

LON/NL/5267/06

**LEASEHOLD VALUATION TRIBUNAL FOR THE RESIDENTIAL PROPERTY**  
**TRIBUNAL SERVICE**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL FOR AN**  
**APPLICATION UNDER SECTION 48 OF THE LEASEHOLD REFORM HOUSING**  
**AND URBAN DEVELOPMENT ACT 1993**

**APPLICANT:** Avon Estates (London) Ltd

Represented by: Jennifer Israel & Co

**RESPONDENT:** Buttercup Building Ltd

Represented by: J R Jones

**PREMISES:** Flat 1 Maison Alfrot, 251 High Road, Harrow  
Weald, Harrow HA3 5EL

**Date of Tenant's Notice:** 16 November 2005

**Date of Counter Notice:** 27 January 2006

**Application Date:** 9 June 2006

**Hearing Date:** Tuesday 19 September 2006

**Members of the Leasehold Valuation Tribunal:**

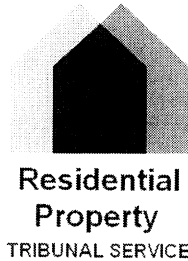
Mr A Jack

Mr J R Humphrys FRICS

Mr F W James FRICS

Mr R D Eschle JP MA BEd

**Date of Decision:** 19 September 2006



**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
DECISION OF THE LEASEHOLD VALUATION TRIBUNAL**

**Leasehold Reform Housing and Urban Development Act 1993  
Leasehold extension section 48**

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**LON/00BD/NL/5267/06**

**Premises:** Flat 1, Maison Alfort, 251 High Road, Harrow Weald,  
Harrow HA3 5EL

**Applicant:** Avon Estates (London) Ltd

**Respondent:** Buttercup Buildings Ltd

**Tribunal:** Adrian Jack (Chairman), J R Humphrys FRICS,  
R D Eschele JP MA BEd

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**Background**

1. The Applicant is a long leaseholder. The Respondent is its landlords.
2. By notice dated 16th November 2005 the then lessees, Christopher John Wright and Lillian Louise Wright, sought an extension of its leases under section 42 of the Leasehold Reform Housing and Urban Development Act 1993. The lessees proposed a price of £8,000 and terms of the extended lease identical to the existing lease (save as modified by the 1993 Act). The Respondent served a counternotice dated 27<sup>th</sup> January 2006 disputing the price (which it put at £12,000) and the costs payable to it under section 60 of the Act.
3. By a deed of transfer dated 12<sup>th</sup> December 2005, Mr and Mrs Wright transferred their interest in the property to the Applicant. The Applicant on 9<sup>th</sup> June 2006 applied to this tribunal for the determination of matters in dispute. The Applicant accepted the price of £12,000 in the Respondent's counternotice, so price ceased to be a live issue.
4. Directions were given on 17<sup>th</sup> July 2006 and a hearing was fixed for 19<sup>th</sup> and 20<sup>th</sup> September 2006. The directions provided that an "application for postponement of the hearing dated because of a provisional agreement between the parties must be made at least 7 days before the hearing date otherwise the parties are required to attend the hearing and confirm the remaining issues within the jurisdiction of the Tribunal."

## **Adjournment**

5. Notwithstanding the Tribunal's directions as to adjournments, on 14<sup>th</sup> September 2006 the Applicant's solicitors faxed the Tribunal a letter which states: "examination of the file shows that the form of Lease has not been deemed agreed by the other side under the Terms of the Regulations and therefore the present issue before the Tribunal does not need to be heard at this stage. However it is anticipated that as part of the Vesting Order procedures, we shall need to have the matter referred back to the Tribunal to determine the appropriate amount because the service charges are in dispute."

6. The letter was copied to the Respondent's solicitors who replied yesterday, 18<sup>th</sup> September 2006, that they were "agreeable for the hearing on 19<sup>th</sup> to be vacated as required by the applicant's solicitor."

7. The request for an adjournment had not previously been considered judicially, so at 10 am on 19<sup>th</sup> September 2006 the Tribunal considered whether an adjournment should be ordered. Neither party had attended.

8. The Tribunal considered that there was no good reason for granting an adjournment. The reasons given for an adjournment in the Applicant's solicitor's letter were spurious. There is no dispute between the parties as to the terms of the lease to be granted. The Respondent's counternotice accepted that the lease should be on the same terms as the existing lease. There is no "vesting order" needed under section 50 of the 1993 Act, because the landlord is known: it is the Respondent.

9. The parties had not followed the procedure for adjourning cases set out in the directions given on 17<sup>th</sup> July 2006. No good reason for departing from that procedure had been advanced. The procedure for adjourning cases is there in order to ensure the just and efficient resolution of cases. Experienced solicitors are expected to follow the procedure.

10. Accordingly the Tribunal refused the request for an adjournment. In order to allow the parties an opportunity to appear, however, the case was put back to 2 pm. The parties' solicitors were informed by telephone. Mrs Israel of the Applicant's solicitors indicated that the Applicant would not appear. A message was left on the Respondent's solicitor's answer-machine.

## **Hearing**

11. At 2 pm, neither party appeared, but the Respondent made written representations. The Tribunal proceeded to hear the case in the absence of the parties in accordance with regulation 14(8) of the Leasehold Valuation Tribunal (Procedure) (England) Regulations 2003.

12. The Respondent's written representations asked for costs as follows:

- (a) £550.00 solicitor's costs for advising the Respondent, instructing a surveyor, considering the report and serving a counternotice;
- (b) surveyor's fee of £400; and
- (c) conveyancing costs of £500.

In each case VAT stood to be added.

13. The representations enclosed an extract from a travelling draft lease and stated that there was a dispute as to clause 3 of the travelling draft. The representations also said:

"it has come to the landlord's attention that unauthorised works in breach of the terms of the lease have been carried out. Although the landlord has requested access for purposes of inspection so that the surveyor can inspect the premises, the access has not been allowed. The landlord has instructed us to make an application to the LVT for leave to issue a Section 146 Notice in respect of the said breach. The

landlord wishes to ensure that the grant of the Deed of Variation will not effect his right to serve the Section 146 Notice in respect of present breaches of the terms of the Lease and also its ability to recover the arrears of the rent and service charges."

14. So far as the costs are concerned, the Tribunal considered that the figures under (b) and (c) were reasonable. The Tribunal noted, however, that the figure under (a) was increased because (in the solicitor's words) the "matter had been further complicated by the fact that there are breaches of the terms of the lease in respect of the unauthorised works which have been carried out." These costs are in the Tribunal's judgment recoverable (if at all) only as part of the costs of a notice under section 146 of the Law of Property Act 1925. They are not properly part of the costs of advising the Respondent on the Applicant's notice. Accordingly the Tribunal has made an apportionment. In the Tribunal's view £300 plus VAT is properly recoverable under (a).

15. The total costs recoverable by the Respondent are thus £1,200 plus VAT of £210.

16. So far as the dispute about the terms of the lease are concerned, the position is that the parties in their notice and counternotice have agreed the terms of the lease. The Tribunal therefore has no jurisdiction to determine the terms of the lease. The parties, for no doubt good reason, are now seeking to replace the terms of the existing lease with a more modern form. The fact that they are in disagreement about clause 3 of this new modern draft does not, however, give the Tribunal jurisdiction under section 48 of the 1993 Act. As noted above, the Respondent accepted that the terms of the lease extension should be identical to those of the existing lease (save that no ground rent should be payable). There is thus nothing for the Tribunal to determine. Similarly the price has been agreed at £12,000.

17. The Respondent alleges that there are arrears of ground rent and service charge. Despite the Tribunal's directions on this issue, no evidence was adduced as to any arrears of ground rent or service charge, so the Tribunal is unable to determine the arrears (if any).

18. The Respondent has made no application to the Tribunal in respect of a notice under section 146 of the 1925 Act. Accordingly the Tribunal can make no determination in respect thereof.

### **Determination**

19. The Tribunal accordingly determines:

- (a) that £1,410.00 is payable by the Applicant to the Respondent under section 60 of the 1993 Act;
- (b) that the Tribunal has no jurisdiction to determine the terms of the lease, because the parties have agreed that the terms are those of the existing lease (save that no ground rent should be payable).



Adrian Jack, Chairman

19<sup>th</sup> September 2006