FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Reference	:	**CAM/26UD/OLR/2023/0013**
Property	:	**108 River Meads, Stanstead Abbotts, Ware, Hertfordshire, SG128EL**
Applicants	:	**Graham Kenneth Spark**
Respondent	:	**Sinclair Gardens Investments (Kensington) Limited**
Type of Application	:	**For determination of the terms for a new lease pursuant to Leasehold Reform, Housing and Urban Development Act 1993**
Tribunal Members	:	**Judge Shepherd** **Sarah Redmond MRICS**
Date	:	**20th July 2023**

DETERMINATION

1. This was a decision made on the papers without hearing from the parties. Neither party had requested a hearing and in the view of the Tribunal it did not require one.

2. The Application was made by Graham Kenneth Spark ("The Applicant"). He is the leaseholder of premises at 108 River Meads, Stanstead Abbotts, Ware, Hertfordshire, SG128EL ("The premises"). The freeholder of the premises is Sinclair Gardens Investments (Kensington) Limited ("The Respondent").

3. The Applicant seeks a determination of the lease terms in relation to a new lease granted pursuant to the Leasehold Reform Housing and Urban Development Act 1993 ("The Act").The Act gives leaseholders the right to acquire a new lease of premises in substitution for the existing lease for a term expiring 90 years after the term date of the existing lease at a peppercorn rent. The leaseholder pays a premium which compensates the landlord for the loss of the rent for the remaining term. The Act provides the mechanism for obtaining the new lease which need not concern us. Suffice to say that if the parties cannot agree on the premium or the terms of the new lease they can apply to the Tribunal to have the issue resolved. In the present case the agreed summary of issues confirms that the only issue remaining between the parties is the lease term in question, the premium having been agreed.

4. Section 57(6) of the Act allows the landlord or the tenant to require that for the purposes of the new lease any terms of the existing lease shall be excluded or modified in limited circumstances (s.57(6)):

a) Where it is necessary to do so in order to remedy a defect in the existing lease.
b) If 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. The onus is on the person proposing the change to show that there are grounds for deleting or modifying the term in question.

5. In the present case the Applicant seeks to delete terms of the existing lease which state the following:

   Clause 5.8.3

   [The tenant covenants with the landlord] To procure that such assignee at his own expense enters into direct covenants with the Landlord and the Company and each of them in the form of a deed set out in the sixth schedule (but subject to any amendment or variation of it as may reasonably be required by the Landlord or the Company) to perform and observe all the Tenant's covenants and all other provisions during the residue of the term.

6. The sixth schedule of the lease contains the form of deed which includes the following:

   The new Tenant covenants with the landlord and the company that as from the date of the transfer to the new tenant of the lease the new tenant will during the residue of the term pay the yearly rent and the service charge reserved by the lease and observe and perform all of the covenants and conditions on the part of the original tenant contained in the lease.

7. The Applicant says this requirement for a separate deed of covenant is superfluous and will add unnecessary complexity and cost to every sale and purchase of the flat in the future. His basis for arguing that the deed is superfluous is the Landlord and Tenant (Covenants) Act 1995 which on its face imposes the burden of the lease covenants in favour of the landlord and management company on the assignee of the new lease. Therefore, no deed is necessary he says.

8. It has been found that the 1995 Act is a change falling within s.57(6) (b) (above): *Huff v Trustees of the Sloane Stanley Estate (No 2)* Unreported 1997 LVT. Indeed, it is common ground in the present case that the 1995 Act is such a

change but the real issue between the parties is whether it is unreasonable to continue to include the term that the Applicant seeks to delete.

9. The Respondent's opposition to the application stems from concern that on a strict reading of the 1995 Act it does not apply to covenants relating to common parts and in any event it is not unreasonable to include the terms of the new lease without modification.

10. Section 12 of the 1995 Act is the relevant one because it concerns covenants with management companies and the present lease is a tripartite lease. It states:
    (1) This section applies where-
        (a) A person other than the landlord or the tenant ("the third party") is under a covenant of a tenancy liable (as principal) to discharge any function with respect to all or any of the demised premises ("the relevant function"); and
        (b) that liability is not the liability of a guarantor or any other financial liability referable to the performance or otherwise of a covenant of the tenant by another party to it.

11. The Respondent is concerned that s.12 does not apply to covenants with management companies in respect of any function relating to the common parts of the building. This is because the "relevant function" applies to the demised premises and not beyond that.

12. In any event argues the Respondent the retention of the clause is not unreasonable as per s.57(6) (b) of the 1993 Act. Indeed, the Respondent states that the clause gives certainty to the parties.

13. For his part the Applicant accepts that there is no authority on the interpretation of s.12 of the 1995 Act but asks the Tribunal to read the section widely based on two articles neither of which directly address the issue at hand.

Determination

14. The Respondent's approach in this case is correct. The Tribunal ought to be cautious about countenancing changes to the lease which on their face at least remove protection in the event of an assignment. Neither side has pointed to authority on s.12 of the 1995 Act. The Respondent is entitled to be concerned about the restrictive nature of the section. In any event there is sufficient doubt about the section to mean that the retention of the clause is not unreasonable. In practical terms the effect of requiring the deed to be signed is not in any way disproportionate.

15. Accordingly, the application is dismissed.

Judge Shepherd

20th July 2023

ANNEX - RIGHTS OF APPEAL Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.

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 state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers
5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.