(191)

LVT 96/5

LEASEHOLD VALUATION TRIBUNAL
OF THE
MIDLAND RENT ASSESSMENT PANEL

Our Ref: M/EH 2447

DECISION OF LEASEHOLD VALUATION TRIBUNAL

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

Applicant:	Mrs Joginder Kaur
Respondent:	The Trustees of Mrs N H Russell Deceased
Re:	8 Mary Road, West Bromwich, B70 6LJ
Date of Tenants Notice:	19 September 2001
Application to Tribunal dated:	18 April 2002
Heard at:	The Panel Office
On:	31 July 2002

APPEARANCES:

For the Applicant:	Mr Anthony Brunt FRICS of Anthony Brunt & Co
For the Respondent:	Mr R G R Mumford FRICS of Timothy Lea & Griffiths

Members of the Leasehold Valuation Tribunal:

Mr N R Thompson FRICS
Mr J H Dove
Mr D Underhill

UNEXPIRED LEASE - 10 YEARS
ANNUAL GROUND RENT £ 0
VALUE OF PROPERTY £ 87,000

Date of Tribunals decision:

25 NOV 2002

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 21 AND 21 (1)(ba) OF THE LEASEHOLD REFORM ACT 1967 IN THE CASE OF

KAUR v THE TRUSTEES OF MRS. N.H. RUSSELL, DECEASED

8 MARY ROAD
WEST BROMWICH
WEST MIDLANDS, B70 6LJ

Reference : M/EH.2447

Background:

1. This is a determination under Section 9 of the Leasehold Reform Act 1967 (as amended) as to the price to be paid for the freehold interest in respect of a terraced house, 8 Mary Road, West Bromwich, West Midlands, B70 6LJ. The property is currently occupied by Mrs. Joginder Kaur who, together with her late husband, Mr. Resham Lal, has lived at the property since approximately 1970. At that time the property was held by way of an Underlease dated 4th December 1950 for a term of 99 years (less 3 days) from the 24th June 1893 at an annual rent of £5. That Underlease was held in the name of Mr. Lal and expired on the 21st June 1992, following which he held over and, together with his family, continued to occupy the property until the time of his death on the 24th August 1999.

2. Mr. Lal died intestate and administration of the Estate, which by law devolved to and vested in the personal representative of Mr. Lal was granted by the High Court on the 20th October 1999 to his widow (the present claimant) Mrs. Joginder Kaur.

3. Mrs. Kaur subsequently served a Notice of Claim to acquire the freehold interest on the 19th September 2001.

Property:

4. The Tribunal inspected the property on 31st July 2002 and found it to comprise a two storey inner terraced house of brick and slate construction with a rendered front elevation and small foregarden situated in a quiet residential area a short distance from West Bromwich High Street.

5. The accommodation comprises two Reception Rooms, Kitchen, Rear Lobby and Combined Bathroom/WC on the ground floor with three Bedrooms on the First Floor.

Hearing:

6. At the Hearing, the Claimant was represented by Mr. A.W. Brunt, FRICS. of Anthony Brunt & Co. of Birmingham. The Landlords were represented by Mr. R.G.R. Mumford, FRICS. of Timothy Lea & Griffiths of Evesham.

7. The Hearing commenced with Mr. Brunt introducing his case on behalf of the Claimant by tabling details of the property and the following valuation:-

No Ground Rent to value as Lease expired in 1992

Standing House Value	:	£37,000	
Plot Value @ 30%	:	£11,100	
Section 15 Rent @ 6.5%	:	£721.50 p.a.	
Y.P. in perpetuity deferred			
0.24 yrs. @ 6.5%	:	15.15	
			£10,930.73
	Price (say)		£10,931.00

8. In support of his Standing House entirety value, Mr. Brunt indicated that this had been agreed as between himself and Mr. Mumford as representing the freehold vacant possession value of the property as at the date of the Notice of Claim (a point confirmed by Mr. Mumford in a letter to the Tribunal dated 30th July 2002). In addition, Mr. Brunt referred to a number of enquiries he had made on the morning of the Hearing (some ten months after the date of the Notice of Claim) of local estate agents which had revealed the availability of a two bedroomed property in Burlington Avenue – some two to three hundred yards away from the subject premises – on offer on a freehold basis for £36,500 as well as two, three bedroomed properties in Poplar Grove (off Trinity Street) which had been sold in June 2002 for £44,000 and £41,000 respectively.

9. Mr. Brunt also referred to the fact that he had considered whether an Haresign Addition would be appropriate in this case, although he had concluded that he did not think it would be given that the property in the Haresign case was very different, being a large Victorian house situated within a Conservation Area just outside the centre of Oxford which had a value of £200,000 some seven years ago.

10. Mr. Brunt considered that a site value of 30% was appropriate given the very small area of the plot and the relatively narrow frontage. He also drew the attention of the Tribunal to the fact that a $6^1/_2$% yield had been used in a number of other cases which had been determined by the Tribunal where short leases (of less than ten years) had been involved (or escalating ground rents had been applicable).

11. Mr. Mumford tabled a Statement of Case detailing a number of facts and highlighting certain provisions of the Leasehold Reform Act 1967 applicable to tenant's rights – including those of their families succeeding to the tenancy on death. He also contended that the Notice of Claim was invalid by virtue of the failure of the Claimant to delete one of the alternatives set out in paragraph 2 and 4 of the prescribed form.

Mr. Mumford then went on to refer to the treatment of a tenant under a former long tenancy contrasting the situation which applied under the Local Government & Housing Act 1989 with the Landlord & Tenant Act 1954. In support of his views, Mr. Mumford referred to correspondence from his office to the Claimant's Solicitors Messrs.Clark Brookes.

12. Prior to the submission of his valuations, Mr. Mumford then referred to six specific points set out in his Statement of Case:-

1. The tenant has not given proof that she was a qualifying tenant to apply for the purchase of the freehold.

2. Notice in the form of a letter had been given on 2nd July 2001 to terminate the long tenancy and to create an Assured Tenancy at a rent of £250 per calendar month.

3. Messrs. Clark Brookes, on behalf of the applicant, made an open offer of £20,000 for the freehold interest in 8 Mary Road (see letter 4th February 2002).

4. The tenant had not paid ground rent since 1994, although application had been made to the occupier at that time for payment.

5. Notice to terminate could be given under Section 4 or 25 of the Landlord & Tenant Act 1954.

6. *(Under)* Section 14(3) of the 1967 Act a tenant may not apply for an extension of the lease unless payment of all outstanding rents is made at the time of the application.

13. In tabling his valuation, Mr. Mumford suggested that while certain assumption might have to be made, the extended lease would run from the termination of the existing lease, i.e. 1992 and only then on the basis that outstanding rents would be paid. In that case, the Landlord's reversion would be available in forty years time.

Mr. Mumford's first valuation was therefore as follows:-

Calculation in accordance with Section 15.

Site Value	£17,000 say 6% = 16.6 Y.P. = £1,020 p.a.

Capitalisation of Sec.15 Rent £1,020 x 16.66 = £17,000

Reversion to value of £17,000 in 40 years time @ 5%

Present value	£ 5,254
Payment required under the Act	£22,254

14. In the alternative, Mr. Mumford had approached the question of value on the basis of the open market value of the property subject to the tenancy, deferred say twelve months to cover the process of serving Notice. This produced the following valuation:-

Rent £250 pcm. Less management 10%		
£225 x 12 months £2,700 x 11 years purchase		£29,700
Deferred 12 months @ 6% x .943		£28,007
	Say	£28,000

15. Mr. Mumford also tabled various copy correspondence as well as relevant extracts from the Local Government and Housing Act 1989 and Schedule 2 to the Intestates Estates Act 1952. In connection with latter, Mr. Mumford indicated that he understood Mr. Lal to have died intestate and therefore by virtue of paragraph 1 (2) Mrs. Kaur as a surviving spouse did not have the right to require the deceased's interest in the matrimonial home to be appropriated to her interest in the deceased's estate because the tenancy was terminable by the Landlord within two years of the death of her husband.

16. In considering the evidence subsequently, the Tribunal felt it would be helpful to have confirmation of whether or not Mr. Resham Lal died intestate and therefore Mr. Brunt was asked to provide such further information as he was able to clarify the situation. This was forwarded to the Tribunal on the 14th August 2002 in the form of a letter confirming that Mr. Lal died intestate; that his son had applied for letters of administration personally (i.e. not using a Solicitor); and that since Mr. Lal died seven years after the expiry of the relevant Underlease, the legal view held by the tenant's Solicitor was that subsequent registration would not have been practical. Mr. Brunt also enclosed confirmation of the grant of letters of administration to Mrs. Joginder Kaur as personal representative.

17. Copies of the relevant correspondence were forwarded to Mr. Mumford, who replied on the 4th September drawing the Tribunal's attention to Section 7 sub-paragraph 8 of the Leasehold Reform Act 1967 and Schedule 2 paragraph 1 of the Intestates Estates Act 1952 as a consequence of which he submitted that Mrs. Kaur had no right to the tenancy and the Landlord had the right to vacant possession. He submitted therefore that the Tribunal had no jurisdiction to determine the case, but that if a determination was made, then the value must be the vacant possession value of the property as agreed between the parties at £37,000.

Decision:

18. As questions had been raised as to the validity of the tenant's Notice and indeed whether she was entitled to serve such a Notice, the Tribunal firstly considered the various points raised by Mr. Mumford in his Statement of Case and other evidence. Dealing firstly with the six numbered submissions in his Statement of Case:-

1 *The tenant has not given proof that she is a qualifying tenant for the purchase of the freehold.*

The Tribunal is satisfied that the Claimant is a qualifying tenant for reasons given below.

2 *Notice in the form of a letter was given to terminate the long tenancy and to create an Assured Tenancy at a rent of £250 per calendar month on the 2nd July 2001.*

Even on the most generous interpretation, the Tribunal does not accept that this (without prejudice) letter could be regarded as formal notice to terminate the former long tenancy and create an Assured Tenancy.

3 *Messrs. Clark Brookes on behalf of the applicant made an open offer of £20,000 for the freehold interest in 8 Mary Road (see letter 4th February 2002).*

The letter in question is marked "subject to contract" and is therefore not binding on the applicant. In addition, the offer could be withdrawn at any time, given that there appears to be no indication that it has been accepted. Furthermore, as an expert body, the Tribunal is entitled to determine what the price should be regardless of the view of one or other – or indeed both parties to the application.

4 *The tenant has not paid ground rent since 1994, although application was made to the occupier at that time for payment.* This does not affect the situation.

5 *Notice to terminate could be given under Section 4 or 25 of the Landlord & Tenant Act 1954.* Again, this does not affect the situation.

6 (Under) *Section 14 (3) of the 1967 Act, a tenant may not apply for an extension of the lease unless payment of all outstanding rents are made at the time of the application.*

Section 14(3) applies in the case of an application for an extended lease. The current application is for the purchase of the freehold.

19. Mr. Mumford also questioned the validity of the Notice on the grounds that the tenant had not deleted one of the alternatives set out in paragraph 4 of the prescribed form. As indicated in his own submission, this could well have serious consequences "unless the tenant has made his intentions clear elsewhere in the Notice". That clearly applies in this case, given that the appropriate deletion has been made in paragraph 2.

There can be no doubt that the Claimant is seeking in the Notice to have the freehold of the house and premises and the fact that the alternative has not been deleted later in paragraph 4 could not leave anyone in doubt as to the intention of the Claimant.

20. Mr. Mumford had drawn the Tribunal's attention to the provisions of the Intestates Estates Act 1952 ("the 1952 Act") and in particular the question of distribution on intestacy, from which he had concluded the claimant did not have an interest in the property which she could enfranchise.

Essentially, the 1952 Act provides, inter alia, that if the deceased died intestate after 1952 and the relevant asset was his interest in the matrimonial home, the nature and effect of the Statutory Power of Appropriation is modified significantly and corresponding rights are conferred upon the surviving spouse. These changes meant that firstly, the Statutory Power of Appropriation have been enlarged, and secondly, a corresponding right has been conferred upon the surviving spouse to require personal representatives to exercise their Statutory Power of Appropriation in its new enlarged form. Thirdly, there are Statutory Provisions to assist the surviving spouse in connection with the exercise of her new rights.

21. The enlarged Statutory Power of Appropriation and the surviving spouse's corresponding rights can however only be exercised in defined circumstances as set out in Section 5 Schedule 2 of the Act:-

Firstly the relevant asset must be a dwelling house,

22. Secondly, the interest in the dwelling house must be comprised in the residuary estate of the deceased's estate. In this context an interest in any freehold or leasehold estate will qualify; even if the deceased was only entitled to an equitable interest as a beneficial tenant in common. However, it is provided by paragraph 1(2) that the right-

"shall not be exercisable where the interest is –

a) a tenancy which at the date of death of the intestate was a tenancy which would determine within the period of two years from that date; or

b) a tenancy which the Landlord by Notice given for that date could determine within the remainder of that period"

23. Thirdly, the surviving spouse must have been resident at the dwelling house at the time of the intestate's death.

24. Fourthly, the intestate's interest in the dwelling house must be appropriated in or towards the satisfaction of an absolute interest of the surviving spouse in the deceased's real and personal estate.

25. From the above, Mr. Mumford drew attention to the fact that the lease under which Mrs. Kaur purported to occupy the subject property could have been determined within two years of the date of death of her husband and as such, the personal representatives did not have the enlarged Statutory Power of Appropriation and the surviving spouse's corresponding rights could not be exercised because the defined circumstances were not fulfilled. In other words, the personal representative of Mr. Lal did not have any Statutory Power to Appropriate his interest in the property to Mrs. Kaur and therefore she did not occupy the property by virtue of a lease under which she was entitled to serve a Notice of Claim.

26. In considering that question, Mr. Mumford himself drew the Tribunal's attention to Section 7 (8) of the Leasehold Reform Act 1967, which specifically refers to Schedule 2 to the Intestates Estates Act 1952 in the following terms:-

"(8) In Schedule 2 to the Intestates Estates Act 1952 (which gives a surviving spouse a right to require the deceased's interest in the matrimonial home to be appropriated to the survivor's interest in the deceased's estate, but by paragraph 1 (2) excludes tenancies terminating or terminable by the Landlord, within two years of the death), paragraph 1 (2) shall not apply to a tenancy if –

a) the surviving wife or husband would in consequence of an appropriation in accordance with that paragraph become entitled by virtue of this Section to acquire the freehold or an extended lease under this Part of this Act, either immediately on the appropriation or before the tenancy can determine or be determined as mentioned in paragraph 1 (2); or..."

27. Section 7 (8) of the 1967 Act clearly is not intended to reinforce the provisions of the 1952 Act; it has no reason to do that. Rather, it makes it clear that paragraph 1 (2) of the 1952 Act is effectively to be disregarded where its application would deprive a surviving wife or husband of their rights under the 1967 Act.

28. Consequently the Tribunal accepts that in those terms, Mrs. Kaur is entitled to serve a valid Notice of Claim under the 1967 Act to have the freehold of the subject premises.

29. In terms of the valuations presented by the two parties, the Tribunal preferred the approach adopted by Mr. Brunt and accepted a standing house value of £37,000 (as agreed between the parties) as well as a 30% proportion of that figure to represent the site value. The Tribunal was not however minded to agree the use of a 6.5% yield rate on a deferment of three months in capitalising the Section 15 rent, and accordingly adopted the following valuation in determining the price to be paid for the freehold interest of the subject property:-

Ground Rent	:	Nil	
Reversion to Standing House Value	:	£37,000	
Site Value @ 30%	:	£11,100	
Section 15 Rent @ 7%	:	£ 777	
Y.P. in perp. @ 7%	:	14.276	
			£11,100

N.R. Thompson
Chairman

25 NOV 2002