

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0053.01/21

In the matter of Flat 4, 27 Clive Street, Cardiff, CF11 7HJ

In the matter of an Application under Section 48(1) Leasehold Reform Housing and Urban Development Act 1993 (“the Act”)

APPLICANTS Victoria Bramfitt
Allen Wright
Thomas Wright

RESPONDENT John Denys Dennis by Stephen Baxter (Trustee in Bankruptcy)

HEARING 9th June 2021

DECISION

The Deed of Surrender and lease is to be in the form attached to this Order.

There be no order as to costs.

1. Background.
2. By an Application dated 23rd September 2020 the Applicant initially sought the Tribunal’s determination as to the premium payable for the lease extension. Negotiations proceeded between the Applicant and the Respondent following the making of the application and agreement was reached upon the premium to be paid.
3. By the time of the Tribunal hearing there were only a small number of matters in issue between the parties which related to the terms of the draft Deed of surrender and lease (“the Deed”).
4. The relevant legislation is contained in the Act as below:
5. **48 Applications where terms in dispute or failure to enter into new lease.**
 - a. Where the landlord has given the tenant—

a counter-notice under section 45 which complies with the requirement set out in subsection (2)(a) of that section, or

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 may, on the application of either the tenant or the landlord, determine the matters in dispute.

6. During the Hearing there was discussion as to the Land Registry requirements to register the Deed.
7. The Tribunal has a very limited jurisdiction in this matter and is unable to order the Land Registry to register the Deed, or accept any documentation in relation to it.
8. That said it appears clear to the Tribunal that the Land Registry must have previously accepted evidence of the bankruptcy of John Denys Dennis because of the entries in the Proprietorship Register of Land Registry title number WA339771.
9. Given the age of the matter and the fact that all parties, including the Land Registry, appear to have destroyed their old files due to the passage of time the Tribunal would respectfully suggest that the Land Registry take this into account when any application is made to register the Deed.

10. The Hearing

11. At the hearing the Applicant Ms Victoria Bramfitt was in attendance and Ms Jacqui Buckley attended in her capacity as Deputy Official Receiver.
12. Before the Tribunal was a letter dated 7th June 2021 (“the Letter”) from TLT Solicitors who acted for the Official Receiver.
13. In the Letter it was agreed that clause 8 of the Deed could be deleted and there were a number of amendments to clause 7.1 of the Deed.
14. It was stated in the Letter that the purpose of the amendments was to “limit the personal liability of the Official Receiver in his individual capacity, not to limit the estate out of which the lease is granted, nor the extent or effectiveness of the landlord covenants which are given in the lease”.
15. Ms Bramfitt stated that Ms Buckley had previously agreed to the removal of clause 7.1 in an email dated 28th May, subject to the Deed being amended to describe the Official Receiver as the Trustee in Bankruptcy of John Denys Dennis at the relevant sections.
16. Ms Bramfitt asked the Tribunal to define John Denys Dennis as the bankrupt in the Deed. The Tribunal is satisfied this is unnecessary and that it is clear on the face of the Deed that the Bankrupt is John Denys Dennis.
17. The Tribunal is satisfied that the proposed amendments in the Deed, attached to the Letter, achieve the purpose set out in paragraph 14 above, are not averse to the Applicants and are reasonable in all the circumstances.
18. At the conclusion of the hearing Ms Bramfitt made an application for wasted costs on the basis that she had been forced to apply for a Tribunal hearing, the Respondent had missed Direction dates, reversed its position in relation to matters and as a result she had been put to considerable time and effort in the matter. She considered the behaviour of the Respondent had been unreasonable in the circumstances. There was no evidence provided to what costs had been incurred by the Applicants other than the application fee.
19. Ms Buckley stated that the matter was complicated and related to a bankruptcy some 27 years ago in 1994 where the files had been destroyed by the Official Receiver. The Directions were missed because it was thought the matter had settled. The Respondent had also spent substantial time on the matter.

20. The Tribunal in Wales has very limited power to award costs against a party to Tribunal proceedings, as set out in paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002. These are: where the application has been dismissed by the Tribunal because it believes the application is (a) frivolous or vexatious or (b) otherwise an abuse of process; or where a person has acted 'frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings'.
21. The Tribunal is satisfied that a) and b) clearly do not apply in this case. On the facts of this matter the only possible applicable criteria would be to argue that the Respondent has acted "unreasonably in connection with the proceedings".
22. The matter was far from straightforward, given the age of the matter, the lost documentation and the issues raised in correspondence between the parties.
23. At the time of the making of the application, the issue between the parties was the premium to be paid. The application was made by the Applicants to determine the premium. The premium was subsequently agreed between the parties. This is common place in lease extension matters.
24. Having carefully considered the documentary and oral evidence before it, the Tribunal is not satisfied that the Respondent has acted unreasonably. The application for costs appeared to be something of an afterthought by the Applicants and no evidence of costs incurred as a result of the Respondent's alleged unreasonable behaviour was provided.

Dated this 10th day of August 2021

Chairman

Deed of surrender and lease

Relating to premises known as Flat 4,
27 Clive Street, Cardiff CL11 7HJ

- (1) John Denys Dennis acting by his Trustee in
Bankruptcy
- (2) [Stephen Baxter as Trustee in Bankruptcy](#)
- (3) Allen Richard Wright and Victoria Jane
Bramfitt and Thomas Henry Wright

Dated 2021

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Land Registry Prescribed Clauses

<p>LR1. Date of lease</p>	<p>2021</p>
<p>LR2. Title number(s)</p>	<p>LR2.1 Landlord's title number(s) WA339771</p> <p>LR2.2 Other title numbers CM370366</p>
<p>LR3. Parties to this lease</p>	<p>Landlord</p> <p>John Denys Dennis acting by his <u>the</u> Trustee in Bankruptcy Stephen Baxter of the Official Receiver's Office PO Box 16655, Birmingham B2 2EP (the "Official Receiver")</p> <p><u>Trustee in Bankruptcy</u></p> <p><u>Stephen Baxter, Official Receiver, of the Official Receiver's Office PO Box 16655, Birmingham B2 2EP</u></p> <p>Tenant</p> <p>Allen Richard Wright and Victoria Jane Bramfitt and Thomas Henry Wright of Flat 4, 27 Clive Street, Cardiff CL11 7HJ</p>
<p>LR4. Property</p>	<p>In the case of a conflict between this clause and the remainder of this lease then, for the purposes of registration, this clause shall prevail.</p> <p>Flat 4, 27 Clive Street, Cardiff CL11 7HJ as more particularly described in the Existing Lease (in the remainder of this Lease referred to as the Premises)</p>
<p>LR5. Prescribed statements etc.</p>	<p>LR5.1 Statements prescribed under rules 179 (dispositions in favour of a charity), 180 (dispositions by a charity) or 196 (leases under the Leasehold Reform, Housing and Urban Development Act 1993) of the Land Registration Rules 2003.</p> <p>This lease is granted pursuant to section 56 of the Leasehold Reform, Housing & Urban Development Act 1993</p> <p>LR5.2 This lease is made under, or by reference to, provisions of:</p> <p>This lease is granted pursuant to section 56 of the Leasehold Reform, Housing & Urban</p>

	Development Act 1993
LR6. Term for which the Property is leased	From and including the date of this lease to and including 28 December 2177 (in the remainder of this lease referred to as the Term)
LR7. Premium	£4,600 (four thousand six hundred pounds) (in the remainder of this lease referred to as the Premium)
LR8. Prohibitions or restrictions on disposing of this lease	This lease contains a provision that prohibits or restricts dispositions.
LR9. Rights of acquisition etc.	LR9.1 Tenant's contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land None LR9.2 Tenant's covenant to (or offer to) surrender this lease None LR9.3 Landlord's contractual rights to acquire this lease None
LR10. Restrictive covenants given in this lease by the Landlord in respect of land other than the Property	None
LR11. Easements	LR11.1 Easements granted by this lease for the benefit of the Property The easements specified in the third schedule of the Existing Lease LR11.2 Easements granted or reserved by this lease over the Property for the benefit of other property The easements specified in the third schedule of the Existing Lease
LR12. Estate rentcharge burdening the Property	None
LR13. Application for standard form of restriction	None
LR14. Declaration of trust where there	The Tenant is more than one person. They are

is more than one person comprising the Tenant	to hold the Property on trust for themselves as beneficial joint tenants
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This Deed is made the _____ day of _____ 2021

Between

- (1) **John Denys Dennis acting by ~~his~~ [the Trustee in Bankruptcy Stephen Baxter of the Official Receiver's Office](#) (the "Landlord")**
- (2) [Stephen Baxter, Official Receiver, of the Official Receiver's Office \(the "Trustee in Bankruptcy"\)](#)
- (3) **Allen Richard Wright and Victoria Jane Bramfitt and Thomas Henry Wright** (the "Tenant")

Recitals

- (4) This Deed is supplemental to a lease (hereinafter called the "Existing Lease") dated 19 July 1989 and made between Sectorstart Residents Management Limited (1) and John Denys Dennis (2) and Lance Gareth Gay (3) as varied by a deed of variation dated 3 July 2007 of the Premises which were demised to the lessee for a term of 99 years less 3 days from 1 January 1989 at the rent and subject to the covenants therein contained.
 - (A) The unexpired residue of the term granted by the Existing Lease is now vested in the Tenant.
 - (B) The Tenant in exercise of the rights conferred on it by Chapter II of Part 1 of the Leasehold Reform, Housing & Urban Development Act 1993 (as amended) (the "Act") has required the Landlord to grant to it a new lease of the Premises for an extended term under the Act in substitution for the Existing Lease and the Landlord has agreed to do so in a manner and upon the terms hereinafter appearing.
 - (C) This lease is granted pursuant to section 56 of the Act and is a new Lease in substitution for the Existing Lease.

Operative provisions

1 Interpretation

1.1 In this deed, unless the context otherwise requires:

- 1.1.1 any reference to a statute or a provision of a statute shall be construed as a reference to that statute or provisions as amended, re-enacted or extended at the relevant time;

- 1.1.2 any reference to the singular shall include the plural and vice versa and any reference to the masculine gender shall include the feminine and neuter and vice versa;
- 1.1.3 the table of contents and headings are inserted for ease of reference only and shall not affect the construction of this agreement;
- 1.1.4 where any party comprises two or more persons, any obligations of that party in, under or arising from this agreement is undertaken by or binding upon such two or more persons jointly and severally;
- 1.1.5 references to any party to this agreement include its successors-in-title and permitted assignees;
- 1.1.6 references to numbered clauses, schedules or paragraphs are references to the relevant clauses or schedules in this agreement or the relevant paragraph of this agreement respectively;

2 Grant

In consideration of the payment of the Premium (the receipt of which the Landlord hereby acknowledges) the Landlord hereby demises to the Tenant with limited title guarantee the Premises to hold the same unto the Tenant for the Term at a rent of one peppercorn (if demanded) in substitution for the Existing Lease and otherwise on the terms and subject to the conditions set out in this Lease.

3 Fixtures

The Landlord agrees that the tenant's fixtures in or upon the Premises shall not vest in the Landlord on the date of this Lease and the Tenant shall have the same rights in the said fixtures as if they had been attached to the Premises following the date hereof.

4 Terms

This Lease is made upon the same terms and subject to and with the benefit of the same rights reservations covenants conditions stipulations and provisos as contained in the Existing Lease save as to the Term and the rent herein reserved and incorporating the provisions of the Schedule hereto to the extent that this Lease shall be construed and take effect as if such rights reservations covenants conditions stipulations and provisos were repeated in this Lease in full with such variations as aforesaid and with such other modifications only as are necessary to make them applicable to this demise.

5 Covenants

The Landlord and the Tenant hereby mutually covenant that they will respectively perform and observe the several covenants conditions stipulations and provisos contained in the Existing Lease as if they were repeated in full in this Lease as specified in clause 5 and the new provisions set out in the Schedule hereto.

6 Declaration

The Landlord and the Tenant declare that this lease shall be a new lease for the purposes of the Landlord and Tenant (Covenants) Act 1995.

7 ~~Official Receiver~~ Trustee in Bankruptcy

- 7.1 The ~~Official Receiver~~ Trustee in Bankruptcy as a party to this lease in his personal capacity shall not, nor shall any of his partners, firm, employer or employees ~~shall~~ incur any ~~no~~ personal liability whatsoever under or by virtue of this lease nor in relation to any related matter or claim however whenever and wherever arising and whether the claim is formulated in contract and/or tort or by reference to any other remedy or right in whatever jurisdiction or forum and, without prejudice to the generality of the foregoing, in respect of any of the obligations undertaken by the Landlord or in respect of any failure on the part of the Landlord to observe, perform or comply with any such obligations or in relation to any associated arrangements or negotiations ~~and the Official Receiver shall have no further obligation or liability whatsoever under this lease after the date of this lease.~~
- 7.2 The ~~Official Receiver~~ Trustee in Bankruptcy certifies that the interest of the Bankrupt is comprised in the estate in bankruptcy of the said Bankrupt divisible amongst his/her creditors

Registration

~~The Tenant hereby agrees to forthwith make application to the Land Registry for registration of this Lease and shall obtain all consents necessary for the registration to be effected and the Tenant shall apply to the Chief Land Registrar to make the necessary entries and cancellations in order to give effect to the surrender and the re-grant herein contained.~~

In witness whereof this Lease has been executed by the parties as a Deed on the date first before appearing

Schedule

New provisions

The Landlord and Tenant hereby agree as follows:-

1. The Landlord may:-

1.2.1 at any time during the period of 12 months ending with the term date of the Existing Lease or

1.2.2 at any time during the period of 5 years ending with the term date of this lease

apply to the Court under section 61 of the Act for an order for possession of the Premises on the ground that for the purpose of redevelopment it intends to demolish or reconstruct or carry out substantial works of construction on the whole of a substantial part of any building containing the Premises and that it could not reasonably do so without obtaining possession of the Premises and the provisions of that section and of Schedule 14 to the Act shall apply accordingly.

2. No long lease (as defined in section 7 of the Act) granted immediately or derivatively by way of sub-lease shall confer on the sub-tenant (as against the Landlord) any right to acquire a new lease under Chapter II of Part I of the Act.

Executed as a Deed _____)
by the Landlord acting by _____) ~~as the~~
Trustee in Bankruptcy _____) in the
presence of: _____)

Witness signature:

Witness name:

Witness address:

Executed as a Deed _____)
by Stephen Baxter _____)
as Trustee in Bankruptcy _____)
without personal liability _____) in
the presence of: _____)

Witness signature:

Witness name:

Witness address:

Executed as a deed by
Allen Richard Wright in
the presence of:

Witness signature

Witness name

Witness address

Executed as a deed by

Victoria Jane Bramfitt

in the presence of:

Witness Signature

Witness Name

Witness address

Executed as a deed by

Thomas Henry Wright

in the presence of:

Witness Signature

Witness Name

Witness address