

Case Ref: CHI/21UD/LIS/2023/0005

IN THE FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY) (Judge Shepherd and Marina Krisko FRICS)

AND

Claim No.: JooCR098

IN THE COUNTY COURT AT CROYDON BOTH SITTING AT ALFRED PLACE, WC1E 7LR

IN THE MATTER OF Second Floor Flat B, 67 Anerley Road, SE19 2AS (the “Property”)

B E T W E E N:

TAYYABA ASIM

Claimant/Applicant

- and -

NEVID RAJA

Defendant/Respondent

DECISION

1. This is a claim for a lease extension by the Applicant under Chapter II of the Leasehold Reform, Housing, and Urban Development Act 1993. The Respondent contests the claim on the basis of ground rent and service charge arrears. The case has had a tortious route. The matter was started in the County

Court and was transferred to the Tribunal. Unbeknown to the Applicant the County Court became involved again and the case was struck out. The Applicant was forced to issue an application in the County Court to have the previous order set aside. The details of this previous litigation have been kept deliberately vague because it is unimportant to the case that the Tribunal finally heard.

BACKGROUND

2. On 14 December 1998, the Respondent was registered as freehold proprietor of the property known as 67 Anerley Road, Penge, SE19 2AS (the “premises”). The premises contains four flats.
3. By a lease dated 12 September 1985 a term of 99 years was granted of the second floor flat, known as Flat B of the Building (the “flat”) commencing on 24 June 1984 .
4. The previous leaseholder of the flat was Diana Linda Baylis. On an unknown date Nigel Ian Fox was appointed as a trustee to the estate in bankruptcy of Ms Baylis. On an unknown date Nigel Ian Fox sold the Lease to a third party, who subsequently put the Lease up for sale at auction. The Applicant purchased the Lease at auction and was registered as proprietor of the Lease on 8 March 2018. The lease was subject to an AST but no debts.
5. Between 2020 and 2021, after serving the requisite notices, the parties agreed a new extended lease under Chapter II of the 1993 Act. On 15 June 2021, The Respondent provided an engrossment “for approval” by which they offered a premium of £23,000, plus valuation fees of £795+VAT and legal fees of £900+VAT.
6. Accordingly the terms of acquisition (as defined at s.48(7) of the Act) were agreed including the premium, draft lease and costs. There was only one matter outstanding: what sums (if any) were due from the Applicant to the Respondent under s.56(3)(a)?

7. On 22 September 2021, the Applicant sent a letter before action notifying the Respondent that they would apply for an order under s.48 if the lease was not completed. Despite being chased again on 4 October 2021 the Respondent failed to execute the agreed engrossment.
8. The Applicant therefore issued the present Part 8 claim on 5 November 2021. The claim was listed for directions, and by a Consent Order approved by DJ Keating dated 8 November 2022 was transferred to the Tribunal to determine (i) D's claim for historic service charges; (ii) the completion of the Lease; and (iii) costs. Thereafter as already indicated there was a mix up and the Applicant was forced to make an application to set aside an order and revive this case.

The hearing on 29th May 2024

9. At the hearing on 29th May 2024 Mr Campbell on behalf of the Respondent sought permission to forfeit the Applicant's lease on the basis of the contested arrears and other breaches of lease which had not previously figured in this case. He said that the previous leaseholder had given an undertaking as to the arrears.
10. His application was made under Schedule 12 para 6 of Leasehold Reform Housing and Urban Development Act 1993 which reads as follows:

*“Restriction on proceedings to enforce right of re-entry or forfeiture
6 . Where by a notice under section 42 a tenant makes a claim to acquire a new lease of a flat, then during the currency of the claim—*

(a)no proceedings to enforce any right of re-entry or forfeiture terminating the lease of the flat shall be brought in any court without the leave of that court, and

(b)leave shall only be granted if the court is satisfied that the notice was given solely or mainly for the purpose of avoiding the consequences of the breach of the terms of the tenant's lease in respect of which proceedings are proposed to be brought;

but where leave is granted, the notice shall cease to have effect.”

11. Mr Rowan said it was not appropriate to raise these issues at such a late date. The Respondent had served notices under s.146 which were invalid as there had been no determination as to the service charges due or the breach. There was no entitlement to forfeit and there was no evidence of demands being sent to the Applicant. The first the Applicant knew of the argument about the previous arrears was in July 2021 when the Respondent was seeking to avoid the consequences of the lease extension.
12. The Tribunal were not impressed by this last minute attempt to derail the process. The requirements for leave to bring forfeiture proceedings are strict. Leave should only be given when the notice under s.42 was served to avoid the consequences of breaches. Here the Applicant didn't even know about the alleged breaches when the notice was served.
13. Mr Campbell had less to say about the substantive issue of whether the Applicant was responsible for the previous leaseholder's arrears. This is probably because he realised that any further argument was doomed to failure. Mr Rowan was right to say that there was no privity of contract. An assignee of a term of years, who only maintains privity of estate with the lessor and not privity of contract, is not liable for breaches of covenant which took place before the assignment to him (*Grescot v Green* (1700) 91 E.R. 179). This claim relates to service charges from 2016-2017. No demands had been sent since 2018 and no s.20B notices. In these circumstances how could it be right to argue that the Applicant was liable for past debts?
14. Accordingly, it is the determination of this Tribunal that the Applicant is not liable to pay any sums claimed by the Respondent in these proceedings. As for

the lease extension this means that all matters are resolved and there is no reason why the extension should not proceed. The Respondent belatedly sought to reopen the issue of value but this was agreed previously and its not appropriate to revisit it.

15. Mr Rowan was anxious to continue with the strike out application he had made in light of the Respondent's conduct in the litigation. The purpose of this is to seek findings from the Tribunal to support a costs claim under Rule 13 of the Tribunal rules. I indicated at the hearing that I preferred to consider the issue of costs once the substantive determination had been made.
16. The draft order prepared by Mr Rowan was eminently sensible and we approve it as attached to this decision. The Respondent made a number of objections to the draft order none of which held any weight as they were primarily aimed at reopening issues already resolved.

Judge Shepherd

18th July 2024

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.

Case Ref: CHI/21UD/LIS/2023/0005

IN THE FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

AND

Claim No.: JooCR098

IN THE COUNTY COURT AT CROYDON BOTH SITTING AT ALFRED PLACE, WC1E 7LR

IN THE MATTER OF Second Floor Flat B, 67 Anerley Road, SE19 2AS (the “Property”)

B E T W E E N:

TAYYABA ASIM

Claimant/Applicant

- and -

NEVID RAJA

Defendant/Respondent

ORDER

BEFORE Tribunal Judge Shepherd sitting as a District Judge of the County Court under s.5(2)(t) & (u) of the County Courts Act 1984 (the “**Court**”)

AND BEFORE Tribunal Judge Shepherd and Ms Krisko FRICS sitting as a First-tier Tribunal of the Property Chamber (Residential Property) (the “**Tribunal**”)

UPON the Claimant’s application for the acquisition of a new lease of the Property under s.48 of the Leasehold Reform Housing and Urban Development Act 1993 (the “**1993 Act**”)

AND UPON the parties agreeing the terms to the new lease as set out in the engrossment sent on 15 June 2021 (the “**Engrossment**”) save that the Defendant disputed the amount due under s.56(3)(a) of the 1993 Act (the “**Disputed Term**”)

AND UPON the Trial of the matter on 24 & 25 October 2023 (the “**First Hearing**”) and 29 May 2024 (the “**Second Hearing**”)

AND UPON the Defendant’s oral application on 29 May 2024 for leave to commence proceedings for forfeiture under Schedule 12, paragraph 5 of the 1993 Act (the “**Oral Application**”)

AND UPON hearing Counsel for the Claimant and the Defendant in Person at the First Hearing

AND UPON hearing Counsel for the Claimant and Counsel for the Defendant at the Second Hearing

THE COURT HEREBY ORDERS THAT:

1. The Oral Application is refused.
2. Time for permission to appeal the Oral Application is extended to 21 days after the date of this Order.
3. Costs reserved.

AND THE TRIBUNAL HEREBY ORDERS AND DECLARES THAT:

4. The amount due under the Disputed Term is £nil.
5. All other terms of the new lease are as agreed between the parties in the Engrossment.
6. The appropriate period in accordance with s.48(6)(b)(ii) is ‘nil’ period.
7. The Applicant shall make any written submissions in respect of costs under Rule 13 within 21 days of the date of this Order.
8. The Respondent shall make any written submissions in respect of costs under Rule 13 within 14 days of receipt of the Applicant’s written submissions.

9. The Applicant may provide a brief reply to the Respondent's written submissions within 14 days of receipt of the Respondent's written submissions.

AND THE COURT HEREBY ORDERS AND DECLARES THAT:

10. The Claimant is entitled to a new lease of the Property on the terms contained in the Engrossment.
11. The Defendant shall, within 14 days of the date of this order, grant the Claimant a new lease of the Property on the terms referred to in paragraph 10 above.
12. If the Defendant fails to comply with paragraph 11 of this order, the Claimant shall have liberty to apply without notice for an order that the new lease shall be executed by a person nominated by the Court on behalf of the Defendant and that that lease shall be effective to vest a new lease of the Property in the Claimant for the term set out in the new lease and in accordance with the terms of the new lease.
13. The Claimant shall make any written submissions in respect of costs under CPR Part 44 within 21 days of the date of this Order.
14. The Defendant shall make any written submissions in respect of costs under CPR Part 44 within 14 days of receipt of the Claimant's written submissions.
15. The Claimant may provide a brief reply to the Defendant's submissions within 14 days of receipt of the Defendant's written submissions.

Dated this ___18th day of July_____ 20224_