(1128)

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

EASTERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Property : **5 Canterbury Close, Luton**

Applicant : **Leigh William Manning**

Respondents : **Louis Chesner and Howard Michael Chesner**

Case Number : **CAM/00KA/OLR/2005/0035**

Tribunal Members : **D S Brown FRICS MCIArb (Chair)**
B M Edgington

DECISION

on the preliminary issue of jurisdiction

The Decision

1. **The Tribunal determines that it has no jurisdiction in this case for the reasons set out below.**

The Background

2. The Applicant is the tenant of the subject premises under a lease dated 11th October 1967.

3. On 10th May 2005, the Applicant served on the Respondents a Notice under s.42 of the Leasehold Reform, Housing and Urban Development Act 1993 claiming a new lease of the property.

4. On 15th July 2005, the Respondents served on the Applicant a Counter-Notice which included a statement that "the landlords do not admit that the applicant on the relevant date had the right to acquire a new lease of the Flat". The Respondents did not specify any reasons why they did not admit the applicant's right.

5. Other issues were in dispute between the parties and on 28th October 2005 the Applicant applied to the Leasehold Valuation Tribunal. The Application stated, under the heading "Terms which are in dispute":-

The Applicant is entitled to the residue of the existing lease and a new lease of a further 90 years
The Applicant is entitled to a new lease at a peppercorn rent.

It also indicated that the price was in dispute.

6. The case Officer wrote to the parties indicating that on a preliminary examination of the papers it appeared that the Tribunal has no jurisdiction, firstly because the counter-notice did not specify why the landlords do not admit that the Applicant has a right to a new lease and secondly because the counter-notice did not contain a counter proposal in respect of the premium. It subsequently appears that the counter-notice was served with a copy of the proposed new lease in which a premium is specified.

7. Howard Chesner responded that he did not see how and why the preliminary conclusion had been reached and asked for a preliminary hearing. Taylor Walton, solicitors for the Applicant, subsequently wrote to the Panel stating that the Applicant and the Respondents "are of one mind i.e. that the Leasehold Valuation Tribunal does have jurisdiction in this particular matter", pointing out that the parties are anxious to avoid unnecessary costs of a preliminary hearing and stating that both parties "appear to be consenting to the jurisdiction of the LVT." They asked for reconsideration of the need for a preliminary hearing.

8. The Vice President considered that the matter remained unresolved and indicated to the parties that the issue of jurisdiction could probably be determined without a hearing. The Tribunal subsequently resolved to proceed with determination of the jurisdiction issue without a hearing, unless either party requested to be heard. On 19th December 2005 Directions were issued, providing an opportunity for the parties to make representations and giving notice that a determination would be made after 31st January 2006. No representations were made but a trial bundle was provided, containing copies of the current lease, the proposed lease, the Notice of Claim and the Counter-Notice. The Tribunal has made its determination on the basis of these documents and has taken into account observations and comments made by the parties in previous correspondence.

The Law

9. S.45(2) of the Leasehold Reform, Housing and Urban Development Act 1993 prescribes requirements with which a counter-notice (to a s.42 notice of claim) must comply. The requirement under sub-section (2)(b) is

> *"state that, for such reasons as are specified in the counter-notice, the landlord does not admit that the tenant had such a right on that date".*

10. S46(1) provides that

"Where

(a) the landlord has given the tenant a counter-notice under section 45 which....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."

11. S.46(2) provides that a landlord's application under subsection (1) must be made within two months of the date of the counter-notice and that if no application is made within that period, *"section 49 shall apply as if the landlord had not given a counter-notice".*

12. Section 48(1) provides that where the landlord has given the tenant a counter-notice under s.45, complying with sub-section (2)(a) of that section, or a further counter-notice under sections 46(4) or 47(4) or (5) and any of the terms of acquisition remain in dispute two months after the date of the counter-notice or further counter-notice a Leasehold Valuation Tribunal may, on the application of the landlord or tenant, determine the matters in dispute.

13. Section 49 provides that where the landlord has failed to give the tenant a counter-notice in accordance with section 45(1), *"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 the acquisition".* Such application must be made not later than the end of the period of six months beginning with the date by which the counter notice was required to be given.

The Tribunal's Determination

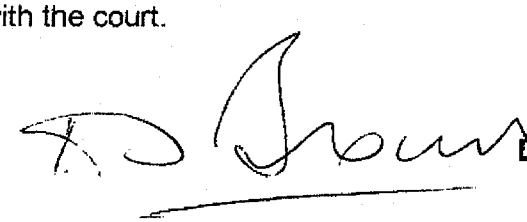
14. The Tribunal considers that the counter-notice was not given in accordance with section 45(1). Subsection (2)(b) requires that such a notice, if not admitting the tenant's right to a new lease, must specify the reasons why. No such reasons were given in the counter-notice. In principle, such a counter-notice must inform the tenant of the grounds on which the landlord will rely in an application to the court under s.46. The Tribunal considers that the omission of reasons is fatal to the validity of the counter-notice. On that basis, there has been no service of a counter-notice in accordance with s.45(1) and s.49 applies to this application. In the case of *Latifi v Colherne Court Freehold* [2002] EWCH 2873 (QB) Mr. Justice Coke decided that if any defects in a counter-notice are corrected and the tenant accepts those corrections, there would be an agreement and the waiver would operate to give the tribunal jurisdiction. Despite the letters from the Tribunal giving clear

notice of this problem, the parties have not made any such agreement and the Tribunal therefore does not have jurisdiction.

15. In any event, where the counter-notice does not admit the tenant's right to acquire a new lease, s.46 clearly puts the onus on the landlord to apply to the court for a declaration of non-entitlement within two months. No such application was made and as a result, under s.46(2), s.49 applies even if the counter-notice is not defective.

16. The jurisdiction of the Leasehold Valuation Tribunal to determine matters in dispute arises under s.48(1). It only arises if the landlord has given a counter-notice admitting the tenant's right to acquire a new lease or a further counter-notice under s.46(4) or s.47(4) or (5), following an application to the court. No such counter-notice has been given in this case and therefore no jurisdiction is conferred upon the Tribunal.

17. The Leasehold Valuation Tribunal only has such jurisdiction as is conferred upon it by statute. The parties cannot bestow jurisdiction upon the Tribunal by consent or agreement between themselves. Once an application falls under the provisions of s.49 jurisdiction lies only with the court.

Signed:  **Date: 10th February 2006**

D S Brown FRICS MCIArb