (as that section applies, in accordance with subsections (7) and (8) below; and that lease shall be effective to vest in the person to whom it is granted the property expressed to be demised by it, subject to and in accordance with the terms of the lease.
- (4) In connection with the determination by the appropriate tribunal of any question as to which the property to be demised by any such lease, or as to the rights with or subject to which it is to be demised, it shall be assumed (unless the contrary is shown) that the landlord has no interest in property other than the property to be demised and, for the purpose of excepting them from the lease, any minerals underlying that property.
- (5) The appropriate sum to be paid into court in accordance with subsection (3) is the aggregate of –
  - (a) such amount as may be determined by the appropriate tribunal to be the premium which is payable under Schedule 13 in respect of the grant of the new lease;
  - (b) such other amount or amounts (if any) as may be determined by such a tribunal to be payable by virtue of that Schedule in connection with the grant of that lease; and
  - (c) any amounts or estimated amounts determined by such a tribunal as being, as the time of execution of that lease, due to the landlord from the tenant (whether due under or in respect of the tenant's lease of his flat or under or in respect of any agreement collateral thereto).
- (6) Where any lease is granted to a person in accordance with this section, the payment into court or the appropriate sum shall be taken to have satisfied any claims against the tenant, his personal representatives or assigns in respect of the premium and any other amounts payable as mentioned in subsection (5)(a) and (b).
- (7) Subject to subsection (8), the following provisions, namely – (a) sections 57 to 59, and



(b) section 61 and Schedule 14,

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shall, so far as capable of applying to a lease granted in accordance with this section, apply to such lease as they apply to a lease granted under section 56, and subsections (6) and (7) of that section shall apply in relation to a lease granted in accordance with this section as they apply in relation to a lease granted under that section.

(8) In its application to a lease granted in accordance with this section

- (a) section 57 shall have effect as if –
  - (i) any reference to the relevant date were a reference to the date of the application under section 50(1) in pursuance of which the vesting order under that provision was made, and
  - (ii) in subsection (5) the reference to section 56(3)(a) were a reference to subsection (5)(c) above; and
  
- (b) section 58 shall have effect as if –
  - (i) in subsection (3) the second reference to the landlord were a reference to the person designated under subsection (3) above, and
  - (ii) subsections (6)(a) and (7) were omitted.

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