

228

MIDLAND RENT ASSESSMENT PANEL

Case No: BIR/00CU/0C6/2003/0032

Leasehold Reform Act 1967

Housing Act 1980

**DETERMINATION OF THE LEASEHOLD VALUATION TRIBUNAL
ON REASONABLE COSTS – SECTION 9(4) LEASEHOLD REFORM ACT 1967**

Applicant Tenants: Neil Watson and Sylvia Doreen Watson

Respondent Freeholder: Miss M A T Johnson

Property: 77, Bankside Crescent, Streetly, Sutton Coldfield, West Midlands
B74 2JA

Date of Tenants' Notice: 18 February 2003

Application dated: 24 April 2003

Heard at: The Panel Office

On: 1 July 2003

APPEARANCES:

For the Tenants: Mr J Moore, Midland Valuations Limited

For the Freeholder: No appearance

Members of the Leasehold Valuation Tribunal:

Mr T F Cooper BSc FRICS FCI Arb (Chairman)
Mr D R Salter LLB
Miss B Granger MBE

Date of Tribunal's decision:

15th July 2003

Background: By an application dated 24 April 2003, Mr J Moore of Midland Valuations Limited, on behalf of Neil Watson and Sylvia Doreen Watson (the '**Applicant**') as the purchasing tenants of the freehold interest in 77, Bankside Crescent, Streetly, Sutton Coldfield, West Midlands B74 2JA (the '**Property**'), applies to us to determine the reasonable costs payable by them to the freeholder, Miss M A T Johnson (the '**Respondent**') under section 9(4) of the Leasehold Reform Act 1967 (as amended) (the '**Act**')

Section 9(4) of the Act provides as follows:

Where a person gives notice of his desire to have the freehold of a house and premises under this Part of this Act, then unless the notice lapses under any provision of this Act excluding his liability, there shall be borne by him (so far as they are incurred in pursuance of the notice) the reasonable costs of or incidental to any of the following matters:

- (a) *any investigation by the landlord of that person's right to acquire the freehold;*
- (b) *any conveyance or assurance of the house and premises or any part thereof or of any outstanding estate or interest therein;*
- (c) *deducing, evidencing and verifying the title to the house and premises or any estate or interest therein;*
- (d) *making out and furnishing such abstracts and copies as the person giving the notice may require;*
- (e) *any valuation of the house and premises;*

but so that this subsection shall not apply to any costs if on a sale made voluntarily a stipulation that they were to be borne by the purchaser would be void.

Para 5 of Part I of Schedule 22 to the Housing Act 1980 provides that:

The costs which a person may be required [to bear] under section 9(4) . . . of the 1967 Act . . . do not include costs incurred by a landlord in connection with a reference to a leasehold valuation tribunal.

The Applicant tenants served a notice of claim (the '**Notice**') dated 18 February 2003 to acquire the freehold interest in the Property.

Mr Moore says, and it is not contested, that the price payable, and the amounts of the subsection (4)(e) 'valuation' costs and the subsections 9(4)(a), (c) (save the 'verifying' costs) and (d) 'legal' costs to be paid, by the Applicant to the Respondent have been agreed.

The issues outstanding for our determination are the Respondent's ss.9(4)(b) 'conveyancing' costs and, after consideration at the hearing, the subsection (c) 'verifying' costs. It is clear that, without evidence of an agreement between the parties in respect of ss. 9(4)(b) 'conveyancing' costs, we should determine an amount as being reasonable to be incurred on the conveyancing which is still to be undertaken.

Vat: All figures we refer to are exclusive of vat. We have no jurisdiction to determine conclusively vat matters as they are a matter for HM Customs and Excise. Therefore we make our determination exclusive of vat, save that vat shall be added at the appropriate rate if applicable.

The parties contentions: Mr Moore says that the subsection 'conveyancing' costs should be £250. Mr K F Davis FRICS of Cottons, Chartered Surveyors, for the Respondent says, in a letter to Mr Moore dated 16 April 2003, that the Respondent's solicitor's costs will be £335.

Mr Moore's submissions: Mr Moore says that we should take into account the fact that the subject case has been and is being dealt with concurrently with a similar property on the same estate: 53, Laneside Avenue, (our case no. BIR/00CU/0C6/2003/0041 on the question of reasonable costs which we heard concurrently with the subject case). He says that he would have contended for £275 but, as the two cases have the same Respondent, the same Respondent's solicitors and there is no difference in the titles, there will be an element of repetitive conveyancing work and this should be reflected by a lower amount of £250.

The freehold title is not a registered title. Mr Moore tells us that his enquiries to local solicitors reveals that the 'going rate' for transferring a not dissimilar registered title is £225 to £250 and he would anticipate an additional £25 to £50 for an unregistered title. On enquiry from ourselves he accepts that, whilst costs incurred in ss.(4)(c) 'deducing and evidencing' title have been agreed, costs incurred in 'verifying' title should form part of our determination.

Our determination: We have no direct evidence of conveyancing costs to be incurred, only Mr Davis's written statement that he is advised by the Respondent's solicitors that its costs will be £335. We are left with Mr Moore's hearsay evidence on the general level of solicitors' conveyancing fees. We find that Mr Moore's evidence is not inconsistent with our general knowledge as an expert tribunal. We find that, recognising that our determination shall include the costs to be incurred in verifying the title and that the title is not registered:

In so far as such costs are incurred by the Respondent freeholder, the Applicant tenants shall bear a sum not exceeding £275 (Two hundred and seventy five pounds) plus vat if appropriate, as the Respondent's reasonable costs of or incidental to ss.(4)(b) 'conveyancing' costs incurred and to be incurred to include ss.(4)(c) costs of verifying the title but not otherwise.

This our final determination on the s.9(4) costs to be borne by the Applicant.

Date: 15th July 2003

T F Cooper
CHAIRMAN