1. This is an application under the Leasehold Reform Act 1967 for the determination of the price payable in respect of the property 8 Abercorn Close, London NW8 9XS. The Applicants freeholders are the Trustees of John Lyon's Charity and the Respondent is Ms Elizabeth Linden. At the hearing both parties were represented by Counsel. Mr Anthony Radevsky appeared on behalf of the Applicant and Mr Gary Cowan appeared on behalf of the Respondent.

2. **Background**

There is no dispute between the parties as to the core facts. The Applicant is the landlord of the premises known as 8 Abercorn Close, London NW8. The Respondent is the lessee of the premises pursuant to a lease dated 9 March 1984 and was granted a term of 75 years from 24 June 1983. The terms of the lease provide that the rent payable is £325 from 24 June 1984 to 24 June 1998. The lease provides for the rent to be reviewed every 15 years in the following manner –

"either the said sum of Three Hundred and twenty five pounds (£325) or (subject to the proviso hereinafter contained) a sum equivalent to point two five per centum (0.25%) of the capital value of the demised premises at the relevant date (whichever is the higher) ...

AND PROVIDED FURTHER that if the said sum equivalent to [0.25%] of the capital value of the demised premises at the relevant date shall be ascertained to be equal to or shall exceed ... 2/3rds of the rateable value of the demised premises on the relevant date then the yearly rent payable hereunder from the relevant date shall be a sum equivalent to ... £1 less than 2/3rds of the rateable value of the demised premises on the relevant date."

3. On 9 November 1998 the Respondent's predecessor agreed with the Applicant that the rent should be £1,150 with effect from 24 June 1998. The lessee for the time being has continued to pay the agreed rent.

4. **The Issue Between the Parties**

The application as originally contained in the parties respective statements of case concerned a single issue, namely whether or not the rent payable from 24 June 1998 was properly agreed between the parties in the sum of £1,150 per annum or whether it was subject to a cap contained in the last proviso in clause 1 of the Lease. The Respondent's case was that this agreement was made under a common mistake of fact and/or mistake of law.

5. At the commencement of the hearing Mr Radevsky raised as a preliminary issue, the question of whether or not the Tribunal had jurisdiction to determine the issue. Both Mr Radesvky and Mr Cowan agreed that if the issue was determined in favour of the Applicant, then the Tribunal should not hear evidence on the issue in dispute but leave it to the parties to apply to the County Court.

6. **The Submissions of the Parties**

Put simply, Mr Radevsky's submitted that the jurisdiction of the Tribunal in such matters was derived under section 21 of the Leasehold Reform Act 1967 and in this particular instance under section 21(1)(a) the price payable for a house and premises under section 9. Under section 21 the Tribunal did not have jurisdiction to determine what the rent should be under the lease when the parties had already agreed terms. The current rent he argued formed an element of the valuation and it was therefore not open to the Tribunal to say that the parties ought not to have arrived at the agreement they did. That he argued was a matter for the County Court.

7. Mr Cowan argued that whilst it was accurate to state that the Applicant and the Respondent had agreed that the rent payable under the lease with effect from the review date of 24 June 1998 would be £1,150 per annum,

that agreement was entered into under a mistake of fact and that the Tribunal had jurisdiction to decide the issue. He referred the Tribunal to paragraph 16-06 of Hague as authority for that proposition that the Tribunal was entitled to decide facts in issue which specifically go to the question of jurisdiction.

8. **Decision**

The Tribunal accepted the Applicant's argument that the jurisdiction of the Tribunal in this instance was limited to matters of valuation under the 1967 Act and in particular the price payable for the house and premises under section 9. The Tribunal had no power declaratory or otherwise under section 21 to set aside an agreement reached between the parties at the instance of one party, irrespective of whether or not that agreement had been reached as the result of a unilateral or mutual mistake. Whilst accepting the proposition that the Tribunal could decide whether the purchase price ought to be on the valuation basis of section 9(1), 9(1A) or 9(1C) of the 1967, this was far removed from the proposition that the Tribunal could at the instance of one party in effect set aside an agreement reached by the parties some years before as to the rent payable under the lease.

9. Tribunal decided that it had no jurisdiction to decide the question of whether or not the rent agreed between the parties on 24 June 1998 was liable to be set aside on the grounds of mistake. Accordingly the Tribunal decided to adjourn the application so that the dispute could resolved in the County Court.

Chairman S E Cannott

Date 29/3/05