FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AE/OLR/2018/0637**
Property	**:**	**30C Staverton Road, London NW2 5HL**
Applicant	**:**	**Joseph Eugene Thuraisamy** **Fernando Perez Cruz**
Representative	**:**	**Mr Piers Harrison Counsel**
Respondent	**:**	**Kaushalya Ahluwalia** **Shweta Ahluwalia**
Representative	**:**	**Mr Richard Granby Counsel**
Type of Application	**:**	**S42 Leasehold Reform, Housing and Urban Development Act 1993 – determination of terms of acquisition in dispute**
Tribunal Members	**:**	**Judge John Hewitt** **Mr Ian Holdsworth FRICS**
Date and venue of Hearing	**:**	**18 September 2018** **10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**26 September 2018**

DECISION

The issues before the tribunal and the decisions of the tribunal

1. The issues before the tribunal were:
   1.1 The lease plan to be annexed to the new lease and whether the tribunal had jurisdiction to determine the format of that plan; and
   1.2 A drafting point concerning paragraph 17 of Schedule 5 to the new lease.

2. The decisions of the tribunal are:

   2.1 The tribunal has jurisdiction to determine the lease plan to be annexed to the new lease and that plan shall be in the form of the plan attached to this decision; and
   2.2 The amendment to paragraph 17 of Schedule 5 contended for by the applicant is rejected and that paragraph shall be in the same form as set out in the existing lease dated 22 August 2013

3. The reasons for our decisions are set out below.

NB Later reference in this Decision to a number in square brackets ([ ]) is a reference to the page number of the hearing file provided to us for use at the hearing.

Background

4. 30 Staverton Road, London NW2 5HL is registered at HM Land Registry with title number NGL12014. On 30 May 2012 the respondents were registered as the proprietors [13]. Evidently that property has been adapted and converted to create three, possibly four, self-contained flats. The Charges Register records that two of the flats have been sold off on long leases – flat 30B (first and second floor) and flat 30C (first floor). Thus, the respondents are the 'landlord' for the purposes of ss9, 38 and 40(1) Leasehold Reform, Housing and Urban Development Act 1993 (the Act).

5. On 19 September 2013 the lease of Flat 30C was registered at HM Land Registry with title number AGL293070. On the same day the applicants were registered as the proprietors [16]. Thus, for present purposes the applicants are a 'qualifying tenant' – s40(1) of the Act in respect of the lease of the Property.

6. By a notice of claim dated 22 December 2017 [7] given pursuant to s42 of the Act, the applicants sought a new lease of the Property. The terms of the proposed new lease were set out in a schedule to the notice, and so far as material for present purposes, paragraph 3 a. was in these terms: *"The lease plan attached to this notice shall be incorporated into the new lease in replacement of the old lease plan."* A copy of the 'new lease plan' is at [9].

7. By a counter-notice dated 2 March 2018 [10] the respondents admitted that the applicants had, on the relevant date, the right to acquire a new lease of the Property. Section 5 set out the proposals contained in the

tenant's notice which were not accepted by the respondent and among those cited was paragraph 3 a. of the schedule. Later in section 5 the respondents set out their counter-proposals and with regard to paragraph 3 a. of the schedule they stated:

"Paragraph 3 a – no offers
It is noted that the proposed variation of the lease plan contains unauthorized variation to the bathroom and extension of the demise to common parts, (the stairway)." [sic]

8. An application dated 3 May 2018 was filed with the tribunal [1]. The application stated that no terms of acquisition had been agreed.

9. Directions were given on 30 May 2018 in standard form. Those directions provided for the landlord to provide a draft lease and for the tenant to identity any amendments sought and steps as regards the valuation of the premium payable. No specific direction was given as to the date of service of written statements of witnesses of fact. Direction 11 dealt with the contents of the hearing bundle which included: *"The existing … lease plan"* and *"The new draft lease and lease plan with any disputed terms highlighted in red"*.

10. The hearing bundle contained material documents and at [85] summarised the issues in dispute. They were:

    1. The format of the lease plan to be attached to the new lease;
    2. Six drafting points on the draft new lease. At the commencement of the hearing the tribunal was told that two of them had been agreed. Toward the end of the hearing the tribunal was told that another three had been agreed, leaving just one in issue.

11. On 14 September 2018 the applicant served on the respondent a witness statement of one of the applicants – Mr Thuraisamy. The statement was relatively short but a considerable amount of correspondence was exhibited to it, so that, in all, it ran to about 230 pages. Evidently the statement was prepared on the advice of counsel and the focus was on the factual background concerning some internal alterations which had been carried out to the bathroom/wc and whether oral consent for them had been given and whether written consent has been unreasonably withheld, such that written consent was no longer required.

12. Over the weekend prior to the hearing one of the respondents, Mrs Ahluwalia had made a witness statement in answer, putting the landlords' side of the story. It is dated 17 September 2017 and is four pages long with 15 pages of exhibits.

The hearing

13. Mr Harrison of counsel represented the applicant tenant and Mr Granby of counsel represented the respondent landlord. Both kindly and helpfully provided us with skeleton arguments. The main issue was

whether the new lease plan should reflect the internal alterations that had been carried out, and some rather minor drafting points. It was argued that the correct lease plan to attach to the new lease might turn on whether the internal alterations were lawful or not. That issue was a mixed issue of fact and law. Hence at a late stage the service of Mr Thuraisamy's witness statement. Mr Harrison sought permission to admit that witness statement and rely upon it. Mr Granby opposed the application. Mr Granby accepted that Mrs Ahluwalia had made a witness statement in answer, but it was done hurriedly (over the weekend) and without a careful and detailed analysis of historic correspondence, on the basis that something was better than nothing. Mr Granby did not wish to make an application for a postponement given the costs regime that applies to leasehold cases in this tribunal.

14. Both counsel accepted that whether the tribunal might need to make findings on whether the alterations were lawful or not, would depend on what view we came to on the construction of a statutory provision – s57 (1)(b) of the Act.

15. Having regard to the rival submissions we decided that we would allow the two witness statements to be filed and relied upon if need be, but that we would review the way forward once we had made determinations on the construction point.

16. The gist of Mr Granby's case was that the format of the lease plan to be annexed to the new lease was not 'a term of acquisition in dispute' such that the tribunal did not have jurisdiction to determine the format of the plan.

On the construction of s57(1)(b) Mr Granby submitted that the statute was ambiguous and that we should imply the word 'lawful' so that so far as material it should read:

"(1) Subject to … the new lease to be granted … shall be on the same terms as those of the existing lease, as they apply on the relevant date, but with such modifications as may be required or appropriate to take account
(a) ….;
(b) Of ***lawful*** *alterations made to the property demised since the grant of the existing lease; or*
(c) …"

The existing lease

17. The existing lease [19] was granted as recently as 22 August 2013 and was granted by the respondent to the applicant. So far as material:

Clause 1 Interpretation
Sets out a number of defined terms, including:
"Property: part of the first floor of the Building known as 30c Staverton Road … , the floor plans of which are shown edged red on Plan 1 and as described in Schedule 1"

Schedule 1 The Property
"The part of the first floor of the Building known as 30C Staverton Road … , the floor plans of which are shown edged red on Plan 1 including:
(a) the internal plaster, plasterboard and surface finishes of all walls;
(b) the whole of any internal, non-load bearing that are entirely within the Property;
(c) – (h) … ;and
(i) all additions and improvements to the Property (if any)"

The Lease Plan 1 is at [50]. It shows the extent of the demised premises edged red and within that edging it shows the internal layout of the flat. Mr Granby accepted that the plan was not a plan 'for the purposes of illustration only'.

Schedule 4 Tenant Covenants
Sets out a number of covenants on the part of the tenant to include:

"8. Alterations
8.1 Not to make any external or structural alteration or addition to the Property or make any opening in any boundary of the Property or cut or maim any structural parts of the Building.

8.2 Not to make any internal, non-structural alteration or addition to the Property, or alteration to the plan, design or elevation of the Property without the prior written consent of the Landlord, such consent not to be unreasonably withheld or delayed.

8.3 Not to install …"

Schedule 5 The Regulations
Sets out a number of regulations to be observed and performed by the tenant to include:

"17. Not to live in the Property unless all floors (other than the kitchen and bathroom) are covered in good quality carpeting and underlay."

The alterations
18. It was not in dispute that some alterations have been carried out.

19. One alteration was the removal of an internal part-glazed partition which divided what was laid out as a galley kitchen and a room which was used as a living room. The effect of that alteration was to create an open plan living/dining area. That alteration was not mentioned in the respondents' counter-notice and it was not in issue before the tribunal.

20. The other suite of alterations was the removal of the internal wall dividing the lavatory and the bathroom so as to create a bathroom/wc

and an associated relocation of a cupboard containing a boiler or water tank. These alterations were summarised as 'variation to the bathroom' in the landlord's counter-notice. We were invited to infer that use of the expression 'unauthorised variation' in that counter-notice should be interpreted as an objection to the 'new' lease plan and a counter-proposal that the plan to be annexed to the new lease should be a copy of the existing lease plan.

21. The counter-notice also asserted that the 'new' lease plan shows *"… extension of the demise to common parts, (the stairway)."* Mr Granby said that that position was no longer asserted by the respondents.

22. It was not in dispute that the 'new' lease plan at [9] accurately shows the extent of the demised premises edged red and it reasonably accurately shows the internal layout of the flat as it now is.

The rival submissions

The terms of acquisition in dispute - the lease plan and jurisdiction

23. S48 of the Act makes provisions for an application to the tribunal where, after a certain period of time, 'any of the terms of acquisition' remain in dispute. The expression 'terms of acquisition' is defined in s48(7) to mean: *"… 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 … payable … or otherwise."*

24. Mr Harrison submitted that the format of the lease plan to be annexed to the new lease was a term of acquisition and that if the format of that plan was in dispute the tribunal had jurisdiction to determine what the format of it should be. In support of that submission Mr Harrison relied upon *Greenpine Investment Holding Limited v Howard De Walden Estates and anor* [2016] EWHC 1923 (Ch) a decision of Mr Timothy Fancourt QC (as he then was) sitting as a deputy judge of the Chancery Division. The relevant paragraphs are 29 – 37 in which the judge summarises the scheme of the Act and how 'terms of acquisition in dispute' are to be identified. With no disrespect to the parties or to Fancourt J (as he now is) our working summary of what is explained is that:

    1. The starting point is that the tenant must set out his position in his notice of claim. S42(3)(d) provides that the notice must: *"specify the terms which the tenant proposes should be contained in any such* [new] *lease;"*.

    2. The next step is the landlord's counter-notice. In essence s45 requires the counter-notice to identify those terms which are accepted by the landlord and those which are not; and in relation to those which are not accepted what his counter-proposals are.

    In paragraph 31 of his judgment the judge said:

"31. Given that the terms of the new lease are firmly based on the terms of the existing lease, it seems clear that the terms of acquisition that are in dispute are contemplated by the draftsman to arise from the terms of the tenant's notice and the landlord's counternotice. That is why section 48(1) refers to any terms of acquisition that ***remain in dispute*** *2 months after the counternotice and why the Tribunal is given jurisdiction to determine those matters in dispute …"*

The judge went on consider that other matters in dispute may arise during the process of the grant of the new lease, but said it was unclear whether those can be 'terms of acquisition'.

Having considered other authorities the judge concluded it makes obvious sense that the terms of acquisition (which are not the same as the exact wording of the new lease) are defined by the notice and counter-notice – against the backdrop of the provisions s57. He held that if not so defined it is difficult to see how all the terms of acquisition are identifiable as such, rather than as issues to be dealt with in the drafting of the new lease, and what (if any) time limit there is on raising further terms of acquisition before the Tribunal has finally determined the matters in dispute.

In paragraph 37 the judge made clear that terms of acquisition to be agreed or determined by the tribunal are the proposals contained in the respective notices that remain in dispute at the relevant time.

25. As regards the subject case, Mr Harrison submitted that the format of the lease plan to be annexed to the new lease was raised by the applicants in their notice of claim and it was objected to by the respondents in their counter-notice and that it can be inferred the respondent's counter-proposal was that the existing lease plan should be annexed to the new lease. In those circumstances he submitted that the format of the lease plan was 'a term of acquisition in dispute' which the tribunal had jurisdiction to determine.

26. Mr Granby argued for a wider approach to the meaning of 'terms of acquisition' and submitted they should be considered more akin to Heads of Terms (HoTs). In support of that proposition Mr Granby relied upon *Bolton v Godwin-Austen & ors* [2014] EWCA Civ 27. Mr Granby drew attention to paragraph 9 where McCombe LJ equated 'terms of acquisition' with HoTs and that the form of lease is drafted by the landlord to give effect to the terms of acquisition, as either agreed between the parties or determined by a tribunal. Once the 'terms of acquisition' are agreed or determined, regulations provide for the landlord to draft the new lease and for the tenant to respond to the details of the draft. Mr Granby equated the lease plan to be annexed a drafting point and not a term of acquisition.

27. We note that the facts of *Bolton* were different to those in *Greenpine* as explained by Fancourt J in paragraph 35 of his judgment. In *Bolton* the landlord set out his counter-proposals in his counter-notice in very

general and compendious terms and form, mostly by reference to several sections of the Act. The tenant accepted those counter-proposals and so that they were not 'terms of acquisition in dispute'. The landlord submitted a draft new lease, the tenant objected to some of the provisions. The issue before the Court was the forum to determine the drafting items in dispute. If the drafting items were 'terms of acquisition in dispute', jurisdiction lay with the tribunal. If they were not, jurisdiction lay with the county court. Because the tenant had accepted the counter-proposals (albeit in very general terms) so they were held not to be 'terms of acquisition in dispute' and so the tribunal did not have jurisdiction to determine the drafting items.

The judgment makes it clear that if the tenant had not accepted the counter-proposals they would have been 'terms of acquisition in dispute' and jurisdiction would have been vested in the tribunal.

28. In the present case it is quite plain that the lease plan is an integral part of the lease. It is not an illustrative plan and it is not a plan which merely identifies the extent of the demised premises. The original parties to the lease clearly intended it should be a floor plan showing not only the extent of the demised premises but also the internal layout of them. We infer this was intended to set a marker as to the internal lay-out at the commencement of the term which would inform the tenant's obligations going forward and as a reference point as to any future alterations that might be contemplated.

29. We find that the applicant's notice of claim clearly proposed that the plan to be annexed to the new lease should reflect reality and the position on the ground as regards to the current internal layout of the flat. The landlord rejected that proposal and (in effect) made a counter-proposal that the plan to be annexed to the new lease should be the same plan as annexed to the existing lease. The applicant did not accept that counter-proposal. In those circumstances we prefer the submissions made by Mr Harrison and supported by *Greenpine* that the format of the lease plan to be annexed to the new lease was a 'term of acquisition in dispute' and that this tribunal had jurisdiction to determine what the format of that plan shall be.

The format of the lease plan – construction of the statute

30. S57 of the Act sets out the terms on which the new lease is to be granted. In brief the starting point is that it shall be on the same terms as the existing lease subject to certain provisions. Material to this case is s57(1)(b) and 57(6).

As regards s57(1)(b), in paragraph 16 above we have highlighted the issue in contention and that Mr Granby submits that as drafted the section is unclear and might lead to ambiguity such that the word 'lawful' should be implied to make it clear what the draftsman had in mind. In support of his argument Mr Granby relied upon a passage from *Bennion* – paragraphs 764-765 to the effect that where a statute was confiscatory, for example the Leasehold Reform Act 1967, if there

is any doubt as to its meaning, it should be construed in favour of the party who is to be dispropriated. Evidently support for that proposition was said to be found in *Methuen-Campbell v Walters* [1979] QB 525.

31. Mr Harrison made rival submissions and drew attention to the more recent Supreme Court decision in *Hosebay Ltd v Day & anor* [2012] UKSC 41, where in paragraph 6 Lord Carnwath said:

"6. Although the 1967 Act like the 1993 Act is in a sense expropriatory, in that it confers rights on lessees to acquire rights compulsorily from their lessors, this has been held not to give rise to interpretative presumption in favour of the latter."

Lord Carnwath then cited with approval a passage from a judgment of Millett LJ where, as regards the 1993 Act, he said:

"It would, in my opinion, be wrong to disregard the fact that, while the Act may to some extent be regarded as expropriatory of the landlord's interest, nevertheless it was passed for the benefit of tenants. It is the duty of the court to construe the 1993 Act and with a view, if possible, to making it effective to confer on tenants those advantages which Parliament must have intended them to enjoy."

32. We reject Mr Granby's submission that s57(1)(b) is unclear such that we should imply the word 'lawful' which he contended for. We have given careful consideration to the rival arguments. We prefer the submissions of Mr Harrison. We find that s57(1)(b) applies to all alterations made to the property since the grant of the lease. Where those are lawful, in the sense that where written consent of the landlord is required and has been given, there will be no argument. Where alterations are unlawful in the sense that written consent is required but has not been given, the landlord may or may be in a position to enforce the covenant or obtain a remedy. The landlord may not have any view or objection, or the landlord may have waived the obligation on the tenant to obtain a written consent or some other form of estoppel may inhibit the landlord from obtaining a remedy.

33. Mr Granby submitted that s57(1)(b) should be construed as to apply only to lawful alterations, and thus the respondents are entitled to insist the lease plan to be annexed to the new lease shall be the same lease plan that was annexed to the existing lease. If that were to happen it would expose the applicants to risk and prejudice and would be contrary to the position on the ground and so not reflect reality or the marker as to the floor plans which the parties as the original landlord and tenant clearly intended.

34. Mr Harrison submitted that where a tenant may have carried out alterations which were not lawful is the sense the written consent was not given, the landlord is free to take such steps as he sees fit to obtain a remedy. Where a new lease is sought, it is open to the landlord to make a counter-proposal in his counter-notice to the effect that the new

lease is to contain a covenant to reinstate the premises to the original lay-out within a specified period. If that were to be contentious it would amount to 'a term of acquisition in dispute' and there is a process to determine it. Mr Harrison said that in the present case the respondents were plainly aware of the alterations in question because reference was made to them in the counter-notice, but the respondents did not see fit to require the new lease to contain a reinstatement provision. He submitted it was now too late for the respondents to do so. Mr Harrison also observed that the respondents have not, to date, taken any steps to pursue any remedy in respect of the alterations which they contend are unlawful.

35. In these circumstances we determine that the format of the lease plan to be annexed to the new lease shall be in the format contended for by the applicants and appended to their notice of claim. For avoidance of doubt a copy of that plan is appended to this decision.

36. Having come to this conclusion on the statutory construction we gave careful consideration as to whether we should make findings of fact on the contentious issue of whether the respondents had given oral consent to the alterations and/or had unreasonably failed to give a written consent within a reasonable time such that written consent was no longer required. Such findings may have been helpful if, on appeal, the Upper Tribunal held that our construction of the Act was in error.

37. We were conscious that the tribunal has not given directions for the serving of written statements of witnesses of fact. The applicants had served a statement quite close to the hearing. The respondent had responded quickly on the footing that something was better than nothing, but Mr Granby made clear Mrs Ahluwalia's statement in answer was rushed. Plus, it appeared that the respondents might wish to contend that part of the alterations affected the structure.

38. We concluded that if the question was whether the subject alterations were lawful or unlawful, was an important question of significance, that question ought to be determined on the basis that both parties had a full and considered opportunity to prepare and put forward all of the evidence they wised to rely upon. The downside to this approach was that if the Upper Tribunal were to set aside this decision it will probably remit the question of whether the alterations were lawful or not back to this tribunal. If that occurred it would put the parties to further costs, expense and delay.

39. We shared our preliminary views with the parties. Following a short adjournment to consider the point and take instructions, both counsel informed us that they were content that we should not proceed to hear the rival evidence as is stood and make findings of fact on it. We therefore confirmed that we would not do so.

The drafting point

40. In the event only one drafting point remained in issue. It concerned paragraph 17 of Schedule 5. In the existing lease it reads:

"17. Not to live in the Property unless all floors (other than the kitchen and bathroom) are covered in good quality carpeting and underlay."

The applicant proposes to insert two words (which we have shown in bold) so that it should read [78]:

"17. Not to live in the Property unless all floors (other than the kitchen and bathroom) are covered in good quality ***[sound deadening/*** *carpeting and****]*** *underlay."*

The drafting proposed does not seem to be too good.

41. Mr Harrison submitted that when the lease was granted wooden or laminate flooring was laid in part of the flat and the proposed amendment was simply to reflect that factual position.

42. Mr Granby opposed that position. He submitted there was no factual evidence before the tribunal as what floor covering was in place at the time of the grant of the lease. He also submitted that the proposed amendment did not fall within s57(6)(a) or (b). Mr Granby cited paragraph 31-10 in *Hague: Leasehold Enfranchisement* Sixth Edition to the effect that words such as 'defect', 'convenient' and 'necessary' should be given a strict or narrow construction, and that the onus is on the person proposing the change to show that there are grounds for modifying the term in question. Mr Granby also relied upon *Burchell v Raj Properties Ltd* [2013] UKUT 443 (LC).

43. We prefer the submissions of Mr Granby on this point. There was no factual evidence before us either as to the floor covering in place at the time of the grant or that the proposed change is necessary to remedy a defect or that it would be unreasonable not to modify the term. If it is the case that paragraph 17 of Schedule 5 did not reflect the understanding or agreement of the parties at the time of the grant of the lease such, that a mistake, whether common or unilateral, has occurred, the applicants will have remedies elsewhere.

44. Accordingly, we have made a determination that paragraph 17 of Schedule 5 shall not be modified in the new lease as proposed by the applicants.

Judge John Hewitt
26 September 2018

Statutory Provisions

Leasehold Reform, Housing and Urban Development Act 1993

The tenant's notice

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.

(2) A notice given by a tenant under this section ("the tenant's notice") must be given—

(a) to the landlord, and

(b) to any third party to the tenant's lease.

(3) The tenant's notice must—

(a) state the full name of the tenant and the address of the flat in respect of which he claims a new lease under this Chapter;

(b) contain the following particulars, namely—

(i) sufficient particulars of that flat to identify the property to which the claim extends,

(ii) such particulars of the tenant's lease as are sufficient to identify it, including the date on which the lease was entered into, the term for which it was granted and the date of the commencement of the term,

(c) specify the premium which the tenant proposes to pay in respect of the grant of a new lease under this Chapter and, where any other amount will be payable by him in accordance with any provision of Schedule 13, the amount which he proposes to pay in accordance with that provision;

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

(e) state the name of the person (if any) appointed by the tenant to act for him in connection with his claim, and an address in England and Wales at which notices may be given to any such person under this Chapter; and

(f) specify the date by which the landlord must respond to the notice by giving a counter-notice under section 45.

(4A) A notice under this section may not be given by the personal representatives of a tenant later than two years after the grant of probate or letters of administration.

(5) The date specified in the tenant's notice in pursuance of subsection (3)(f) must be a date falling not less than two months after the date of the giving of the notice.

(6) Where a notice under this section has been given with respect to any flat, no subsequent notice may be given under this section with respect to the flat so long as the earlier notice continues in force.

(7) Where a notice under this section has been given with respect to a flat and—

(a) that notice has been withdrawn, or is deemed to have been withdrawn, under or by virtue of any provision of this Chapter, or

(b) in response to that notice, an order has been applied for and obtained under section 47(1),

no subsequent notice may be given under this section with respect to the flat within the period of twelve months beginning with the date of the withdrawal or deemed withdrawal of the earlier notice or with the time when the order under section 47(1) becomes final (as the case may be).

(8) Where a notice is given in accordance with this section, then for the purposes of this Chapter the notice continues in force as from the relevant date—

(a) until a new lease is granted in pursuance of the notice;

(b) if the notice is withdrawn, or is deemed to have been withdrawn, under or by virtue of any provision of this Chapter, until the date of the withdrawal or deemed withdrawal; or
(c) until such other time as the notice ceases to have effect by virtue of any provision of this Chapter;
but this subsection has effect subject to section 54.
(9) Schedule 12 (which contains restrictions on terminating a tenant's lease where he has given a notice under this section and makes other provision in connection with the giving of notices under this section) shall have effect.

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).
(2) The counter-notice must comply with one of the following requirements—
(a) state that the landlord admits that the tenant had on the relevant date the right to acquire a new lease of his flat;
(b) state that, for such reasons as are specified in the counter-notice, the landlord does not admit that the tenant had such a right on that date;
(c) contain such a statement as is mentioned in paragraph (a) or (b) above but state that the landlord intends to make an application for an order under section 47(1) on the grounds that he intends to redevelop any premises in which the flat is contained.
(3) If the counter-notice complies with the requirement set out in subsection (2)(a), it must in addition—
(a) state which (if any) of the proposals contained in the tenant's notice are accepted by the landlord and which (if any) of those proposals are not so accepted; and
(b) specify, in relation to each proposal which is not accepted, the landlord's counter-proposal.
(4) The counter-notice must specify an address in England and Wales at which notices may be given to the landlord under this Chapter.
(5) Where the counter-notice admits the tenant's right to acquire a new lease of his flat, the admission shall be binding on the landlord as to the matters mentioned in section 39(2)(a), unless the landlord shows that he was induced to make the admission by misrepresentation or the concealment of material facts; but the admission shall not conclude any question whether the particulars of the flat stated in the tenant's notice in pursuance of section 42(3)(b)(i) are correct.

48.— Applications 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 of two months beginning with the date when the counter-notice or further counter-notice was so given, [the appropriate tribunal] [1] may, on the application of either the tenant or the landlord, determine the matters in dispute.
(2) Any application under subsection (1) must be made not later than the end of the period of six months beginning with the date on which the counter-notice or further counter-notice was given to the tenant.
(3) Where—
(a) the landlord has given the tenant such a counter-notice or further counter-notice as is mentioned in subsection (1)(a) or (b), and
(b) all the terms of acquisition have been either agreed between those persons or determined by the appropriate tribunal under subsection (1),

but a new lease has not been entered into in pursuance of the tenant's notice by the end of the appropriate period specified in subsection (6), the court may, on the application of either the tenant or the landlord, make such order as it thinks fit with respect to the performance or discharge of any obligations arising out of that notice.
(4) Any such order may provide for the tenant's notice to be deemed to have been withdrawn at the end of the appropriate period specified in subsection (6).
(5) Any application for an order under subsection (3) must be made not later than the end of the period of two months beginning immediately after the end of the appropriate period specified in subsection (6).
(6) For the purposes of this section the appropriate period is—
(a) where all of the terms of acquisition have been agreed between the tenant and the landlord, the period of two months beginning with the date when those terms were finally so agreed; or
(b) where all or any of those terms have been determined by [the appropriate tribunal] [1] under subsection (1)—
(i) the period of two months beginning with the date when the decision of the tribunal under subsection (1) becomes final, or
(ii) such other period as may have been fixed by the tribunal when making its determination.
(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.

56.— Obligation to grant new lease.
(1) Where a qualifying tenant of a flat has under this Chapter a right to acquire a new lease of the flat and gives notice of his claim in accordance with section 42, then except as provided by this Chapter the landlord shall be bound to grant to the tenant, and the tenant shall be bound to accept—
(a) in substitution for the existing lease, and
(b) on payment of the premium payable under Schedule 13 in respect of the grant,
a new lease of the flat at a peppercorn rent for a term expiring 90 years after the term date of the existing lease.
(2) In addition to any such premium there shall be payable by the tenant in connection with the grant of any such new lease such amounts to the owners of any intermediate leasehold interests (within the meaning of Schedule 13) as are so payable by virtue of that Schedule.
(3) A tenant shall not be entitled to require the execution of any such new lease otherwise than on tendering to the landlord, in addition to the amount of any such premium and any other amounts payable by virtue of Schedule 13, the amount so far as ascertained—
(a) of any sums payable by him by way of rent or recoverable from him as rent in respect of the flat up to the date of tender;
(b) of any sums for which at that date the tenant is liable under section 60 in respect of costs incurred by any relevant person (within the meaning of that section); and
(c) of any other sums due and payable by him to any such person under or in respect of the existing lease;
and, if the amount of any such sums is not or may not be fully ascertained, on offering reasonable security for the payment of such amount as may afterwards be found to be payable in respect of them.
(4) To the extent that any amount tendered to the landlord in accordance with subsection (3) is an amount due to a person other than the landlord, that amount shall be payable to that person by the landlord; and that subsection has effect subject to paragraph 7(2) of Schedule 11.

(5) No provision of any lease prohibiting, restricting or otherwise relating to a sub-demise by the tenant under the lease shall have effect with reference to the granting of any lease under this section.
(6) It is hereby declared that nothing in any of the provisions specified in paragraph 1(2) of Schedule 10 (which impose requirements as to consent or consultation or other restrictions in relation to disposals falling within those provisions) applies to the granting of any lease under this section.
(7) For the purposes of subsection (6), paragraph 1(2) of Schedule 10 has effect as if the reference to section 79(2) of the Housing Act 1988 (which is not relevant in the context of subsection (6)) were omitted.

57.— Terms on which new lease is to be granted.
(1) Subject to the provisions of this Chapter (and in particular to the provisions as to rent and duration contained in section 56(1)), the new lease to be granted to a tenant under section 56 shall be a lease on the same terms as those of the existing lease, as they apply on the relevant date, but with such modifications as may be required or appropriate to take account—
(a) of the omission from the new lease of property included in the existing lease but not comprised in the flat;
(b) of alterations made to the property demised since the grant of the existing lease; or
(c) in a case where the existing lease derives (in accordance with section 7(6) as it applies in accordance with section 39(3)) from more than one separate leases, of their combined effect and of the differences (if any) in their terms.
(2) Where during the continuance of the new lease the landlord will be under any obligation for the provision of services, or for repairs, maintenance or insurance—
(a) the new lease may require payments to be made by the tenant (whether as rent or otherwise) in consideration of those matters or in respect of the cost thereof to the landlord; and
(b) (if the terms of the existing lease do not include any provision for the making of any such payments by the tenant or include provision only for the payment of a fixed amount) the terms of the new lease shall make, as from the term date of the existing lease, such provision as may be just—
(i) for the making by the tenant of payments related to the cost from time to time to the landlord, and
(ii) for the tenant's liability to make those payments to be enforceable by [re-entry or otherwise (subject to section 85 of the Tribunals, Courts and Enforcement Act 2007)] [1] in like manner as if it were a liability for payment of rent.
(3) Subject to subsection (4), provision shall be made by the terms of the new lease or by an agreement collateral thereto for the continuance, with any suitable adaptations, of any agreement collateral to the existing lease.
(4) For the purposes of subsections (1) and (3) there shall be excluded from the new lease any term of the existing lease or of any agreement collateral thereto in so far as that term—
(a) provides for or relates to the renewal of the lease,
(b) confers any option to purchase or right of pre-emption in relation to the flat demised by the existing lease, or
(c) provides for the termination of the existing lease before its term date otherwise than in the event of a breach of its terms;
and there shall be made in the terms of the new lease or any agreement collateral thereto such modifications as may be required or appropriate to take account of the exclusion of any such term.
(5) Where the new lease is granted after the term date of the existing lease, then on the grant of the new lease there shall be payable by the tenant to the landlord, as an addition to the rent payable under the existing lease, any amount by which, for the

period since the term date or the relevant date (whichever is the later), the sums payable to the landlord in respect of the flat (after making any necessary apportionment) for the matters referred to in subsection (2) fall short in total of the sums that would have been payable for such matters under the new lease if it had been granted on that date; and section 56(3)(a) shall apply accordingly.
(6) Subsections (1) to (5) shall have effect subject to any agreement between the landlord and tenant as to the terms of the new lease or any agreement collateral thereto; and either of them may require that for the purposes of the new lease any term of the existing lease shall be excluded or modified in so far as—
(a) it is necessary to do so in order to remedy a defect in the existing lease; or
(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 that lease.
(7) The terms of the new lease shall—
(a) make provision in accordance with section 59(3); and
(b) reserve to the person who is for the time being the tenant's immediate landlord the right to obtain possession of the flat in question in accordance with section 61.

ANNEX - RIGHTS OF APPEAL

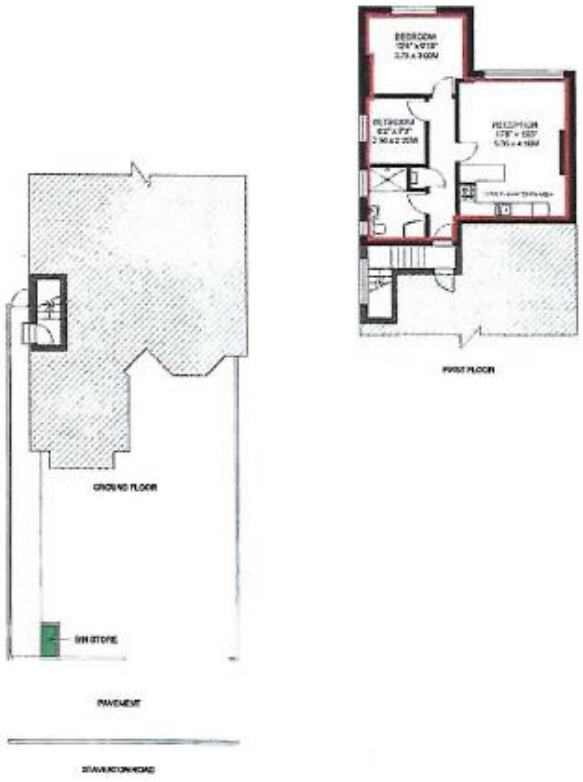
1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

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.

30C STAVERTON ROAD
LONDON NW2 5HL
APPROXIMATE INTERNAL FLOOR AREA
561 SQ.FT / 52.1 SQ.M.



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