(135)

LVT 96/5

LEASEHOLD VALUATION TRIBUNAL
OF THE
MIDLAND RENT ASSESSMENT PANEL

Our Ref: M/LRC 263

DECISION OF LEASEHOLD VALUATION TRIBUNAL

ON AN APPLICATION UNDER SECTION 21(1) (ba)
OF THE LEASEHOLD REFORM ACT 1967

Applicant:	Mrs C A Pegg
Respondent:	Speedwell Estates Ltd
Re:	2 Park Avenue, Oldbury, Warley, West Midlands, B68
Date of Tenants Notice:	10 April 2001
Application to Tribunal dated:	23 April 2001
Heard at:	The Panel Office
On:	Wednesday 3 April 2002
APPEARANCES: For the Applicant:	Mr G Ritchie of Margetts & Ritchie
For the Respondent:	

Members of the Leasehold Valuation Tribunal:

Mr J R Bettinson LLD (Chairman)
Mr S Berg
Mrs N Jukes

Date of Tribunals decision:
29 APR 2002

M/LRC.263

MIDLAND LEASEHOLD VALUATION TRIBUNAL
Re 2 PARK AVENUE OLDBURY WEST MIDLANDS

APPLICATION

This is a reference to the Tribunal by the Tenant, Mrs. C.A.Pegg, to determine the reasonable costs of the Landlord, Speedwell Estates Limited, payable by her in pursuance of the enfranchisement of the above property in accordance with Section 9(4) Leasehold Reform Act 1967.

HEARING

Mr. Graham Ritchie of Messrs. Margetts & Ritchie Solicitors appeared for the Tenant. The Landlord was not represented but Mr. D.W.S.Fell had filed for the Tribunal's consideration a Statement with certain annexures.

Mr. Ritchie spoke to a written paper which he tabled setting out the statutory provisions and outlining the history of the case. He indicated that a price for the freehold interest has been agreed and a transfer completed. The costs associated with that conveyancing has also been agreed and paid. The Tribunal had to consider only the further costs claimed by the Landlord namely those relating to the investigation of his client's right to enfranchise (Section 9(4)(a)) verifying the title (9(4)(c)) and any valuation (9(4)(e)).

The case had departed from the normal course there having been two Notices the first dated the 27th July 2000 and the second dated the 24th April 2001. The subsequent course of events can perhaps be summarised.

On receipt of the first Notice, Mr. Fell had required evidence of title and a Statutory Declaration as to occupancy. When these had been furnished, he had queried the title and rejected the Declaration as "completely useless". No Counter Notice had been served within the two month period but after an application had been made to the Tribunal a late Notice had been given not admitting the Tenant's right to enfranchise on the grounds of the invalidity of the Notice and the inadequacy of the Declaration. The Landlord then issued County Court proceedings and the Tenant had conceded the invalidity of the Notice only.

The second Notice was then served and a request for evidence of the Tenant's title and for a Statutory Declaration were repeated and met.

An application was then made to this Tribunal to determine the price and a hearing date set. However, this was adjourned at the request of Mr. Arnold Shepherd of Messrs. Bigwoods, Valuers as he had just been instructed in the matter. In the event, a price was agreed and no further hearing on that aspect was required.

The Landlord then submitted claims totalling £460 in respect of the first Notice stage and £448.75 in respect of the second Notice stage. The former claim was made up of £210, Mr. Fell's own costs of dealing with the application, and £250 a fee paid to

Fell Estates Limited, an associated company, for a valuation of the freehold interest made by Mr.Martin Fell. Although there is conflicting authority as to "in house" valuation Mr. Ritchie conceded for the present case that such a valuation fell within the definition of reasonable costs. However, he questioned why Mr. Fell, an expert on leasehold enfranchisement and frequently dealing with applications, incurred needless subsequent expense when he had clearly determined to reject the Notice on the grounds of invalidity – see the first entry in his "Time and Costing Sheet Item" "Receiving and Inspecting LRA Notice £35"

Mr. Ritchie claimed that Mr. Fell had run up subsequent costs unreasonably and that these should be disallowed. So far as the costs for the earlier work was concerned, he felt a sum of £20 was sufficient – and was more than covered by the deposit of £25 that had been paid.

It followed that the valuation fee should not have been incurred and in any event Mr. Ritchie questioned what form of valuation had taken place. His client had not been approached or given Mr. Martin Fell access to the property. He also found it strange that Mr, Dennis Fell claimed to have paid the fee but could only produce an unreceipted invoice faxed to him as recently as this 22nd March.

So far as the second Notice was concerned, Mr.Ritchie accepted that costs falling within Section 9(4)(a) and (c) had been incurred but questioned whether it had been justifiable to require the obtaining of a second set of Land Registry Office Copies when the earlier set had identified his client's proprietorship and, if an assignment had taken place since, notice of the assignment would have been required to be given to the Landlord. He felt that a total of £60 for these costs was reasonable.

The claim to the second valuation fee of £250 paid to Messrs. Bigwoods fell outside his client's responsibility since, as Mr.Shepherd's application for an adjournment confirmed, the valuation had only been undertaken after the application to the Tribunal had been made – see Naiva –v- Covent Garden Group Limited (1994) EGCS 174(CA)

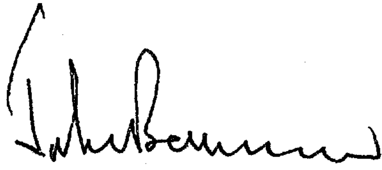
Mr. Fell's Statement set out the stages in the matter at which he had been involved and itemised the costs attributable to each although the total was incorrectly stated as £495 in respect of the first Notice. He stressed that the costs he had claimed were only those given by the Lands Tribunal in Cressingham Properties Limited re 359 Highters Heath Lane (LRA/25/1998). Costs had risen considerably in the last four years but he had not increased his costs in that time.

DECISION

We accept Mr.Ritchie's view that in connection with the first Notice Mr. Fell appeared to have undertaken work – including the commissioning of a valuation – when he had already, and justifiably, concluded that the Notice was invalid. We do not however accept Mr. Ritchie's view as to the amount and we award £50. Clearly no valuation need have been commissioned in such circumstances.

So far as the second Notice is concerned where further stages were appropriate, again we do not accept Mr. Ritchie's suggestions as to what is a reasonable amount and award £100. It is however clear that Messrs. Bigwoods fee (which included negotiating and agreeing a price) was in respect of work undertaken after the application to this Tribunal had been made and falls outside the scope of Section 9(4).

Accordingly we determine the Landlord's reasonable costs for the purpose of this application, and payable by the Tenant, at £150. plus VAT if applicable



JOHN BETTINSON
Chairman

April 2002