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Leasehold Reform, Housing and Urban Development Act 1993

1993 CHAPTER 28

PART I

LANDLORD AND TENANT

CHAPTER II

INDIVIDUAL RIGHT OF TENANT OF FLAT TO ACQUIRE NEW LEASE

VALID FROM 01/11/1993

Applications to court or leasehold valuation tribunal

46 Proceedings relating to validity of tenant's notice.

(1) Where—

- (a) the landlord has given the tenant a counter-notice under section 45 which (whether it complies with the requirement set out in subsection (2)(b) or (c) of that section) contains such a statement as is mentioned in subsection (2) (b) of that section, and
- (b) the court is satisfied, on an application made by the landlord, that on the relevant date the tenant had no right under this Chapter to acquire a new lease of his flat,

the court shall by order make a declaration to that effect.

(2) Any application for an order under subsection (1) must be made not later than the end of the period of two months beginning with the date of the giving of the counter-notice to the tenant; and if, in a case falling within paragraph (a) of that subsection, either—

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- (a) no application for such an order is made by the landlord within that period, or
 - (b) such an application is so made but is subsequently withdrawn,
- section 49 shall apply as if the landlord had not given the counter-notice.
- (3) If on any such application the court makes such a declaration as is mentioned in subsection (1), the tenant's notice shall cease to have effect on the order becoming final.
- (4) If, however, any such application is dismissed by the court, then (subject to subsection (5)) the court shall make an order—
- (a) declaring that the landlord's counter-notice shall be of no effect, and
 - (b) requiring the landlord to give a further counter-notice to the tenant by such date as is specified in the order.
- (5) Subsection (4) shall not apply if—
- (a) the counter-notice complies with the requirement set out in section 45(2)(c), and
 - (b) either—
 - (i) an application for an order under section 47(1) is pending, or
 - (ii) the period specified in section 47(3) as the period for the making of such an application has not expired.
- (6) Subsection (3) of section 45 shall apply to any further counter-notice required to be given by the landlord under subsection (4) above as if it were a counter-notice under that section complying with the requirement set out in subsection (2)(a) of that section.

47 Application to defeat tenant's claim where landlord intends to redevelop.

- (1) Where the landlord has given the tenant a counter-notice under section 45 which complies with the requirement set out in subsection (2)(c) of that section, the court may, on the application of the landlord, by order declare that the right to acquire a new lease shall not be exercisable by the tenant by reason of the landlord's intention to redevelop any premises in which the tenant's flat is contained; and on such an order becoming final the tenant's notice shall cease to have effect.
- (2) The court shall not make an order under subsection (1) unless it is satisfied—
- (a) that the tenant's lease of his flat is due to terminate within the period of five years beginning with the relevant date; and
 - (b) that for the purposes of redevelopment the landlord intends, once the lease has so terminated—
 - (i) to demolish or reconstruct, or
 - (ii) to carry out substantial works of construction on, the whole or a substantial part of any premises in which the flat is contained; and
 - (c) that he could not reasonably do so without obtaining possession of the flat.
- (3) Any application for an order under subsection (1) must be made within the period of two months beginning with the date of the giving of the counter-notice to the tenant; but, where the counter-notice is one falling within section 46(1)(a), such an application shall not be proceeded with until such time (if any) as any order dismissing an application under section 46(1) becomes final.

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- (4) Where an application for an order under subsection (1) is dismissed by the court, the court shall make an order—
- (a) declaring that the landlord’s counter-notice shall be of no effect, and
 - (b) requiring the landlord to give a further counter-notice to the tenant by such date as is specified in the order.
- (5) Where—
- (a) the landlord has given such a counter-notice as is mentioned in subsection (1), but
 - (b) either—
 - (i) no application for an order under that subsection is made within the period referred to in subsection (3), or
 - (ii) such an application is so made but is subsequently withdrawn,
 then (subject to subsection (7)), the landlord shall give a further counter-notice to the tenant within the period of two months beginning with the appropriate date.
- (6) In subsection (5) “the appropriate date” means—
- (a) if subsection (5)(b)(i) applies, the date immediately following the end of the period referred to in subsection (3); and
 - (b) if subsection (5)(b)(ii) applies, the date of withdrawal of the application.
- (7) Subsection (5) shall not apply if any application has been made by the landlord for an order under section 46(1).
- (8) Subsection (3) of section 45 shall apply to any further counter-notice required to be given by the landlord under subsection (4) or (5) above as if it were a counter-notice under that section complying with the requirement set out in subsection (2) (a) of that section.

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),

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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.

49 Applications where landlord fails to give counter-notice or further counter-notice.

- (1) Where the tenant's notice has been given in accordance with section 42 but—
 - (a) the landlord has failed to give the tenant a counter-notice in accordance with section 45(1), or
 - (b) if required to give a further counter-notice to the tenant by or by virtue of section 46(4) or section 47(4) or (5), the landlord has failed to comply with that requirement,

the court may, on the application of the tenant, make an order determining, in accordance with the proposals contained in the tenant's notice, the terms of acquisition.
- (2) The court shall not make such an order on an application made by virtue of paragraph (a) of subsection (1) unless it is satisfied—
 - (a) that on the relevant date the tenant had the right to acquire a new lease of his flat; and
 - (b) if applicable, that the requirements of Part I of Schedule 11 were complied with as respects the giving of copies of the tenant's notice.
- (3) Any application for an order under subsection (1) must be made not later than the end of the period of six months beginning with the date by which the counter-notice or further counter-notice referred to in that subsection was required to be given.

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- (4) Where—
- (a) the terms of acquisition have been determined by an order of the court under this section, but
 - (b) 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 (7),
- 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.
- (5) 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 (7).
- (6) Any application for an order under subsection (4) 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 (7).
- (7) For the purposes of this section the appropriate period is—
- (a) the period of two months beginning with the date when the order of the court under subsection (1) becomes final, or
 - (b) such other period as may have been fixed by the court when making that order.

50 Applications where landlord cannot be found.

- (1) Where—
- (a) a qualifying tenant of a flat desires to make a claim to exercise the right to acquire a new lease of his flat, but
 - (b) the landlord cannot be found or his identity cannot be ascertained,
- the court may, on the application of the tenant, make a vesting order under this subsection.
- (2) Where—
- (a) a qualifying tenant of a flat desires to make such a claim as is mentioned in subsection (1), and
 - (b) paragraph (b) of that subsection does not apply, but
 - (c) a copy of a notice of that claim cannot be given in accordance with Part I of Schedule 11 to any person to whom it would otherwise be required to be so given because that person cannot be found or his identity cannot be ascertained,
- the court may, on the application of the tenant, make an order dispensing with the need to give a copy of such a notice to that person.
- (3) The court shall not make an order on any application under subsection (1) or (2) unless it is satisfied—
- (a) that on the date of the making of the application the tenant had the right to acquire a new lease of his flat; and
 - (b) that on that date he would not have been precluded by any provision of this Chapter from giving a valid notice under section 42 with respect to his flat.
- (4) Before making any such order the court may require the tenant to take such further steps by way of advertisement or otherwise as the court thinks proper for the purpose

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of tracing the person in question; and if, after an application is made for a vesting order under subsection (1) and before any lease is executed in pursuance of the application, the landlord is traced, then no further proceedings shall be taken with a view to a lease being so executed, but (subject to subsection (5))—

- (a) the rights and obligations of all parties shall be determined as if the tenant had, at the date of the application, duly given notice under section 42 of his claim to exercise the right to acquire a new lease of his flat; and
- (b) the court may give such directions as the court thinks fit as to the steps to be taken for giving effect to those rights and obligations, including directions modifying or dispensing with any of the requirements of this Chapter or of regulations made under this Part.

(5) An application for a vesting order under subsection (1) may be withdrawn at any time before execution of a lease under section 51(3) and, after it is withdrawn, subsection (4)(a) above shall not apply; but where any step is taken (whether by the landlord or the tenant) for the purpose of giving effect to subsection (4)(a) in the case of any application, the application shall not afterwards be withdrawn except—

- (a) with the consent of the landlord, or
- (b) by leave of the court,

and the court shall not give leave unless it appears to the court just to do so by reason of matters coming to the knowledge of the tenant in consequence of the tracing of the landlord.

(6) Where an order has been made under subsection (2) dispensing with the need to give a copy of a notice under section 42 to a particular person with respect to any flat, then if—

- (a) a notice is subsequently given under that section with respect to that flat, and
- (b) in reliance on the order, a copy of the notice is not to be given to that person, the notice must contain a statement of the effect of the order.

(7) Where a notice under section 42 contains such a statement in accordance with subsection (6) above, then in determining for the purposes of any provision of this Chapter whether the requirements of Part I of Schedule 11 have been complied with in relation to the notice, those requirements shall be deemed to have been complied with so far as relating to the giving of a copy of the notice to the person referred to in subsection (6) above.

51 Supplementary provisions relating to vesting orders under section 50(1).

(1) A vesting order under section 50(1) is an order providing for the surrender of the tenant's lease of his flat and for the granting to him of a new lease of it on such terms as may be determined by a leasehold valuation tribunal to be appropriate with a view to the lease being granted to him in like manner (so far as the circumstances permit) as if he had, at the date of his application, given notice under section 42 of his claim to exercise the right to acquire a new lease of his flat.

(2) If a leasehold valuation tribunal so determines in the case of a vesting order under section 50(1), the order shall have effect in relation to property which is less extensive than that specified in the application on which the order was made.

(3) Where any lease is to be granted to a tenant by virtue of a vesting order under section 50(1), then on his paying into court the appropriate sum there shall be executed by such person as the court may designate a lease which—

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- (a) is in a form approved by a leasehold valuation tribunal, and
 - (b) contains such provisions as may be so approved for the purpose of giving effect so far as possible to section 56(1) and section 57 (as that section applies in accordance with subsections (7) and (8) below);and that lease shall be effective to vest in the person to whom it is granted the property expressed to be demised by it, subject to and in accordance with the terms of the lease.
- (4) In connection with the determination by a leasehold valuation tribunal of any question as to the property to be demised by any such lease, or as to the rights with or subject to which it is to be demised, it shall be assumed (unless the contrary is shown) that the landlord has no interest in property other than the property to be demised and, for the purpose of excepting them from the lease, any minerals underlying that property.
- (5) The appropriate sum to be paid into court in accordance with subsection (3) is the aggregate of—
 - (a) such amount as may be determined by a leasehold valuation tribunal to be the premium which is payable under Schedule 13 in respect of the grant of the new lease;
 - (b) such other amount or amounts (if any) as may be determined by such a tribunal to be payable by virtue of that Schedule in connection with the grant of that lease; and
 - (c) any amounts or estimated amounts determined by such a tribunal as being, at the time of execution of that lease, due to the landlord from the tenant (whether due under or in respect of the tenant's lease of his flat or under or in respect of any agreement collateral thereto).
- (6) Where any lease is granted to a person in accordance with this section, the payment into court of the appropriate sum shall be taken to have satisfied any claims against the tenant, his personal representatives or assigns in respect of the premium and any other amounts payable as mentioned in subsection (5)(a) and (b).
- (7) Subject to subsection (8), the following provisions, namely—
 - (a) sections 57 to 59, and
 - (b) section 61 and Schedule 14,shall, so far as capable of applying to a lease granted in accordance with this section, apply to such a lease as they apply to a lease granted under section 56; and subsections (6) and (7) of that section shall apply in relation to a lease granted in accordance with this section as they apply in relation to a lease granted under that section.
- (8) In its application to a lease granted in accordance with this section—
 - (a) section 57 shall have effect as if—
 - (i) any reference to the relevant date were a reference to the date of the application under section 50(1) in pursuance of which the vesting order under that provision was made, and
 - (ii) in subsection (5) the reference to section 56(3)(a) were a reference to subsection (5)(c) above; and
 - (b) section 58 shall have effect as if—
 - (i) in subsection (3) the second reference to the landlord were a reference to the person designated under subsection (3) above, and

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(ii) subsections (6)(a) and (7) were omitted.

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