

Tenants' right of first refusal

What's the price under the Landlord and Tenant Act 1987?

The Landlord and Tenant Act 1987 grants tenants of flats the right to apply to buy their landlord's interest when he or she disposes of it. A recent case has given guidance upon the amount that the tenants will be required to pay in order to exercise their rights under the Act.

Facts

8 Alexandra Gardens, Ventnor, Isle of Wight ("the property") is divided into four residential flats, all held on long leases. Some of the leases also have associated rights to park adjacent to the property.

In 2007 the then landlord sold his freehold interest in the property to Mr Philip Perseval. Mr Perseval also bought the basement flat in 8 Alexandra Gardens at around the same time.

There was then a dispute about what happened next. Under the 1987 Act the seller of the property in 2007 should have given the leaseholders the opportunity to buy the freehold on the same terms as Mr Perseval had acquired it. This did not seem to have happened. Mr Perseval claimed that his agents, Landed Property Management Company Limited, had served notices upon the leaseholders in 2007 (once he had acquired the freehold) informing them of their rights under the 1987 Act to buy the freehold. The leaseholders denied receiving such notices. The importance of whether Mr Perseval had served notices was that it would have set the clock running for the time limit within which the leaseholders could apply to buy the freehold. The issue was eventually conceded by Mr Perseval, that is, he acknowledged that the leaseholders had rights under the 1987 Act.

Claiming rights under the LTA 1987

The leaseholders formed a company (8 Alexandra Gardens Freehold Limited) and in 2010 applied to Mr Perseval to buy the freehold of the property. Section 12B of the 1987 Act indicates that, subject to certain exceptions, where leaseholders are exercising their rights they are entitled to acquire their landlord's interest for the same price as he paid for it. Mr Perseval had acknowledged that he bought the freehold in 2007 for £2000 plus nominal legal costs, and this was the figure therefore offered by the leaseholders.

A change in circumstances?

In the meantime, Mr Perseval had taken a number of steps in relation to the property. He had varied the terms of the basement lease (by, amongst other things, increasing the ground payable under it), and had sold it on to new leasehold purchasers. He has also granted a new lease of the parking spaces, for £1, to a company of which he was the sole director (the Freehold Conveyancing Company – "FCC").

Mr Perseval therefore indicated that, by 2010, the terms of purchase fell within the ambit of section 12B(7) of the 1987 Act. This subsection protects a purchaser landlord where the nature of the subject property has changed between when he acquired it, and when the leaseholders exercise their rights under the 1987 Act. It allows for the purchase price payable by the leaseholders to be increased where there has been a change in circumstances (excluding any change in price attributable only to property inflation). Mr Perseval claimed that the effect of the new basement lease and the new parking lease increased the value of his interest to around £132,000.00.

As the value of the interest to be acquired by 8 Alexandra Gardens Limited could not be agreed, the matter was referred to the Leasehold Valuation Tribunal (LVT).

The decision

The LVT found for the leaseholders. It held that the grant of the new parking lease was not a change in circumstances under section 12B(7). The leaseholders were therefore entitled to acquire the parking lease for the value the FCC paid for it, that is, £1. The variation to the basement lease did increase the value of the freehold, but only by an additional £3093.00. Permission for Mr Perseval to appeal the LVT's decision has been refused.

Relevance of the decision

The LTA 1987 is frequently criticised for being poorly drafted and lacking in adequate protections for leaseholders. In this case it appears to have brought about the correct result, and in the process the LVT was able to provide useful guidance on what amounts to a 'change in circumstances' for the purposes of valuing the landlord's interests.

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