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Reference: LON/LVT/1839/04

LEASEHOLD VALUATION TRIBUNAL

LEASEHOLD REFORM ACT 1967 SECTION 21

HEARING ON: TUESDAY 13TH SEPTEMBER 2005

PREMISES: 35 HALESWORTH ROAD, LEWISHAM SE13

TRIBUNAL MEMBERS: Mr J M Deane LLB MPhil
Mrs H C Bowers BSc (Econ) MSc MRICS
Mr P A Copland BSc FRICS

APPLICANT: Enid May Fairman

Represented by: Thackray Williams

COUNSEL: Mr Michael Buckpitt – FMD

VALUATION: Mr Richard Inniss – BSc FRICS FCI Arb

RESPONDENT: Ronald Judah Collins

COUNSEL: Mr S. Parrish – Acting on Behalf of Mr Collins (on application for
adjournment)

Clerk: Hitesh Darjee (Loveth Okapa)

OBSERVATION: Mr M Ward
Mr R. G. Ditchfield

REFERENCE LON/LVT/1839/04

LEASEHOLD VALUATION TRIBUNAL
35, HALESWOTH ROAD, LEWISHAM, SE13
BETWEEN END MAY FAIRMAN ANDRONALD JUDAH COLLINS

THE TRIBUNAL'S DECISION

BACKGROUND

The Applicant Enid May Fairman is lessee of a leasehold house, 35, Halesworth Road, Lewisham, SE13 held under a lease dated 28th March 1898 being for a term of 99 years from 25th March 1897 at a ground rent of £7 10s od. The Respondent is the freeholder. On 16th May 2002 the Applicant gave notice of her claim to acquire the freehold under the terms of the Leasehold Reform Act 1967. The Respondent's notice in reply stated that the claim was not admitted on the grounds that the notice was out of time and that the property was required as a residence for the Respondent's son.

On 16th December 2004 the Applicant applied to the Tribunal for a determination of the price payable under Section 9 of the Leasehold Reform Act 1967 for the house. A statement of agreed facts and areas in dispute was signed by Mr R. J. Inniss BSc FRICS FCI Arb on behalf of the Applicant on 11th July 2005 and by Mr P. K. Soloman BSc MSc (East Man) FRICS FCI Arb on behalf of the Respondent on 23rd August 2005.

The matters agreed included the following:-

The general description, site area, details of accommodation, terms of lease, valuation date (16th May 2002) yield (6%), proportion of "standing house" value in relation to reversionary value (40%), "standing house" value (£360,000), modern ground rent (£8,640 p.a) and valuation if based on a modern ground rent (£155,166).

The matters not agreed included the following:-

The Respondents' contention that the valuation should be based on the assumption that the Respondent had an assured tenancy.

The price to be paid on the assumption of an assured tenancy.

A hearing took place on 13th September 2005 at 1.30 pm at which the Applicant was represented by Mr M. Buckpitt of Counsel and the Respondent appeared in person. The Tribunal had agreed to a short adjournment following a request by the Applicant who was represented on the application for an adjournment by Mr Parrish of Counsel.

THE APPLICANT'S SUBMISSIONS

Mr Buckpitt contended that on the expiration of the term granted by the lease the tenancy continued under the provisions of Part 1 of the Landlord and Tenant Act 1954. The conditions for the tenancy to continue, namely that the premises were occupied as a residence and the tenancy was a long tenancy at a low rent, applied to the subject property. The continuation tenancy which arose on the expiry of the term of the lease was on the same terms, including rent, and continued until determined by notice in prescribed form under the provisions of Section 3(11) of the Landlord and Tenant Act 1954. No such notice had been served. There was no authority for the suggestion that an assured tenancy would arise in these circumstances.

S 9(11) of the Leasehold Reform Act 1967 sets out the basis of valuation and the Act made no mention of an assumed assured tenancy.

Mr Inniss who attended the hearing, agreed that there was no justification for valuation to be based other than on the open market value of the house and confirmed his opinion that the correct price to be paid was £155,166.

THE RESPONDENT'S SUBMISSIONS

Mr Collins and Mr Soloman (who did not attend the hearing) argued that there was some doubt as to the basis of valuation since the tenant's notice was served after the lease had expired. Mr Soloman and Mr Collins considered that in effect that the valuation should take into account the market rent for an assured tenancy from the expiry of the lease until the acquisition of the freehold. Mr Soloman had proposed a figure of £240,000 should the property be valued on this basis.

DECISION

Following the order of District Judge Wilkinson in the Bromley County Court on 7th November 2003 that the Applicant was entitled to acquire the freehold it was for the Leasehold Valuation Tribunal to determine the price payable. The parties had agreed to the figure of £155,165 and the sole issue was whether this should be adjusted to take into account the Respondent's contention that an assured tenancy arose on the expiration of the term of the lease.

Section 3(2A) of the Landlord and Tenant Act 1954 states that a continuation tenancy "shall continue at the same rent and in other respects on the same terms as before the term date". There is no authority for the imposition of any variation in the terms in the absence of a landlord notice determining the tenancy which in any event would give rise to a statutory tenancy.

The Tribunal accordingly determined the price to be paid will be £155, 166. The calculation is set out in the Appendix.

Julian Dew CHAIRMAN
10-11-05

Assessment of price to be paid for freehold interest in accordance with Section 9(1) of the Leasehold Reform Act 1967 as amended.

Lease expired. Nominal ground rent

Review to Modern Ground Rent

Standing house value	£360,000	
Proportion as site value	@ 40%	
	£144,000	
Rental	@ 6%	
	£8,640	
Y.P. for 50 years @ 6%	<u>15.76</u>	136,166
Reversion to	£350,000	
P.V. on £150 years @ 6%	<u>0.05429</u>	<u>19,000</u>
Price to be paid		£155,166