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Reference BIR/00CN/OAF/2004/0099

MIDLAND RENT ASSESSMENT PANEL

In the matter of an application under Section 21 (1) (a) Leasehold Reform Act 1967

Rent Assessment Committee:

Miss N Jackson (Chair)
Mr V Chadha
Mrs C L Smith

Address of Premises:

107 Atlantic Road,
Birmingham,
West Midlands,
B44 8LW

Freeholder

Rueda Estates Limited
96 - 98 Pentonville Road
London

Leaseholder

Mr W. Waters

Date of Tribunal Hearing

16 July 2004

Date of Determination

16 JUL 2004

1. **Background**

By notice dated 5 May 2004, the leaseholder applied for determination by the Leasehold Valuation Tribunal of the price to be paid in relation to the acquisition of the freehold of the subject property. The leaseholder subsequently provided a copy of a notice of tenant's claim to acquire the freehold dated the 28 May 2004. The issue therefore arose as to whether or not the Tribunal had jurisdiction to hear the application dated the 5 May 2004 as it would appear that prior to that date no Notice of Tenant's Claim had been served on the freeholder.

2. **Hearing**

A preliminary hearing was held at the Panel office in Birmingham on 16 July 2004 at which the freeholder did not attend and was not represented. The leaseholder was present.

3. **Submissions by the Leaseholder**

- 3.1 The Tribunal had a copy of the Application for Determination by Leasehold Valuation Tribunal on acquisition of freehold dated the 5 May 2004. Within this application it stated that the date on which notice was given by the leaseholder of his desire to acquire the freehold was September 2003 'by letter - no copy kept -reply enclosed'.

- 3.2 In answer to paragraph 7 of that application relating to whether the landlord had given notice stating whether or not he admitted the tenant's right to have the freehold, the leaseholder had completed this with the following response '19.10.99' and enclosed a copy of a letter from the landlord of that date. The leaseholder subsequently sent to the freeholder a Notice of Tenant's Claim to Acquire the Freehold dated the 28 May 2004. At the hearing, Mr Waters, provided a copy of a response from the freeholders solicitors dated the 13 July 2004 in which the freeholders confirmed that they accepted the Notice and enclosed a counter notice.

4. The Law

- 4.1 Section 8 of the Leasehold Reform Act 1967 entitles a tenant of a long tenancy at a low rent within the meaning of Part 1 of the 1967 Act to acquire their freehold on fair terms, provided they have given to the landlord 'written notice of his desire to have the freehold...'

If the leaseholder gives such notice then:

'...except as provided by this Part of the Act the landlord shall be bound to make to the tenant, and the tenant to accept, (at the price and the conditions so provided) a grant of the house and premises for an estate in fee for absolute, subject to the tenancy and a tenant's incumbrances, but otherwise free from incumbrances.'

- 4.2 Regulation 3 (1) of the Leasehold Reform (Notices) Regulations 1997 as amended states that *'the form to be used by a tenant for the purpose of giving notice under Part 1 (enfranchisement and extension of long leaseholds) of the Act of his desire to have the freehold or an extended lease of a house or premises is Form 1'*

The combined effect of Regulations 2 and 3 (1) of 1997 Regulations is that the leaseholder can use either form 1 as prescribed by the Regulation or else 'a form substantially to the same effect'.

- 4.3 Part II of Schedule 3 of the 1967 Act contains the procedural provisions governing the service of notices. Paragraph 6 provides as follows:

'(1) A tenant's notice under Part 1 of this Act of his desire to have the freehold or an extended lease of a house and premises shall be in the prescribed form, and shall contain the following particulars:-

a) the address of the house, and sufficient particulars of the house and premises to identify the property to which the claim extends;

b) such particulars of the tenancy and, [in the case of a tenancy falling within Section 4 (1) (i) of this Act], d) the rateable value of the house and premises as serve to identify the instrument creating the tenancy and show that

[(i) (apart from the operation, if any, of the proviso to Section 4 (1) of this Act) the tenancy is and has at all material times been a long tenancy at a low rent;...

c) the date on which the tenant acquired the tenancy;

d)....

e) in the case of a tenancy falling within Section 1 (1) (a) (ii) of this Act, the premium payable as a condition of the grant of the tenancy....]

(3) The notice shall not be invalidated by any inaccuracy in the particulars required by this paragraph or any mis-description of the property to which the claim extends....'

5. Tribunal's Determination

- 5.1 It is clear that in order to make an application under Section 8 of the 1967 Act, the law requires the tenant's Notice of Claim to be either in the prescribed form or alternatively in a form substantially to the same effect. However from the evidence before the Tribunal, it is clear that as at 5 May 2004, the date of the application to the Tribunal, the only notice sent to the freeholder had been in the form of a letter in September 2003 a copy of which was not available to the Tribunal. Therefore, the Tribunal were neither able to determine whether the letter of September 2003 contained the information required by Paragraph 6 (1) of Schedule 3 of the 1967 Act nor to determine whether it was in a form substantially to the same effect.
- 5.2 The correct prescribed form was subsequently served on the 28 May 2004 although this was after the date on which the leaseholder had applied to the Tribunal for determination of the price payable under Section 9 of the 1967 Act.
- 5.3 The Tribunal therefore determines that it does not have jurisdiction to consider the application made under Section 9 of the 1967 Act dated 5 May 2004, as at that date no valid notice of claim in the terms required by Paragraph 6 of Schedule 3 of the 1967 Act had been served.

N. Jackson

N. Jackson
Chair

18 AUG 2004