



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

Case Reference : **LON/OOBK/OLR/2013/0497**

Property : **Lower Maisonette, 145A Bravington Road, London W9 3AT (the Property)**

Applicant : **Palani Ketheeswaran**

Representative : **Blatchfords solicitors**

Respondent : **Philip James Wagstaff**

Representative : **Cree Godfrey & Wood solicitors**

Type of Application : **S48 Leasehold Reform, Housing and Urban Development Act 1993 (the Act)**

Tribunal Members : **Tribunal Judge Dutton**

Date and venue of Determination : **15th October 2014 at 10 Alfred Place, London WC1E 7LR**

Date of Decision : **15th October 2014**

DECISION

The tribunal determines that it does not have jurisdiction to entertain a request to reinstate the original application as a result of the Respondent's failure to execute the new lease.

REASONS

BACKGROUND

1. An application under section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") was made by the Applicant on or about 26th February 2013. A hearing was scheduled for 30th and 31st July 2013.
2. I am told that on 22nd July 2013 it was agreed that the existing lease would be varied to include a provision for the Landlord to insure the Property and to take on certain repairing obligation and the premium was agreed at £35,675.00. As the terms of acquisition were considered to be agreed, a joint application was made to vacate the hearing.
3. During the period 23rd July to 21st November 2013 numerous attempts were apparently made by the Applicant's solicitors to complete the lease. An extension of time was sought to the end of November 2013. In January 2014 contact was made with the Respondent's solicitors, Cree Godfrey & Wood, but it seems to no effect.
4. On 7th July 2014 Blatchfords, acting for the Applicant, wrote to the Tribunal asking for the original application to be reinstated. The letter confirms that all terms were agreed between the parties.
5. On 22nd July 2014 the Tribunal wrote to both sets of solicitors raising a concern that the Tribunal did not have jurisdiction to deal with this matter because all terms of acquisition had been agreed and nothing remained in dispute. Cree Godfrey & Wood responded on 11th August 2014 stating that "*We will leave the Tribunal to make such Decision and order as it thinks fit*".
6. On 1st September 2014 directions were issued setting out the Tribunal's concerns as to jurisdiction and inviting submissions. No party requested a hearing and the matter was listed for a paper determination in the week commencing 13th October 2014.

THE LAW

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, a leasehold valuation tribunal 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 a leasehold valuation 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 a leasehold valuation tribunal 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.

FINDINGS.

7. There is no doubt that by July 2013 the terms of acquisition had been agreed. What has happened is that the Respondent's solicitors appear to have ignored entreaties from the Applicant's solicitors to complete.
8. These circumstances are provided for at section 48 (3) and (6). It is quite clear that the enforcement of the lease execution rests with the Court and not with this Tribunal.

9. In those circumstances I find that as the terms of acquisition had been agreed in July 2013 this Tribunal no longer has jurisdiction in this matter. The Applicant will have to consider with his legal advisors the way forward.

Andrew Dutton
Tribunal Judge

15th October 2014