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Ref:- BIR/00CN/OAF/2005/0147

MIDLAND RENT ASSESSMENT PANEL

Leasehold Reform Act 1967

Housing Act 1980

**DECISION OF LEASEHOLD VALUATION TRIBUNAL
ON APPLICATIONS UNDER S21 OF THE LEASEHOLD REFORM ACT 1967**

Applicant: Khadeja Begum

Respondent: Person Unknown

Re: 4, Yew Tree Road, Aston, Birmingham, B6 6RT

Valuation Date: 29th October 2004

RV as at 1.4.73: Less than £500

Application dated: 17th June 2005

Heard at: The Tribunal's Offices in Birmingham

On: 16th August 2005

APPEARANCES:

For the Tenant: Mr Leo of Coley and Tilley, Solicitors

For the Landlord: No appearance

MEMBERS OF THE LEASEHOLD VALUATION Tribunal:

Mr W. J. MARTIN (Chairman)
 Mr S. BERG F.R.I.C.S.
 Mrs A. BARTRAM

Date of Tribunals decision: 16th August 2005

DETERMINATION

That the price payable by the Applicants to the Respondent under Section 9 (1) of the Leasehold Reform Act 1967 ('the Act') is £26,326.00

REASONS FOR THE TRIBUNAL'S DECISION

BACKGROUND

1. This is a decision on an application under the Act made to the Leasehold Valuation Tribunal by Mrs. K Begum, the leaseholder of the house and premises at 4 Yew Tree Road, Aston, Birmingham ('the property') as a result of an order of the Birmingham County Court dated 27th April 2005 directing that an application be lodged with the Leasehold Valuation Tribunal. The order arises out of an application to the Court under Section 27 (5) of the Act as the Freeholder cannot be found.

2. The Applicant holds the property under an Underlease ('the Underlease') dated 21st May 1955 whereby the property was demised to Horace Edwin George Crane for all the residue then unexpired of a term of 99 years, less three days, granted by a Lease ('the Headlease') dated 10th January 1900. The Underlease reserved a rent of £5 per annum. The Headlease demised the property and other property from 29th September 1898 for a term of 99 years and reserved a rent of £13. 8s. per annum. The Headlease expired on 28th September 1997 and the Underlease three days earlier, on 25th September 1997.

3. The Applicant has been in occupation of the property since she purchased the underleasehold interest on 4th March 1985 and accordingly under the provisions of Section 1 (1) of the Landlord and Tenant Act 1954 a statutory extension of her tenancy arose. No such statutory extension arises in respect of the Headlease as the Headlessor was not in occupation and accordingly the Headlease merged with the freehold and was extinguished. Accordingly, the Applicant is tenant of the freeholder under the statutory extension and subject to the rent and other terms of the Underlease.

4. In accordance with the directions of the Court the Applicant made the application to the Leasehold Valuation Tribunal on 17th June 2005.

THE PROPERTY

5. The Property comprises a terraced house in Yew Tree Road, Aston. It has a frontage of about 12 feet (3.66 metres) and is not passaged on either the ground floor or the first floor. The accommodation comprises two reception rooms on the ground floor with a kitchen and bathroom extension at the rear constructed by the Applicant. Upstairs there are three bedrooms, but the third bedroom is approached through the second bedroom. There is a small yard at the rear and there is access to the rear by a foot passage from an adjoining flank road. The property has central heating and double glazing and is in good condition. The site is fully developed.

INSPECTION

6. The Tribunal inspected the property on the day of the hearing in the presence of the Applicant and Mr. Leo, her solicitor.

WRITTEN SUBMISSIONS

7. The Applicant's solicitors submitted a helpful hearing bundle. Within this bundle is an expert evidence report of Alan Peter Herbert FRICS, of Pennycuik Collins, Chartered Surveyors of Birmingham. In brief Mr. Herbert's submission is that the entirety value of the Property is £82,500, that the site apportionment should be 28% and that the Section 15 (of the Act) modern ground rent is derived by applying 6.5%. This produces a rent of £1,501.50 per annum which is capitalised in perpetuity at 6.5%, producing a figure of £23,099.98.

HEARING

8. Mr. Leo went through the history of Mrs. Begum's ownership. She apparently purchased the property knowing that there was only a short period to run before Underlease expired but understood that after a residence qualification she would be in a position to purchase the freehold under the Act. No rent has been paid during her period of occupation. A great deal of effort was made in 1998 to trace the freeholder, by enquiring in the neighbourhood, and by advertisement in the local press. The matter rested then until the present application as Mrs. Begum's circumstances at the time did not permit her to proceed further.

9. In the written submission of Mr. Herbert a valuation date of 1st April 2005 had been used. The correct date is the date of the application to court on 29th October 2004 (s27(2)(a) of the Act). Mr. Leo was able to report that he had spoken to Mr. Herbert whose opinion was that there would be no difference in the entirety value between that date and 1st April 2005.

10. Mr. Leo agreed that as a result of the statutory extension the minimum period of notice to terminate the Applicant's tenancy is six months, and that the ground rent should be capitalised for this period. Consequently, the capitalisation of the modern ground rent should be deferred for the same period.

11. Mr. Leo also agreed that a figure for unpaid rent, up to the maximum permitted by the Limitation Acts should be added to the Section 9 determination.

DECISION OF THE TRIBUNAL

The Tribunal find that the price to be payable for the freehold falls to be determined under Section 9 (1) of the Act. They considered the fact that Mr. Herbert had used a rate of 6.5% in his calculations but determined that the proper yield rate for them to use is 7% for the reversion. However, because the ground rent is only to be valued for six months they adopt the lower rate of 6.5% for this part of the calculation. They therefore determine that the proper basis for such their valuation is to:

- (a) value the ground rent of £5 pa for the unexpired term (six months) at 6.5%.

This produces a figure of £2.35

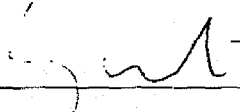
(b) ascertain a modern ground rent under Section 15 of the Act by valuing the entirety, apportioning the entirety between the site and the building and calculating the rent at 7% of the site value. The entirety value is the freehold value of the house assuming it to be in good condition and that the site is fully developed.

The Tribunal were disappointed that Mr. Herbert did not provide any comparables for his valuation of £82,500. They felt that this figure was too low. Using their own knowledge and experience as an expert tribunal, but not any special or secret knowledge, they determine the entirety value at £95,000. They do not agree with the site value apportionment of 28% adopted by Mr. Herbert. They accept that the frontage is narrow, but nevertheless determine the apportionment as 30% which gives a site value of £28,500.00. Seven percent (7%) of this sum produces a modern ground rent of £1995.00 per annum

(c) value the modern ground rent in perpetuity but deferred for the unexpired term of the lease (six months) at 7%. This produces a figure of £26,294.00

(d) add the existing ground rent value of £2.35 under (a) above to the modern ground rent value of £26,294 under (c) above which gives a total of £26,296.35. To this is added the sum of £30 in respect of six years unpaid rent of £5. This produces a total of £26,296.35 which the Tribunal round to £26,296.00 determine this sum as the price payable for the freehold under Section 9 (1) of the Act

Signed



(W. J. Martin – Chairman)

Dated 22 AUG 2005