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BIR/00CN/OC6/2005/0005

**THE RENT ASSESSMENT COMMITTEES
(ENGLAND & WALES) REGULATIONS 1971
CERTIFICATE OF CORRECTION**

I hereby certify that due to a clerical error the information which should have been included in the correction certificate, which was signed by me on 18 August 2005 in respect of 36 Lomaine Drive, Kings Norton, Birmingham B30 1AJ is incorrect and should read:-

Respondent: Miss L M M Adcock

A P Bell

**Mr A P Bell MA LLB
Chairman**

Date:

**Midland Rent Assessment Panel
2nd Floor East Wing Ladywood House
45-46 Stephenson Street
Birmingham
B2 4DH**

BIR/00CN/OC6/2005/0005

**THE RENT ASSESSMENT COMMITTEES
(ENGLAND & WALES) REGULATIONS 1971
CERTIFICATE OF CORRECTION**

I hereby certify that due to a clerical error the information which should have been included in section Respondent: on page 1 of the Determination of the Leasehold Valuation Tribunal, which was signed by me on 15 August 2005 in respect of 36 Lomaine Drive, Kings Norton, Birmingham B30 1AJ is incorrect and should read:-

Respondent: Miss L M M Adcocks



**Mr A P Bell MA LLB
Chairman**

Date: 18 August 2005

**LEASEHOLD VALUATION TRIBUNAL
OF THE
MIDLAND RENT ASSESSMENT PANEL**

Ref: BIR/OOCN/OC6/2005/0005

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER SECTION 21(1) OF THE LEASEHOLD REFORM ACT 1967**

Applicants: Mr and Mrs M. J. Norton (leaseholders)

Respondent: Fee Simple Investments Limited (freeholder))

Subject property: 36 Lomaine Drive
Kings Norton
Birmingham
B30 1AJ

Application to the LVT: 15 June 2005

Hearing: 27 July 2005

Appearances:

For the applicant: Mr. A. W. Brunt

For the respondents: No appearance

Members of the LVT: Mr. A.P. Bell MA LLB
Mr. D. Satchwell FRICS
Mr. G.G.W. Chidlow ACIS

Date of determination: 15 AUG 2005 2005

Introduction

- 1 This is a decision on an application under section 21(1) of the Leasehold Reform Act 1967 ("the 1967 Act") in respect of premises at 36 Lomaine Drive Kings Norton Birmingham B30 1AJ ("the subject property") on 15 June 2005 for the determination of the reasonable costs payable under section 9(4) of the 1967 Act.

Hearing

- 2 The hearing was attended by Mr. A.W. Brunt of Anthony Brunt & Co representing the Applicants. The Respondent did not attend and was not represented.

Representations of the parties

- 3 Written representations were made from Adcocks, the solicitors of the Respondent, by letter dated 25 July 2005, which was only received by the Tribunal on the morning of the hearing in very belated compliance by the Respondent with the directions made on 23 June 2005.
- 4 Mr. Brunt, representing the Applicants, contended that under section 9(4) of the 1967 Act the Applicants were only liable to pay reasonable costs incurred in pursuance of the notice in respect of the matters set out in sub- paragraphs (a) to (e) of section 9(4). He submitted that the Respondent could not charge for a substantial number of the items listed in the summary of works which accompanied Adcock's letter of 25 July 2005. In particular he pointed out that it was the job of the Applicants' solicitors to prepare the draft transfer and subsequently engross this, whereas the summary of works to be done by Adcocks incorrectly referred to the Respondent's solicitors drafting the transfer and considering the tenants' amendments to this before engrossing the transfer. Mr Brunt referred the Tribunal to a passage at paragraph 6-39 of Hague on Leasehold Enfranchisement (4th Edition) which states that the tenant is not liable for the landlord's costs of preparing and serving a Notice in Reply nor in taking general advice as to their rights under the 1967 Act.
- 5 With regard to the decision relating to 2 Taylors Lane West Bromwich West Midlands (reference M/LRC 265) referred to in Adcocks' letter of 25 July 2005 where legal costs of £400 had been allowed Mr Brunt pointed out that in that case the Tribunal stated that " the time otherwise spent on addressing unusually restrictive covenants in the course of the conveyancing justifies a higher charge than would usually be the case".

Decision of the Tribunal

6. The Tribunal considered carefully the representations of Mr. Brunt both in writing and at the hearing and also the written representations of Adcocks. The tribunal agrees with Mr Brunt that the decision relating to 2 Taylors Lane West Bromwich referred to in paragraph 5 above is not helpful to the Respondent's

case since the Tribunal found in that case that the additional time spent on addressing unusually restrictive covenants justified higher costs than would usually be the case.

7. The Tribunal have referred to the summary of work prepared by Adcocks and determine that the time spent in perusing the tenant's notice and two items in respect of taking instructions are not allowable since these undoubtedly would have been required in respect of other work done by them which were not incurred in respect of the matters listed in section 9(4) of the 1967 Act. With regard to the summary of work to be done the Tribunal determines for the same reason that the opening of the file, perusing correspondence, taking instructions again and setting retainer and perusing lease terms are not allowable. Nor are many of the subsequent items listed in the summary recoverable since they are listed on the basis that the Respondent's solicitors will be drafting the transfer, considering amendments and engrossing the transfer, whereas this is not the case. These jobs will be those for the Applicants' solicitors to do. Clearly, however, the costs of completing and registering the title are recoverable.
8. The Tribunal determine that the reasonable costs incurred in pursuance of the Applicants' notice in respect of the matters set out in section 9(4) of the 1967 Act, in line with the decisions of other Midland Leasehold Valuation Tribunals, amount to £300 plus VAT (if applicable) and the fees incurred in respect of obtaining official copy entries from the Land Registry.

A. P. Bell

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A. P. Bell
Chairman
Dated

17.5 AUG 2005

2005

**LEASEHOLD VALUATION TRIBUNAL
OF THE
MIDLAND RENT ASSESSMENT PANEL**

Ref: BIR/OOCN/OC6/2005/0005

*DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER SECTION 21(1) OF THE LEASEHOLD REFORM ACT 1967*

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Respondent: Fee Simple Investments Limited (freeholder)

Subject property: 36 Lomaine Drive
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Birmingham
B30 1AJ

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Hearing: 27 July 2005

Appearances:

For the applicant: Mr. A. W. Brunt

For the respondents: No appearance

Members of the LVT: Mr. A.P. Bell MA LLB
Mr. D. Satchwell FRICS
Mr. G.G.W. Chidlow ACIS

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8. The Tribunal determine that the reasonable costs incurred in pursuance of the Applicants' notice in respect of the matters set out in section 9(4) of the 1967 Act, in line with the decisions of other Midland Leasehold Valuation Tribunals, amount to £300 plus VAT (if applicable) and the fees incurred in respect of obtaining official copy entries from the Land Registry.



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A. P. Bell
Chairman

Dated

15 AUG 2005

2005

MIDLAND RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION BY THE LANDLORD FOR PERMISSION TO APPEAL

Ref: BIR/00CN/OC6/2005/0005

Premises: 36 Lomaine Drive, Kings Norton, Birmingham B30 1AJ

Applicants: Mr. and Mrs. M.J. Norton (leaseholders)

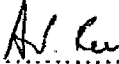
Respondent: Miss L.M.M.Adcock (freeholder)

Date of application for permission to appeal: 26 August 2005

Members of the leasehold valuation tribunal:

Mr. A.P. Bell MA, LLB.
Mr. D. Satchwell FRICS
Mr. G.G.W. Chidlow ACIS

1. Adcocks solicitors have applied on behalf of the Respondent, Miss. L.M.M. Adcock, (the freeholder) under Section 175 of the Commonhold and Leasehold Act 2002 for permission to appeal to the Lands Tribunal from a decision of this Tribunal dated 15 August 2005.
2. In their appeal letter of 26 August 2005 Adcocks refer to a decision dated 1 January 2005 in the case of Wilkinson v Timmins and Adcock as trustees of Ernest Timmins Deceased (BIR/00CS/OAF/2004/0319) where legal costs of £400 plus vat and reasonable disbursements were awarded. This case was not, however, referred to in the Respondent's submission dated 25 July 2005 which referred to a decision relating to 2 Taylors Lane West Bromwich (Ref M/LRC 265) which the Tribunal considered and commented on in its decision. The Tribunal do not consider that it is appropriate to allow the Respondent to adduce fresh evidence in seeking leave to appeal which would have the consequence of preventing the Applicants or their representative having the opportunity of commenting on this.
3. The Respondent's solicitors in relying on the case of Wilkins v Timmins and Adcock referred to in paragraph 2 above state in their appeal letter that they "do not see why this case differs from the present case as it was no more complex". It should be noted that members of the Lands Tribunal have ruled that findings of fact are not binding on subsequent tribunals and should not be regarded as authoritative. The award of costs is necessarily discretionary and the amount awarded does vary from case to case depending on what the Tribunal consider is "reasonable" in all the circumstances of the case, and in particular if any issues of unusual complexity are raised. This will to a large extent be based on the evidence put before the Tribunal in each case. The evidence put forward by the Respondent's solicitors in their original submissions was carefully considered and the decision illustrates and reflects that fact.
4. For these reasons it is the view of the Tribunal that the Respondent has not produced any evidence to undermine the findings and determination of the Tribunal dated 15 August 2005. Therefore permission to appeal is refused, but the application may be renewed before the Lands Tribunal within 28 days of the date when this decision is sent to the Respondent in accordance with section 175 of the Commonhold and Leasehold Reform Act 2002 and the Lands Tribunal Rules 1996.


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A.P. Bell
Chairman

Dated

15 SEP 2005

2005.