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**DETERMINATION ON JURISDICTION  
LEASEHOLD REFORM, HOUSING AND URBAN  
DEVELOPMENT ACT 1993**

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Applicant: TABITHA ANNE GURNER

Respondent : TRUSTEES OF CALTHORPE ESTATES (Freeholders)  
PRIORY ESTATE MANAGEMENT (EDGBASTON) LIMITED  
(Intermediate Landlord)

Property: Flat 2 Griffin Court, West Drive, Edgbaston, Birmingham B5 7RS

Heard at : Birmingham Panel Offices

On : 23rd January 2007

Appearances :

For the Applicant : None

For the Respondent

Freeholder : Mr K Davies

Intermediate landlord : No appearance

Members of the Tribunal : Mr D Jackson (Chairman)  
Mr T F Cooper FRICS  
Mr I Taylor FRICS

Date of decision :

1. BACKGROUND

This is the determination of a Leasehold Valuation Tribunal of the Midland Rent Assessment Panel on jurisdiction under the Leasehold Reform, Housing and Urban Development Act 1993 (the 1993 Act) in relation to Flat 2 Griffin Court, West Drive, Birmingham, West Midlands B5 7RS (the Property).

The Property is held under the terms of an Underlease dated 18th November 1959 made between Priory Development Management Company (1) Midland Bank Limited (2) and Sarah Helen Makin Wallace (3) whereby the Property was demised for a term of 99 years (less 3 days) from 25th March 1958 at a ground rent of £10 per annum. The Freeholders are the Trustees of the Calthorpe Estate.

2. THE APPLICANT'S FIRST NOTICE

By Notice (the Applicant's First Notice) dated 6th January 2006 the Applicant gave "Notice of Claim to Exercise Right."

On 1st February 2006 the Respondent Freeholders by their agents gave a Counter-Notice. Paragraph 2 of that Counter-Notice reads:-

"The Landlord does not admit that the tenant had on the relevant day the rights to acquire a new lease of the flat for the following reasons:-

a) The Notice of Claim served is invalid."

3. By letter to the Panel Office dated 31st July 2006 the Applicant applied to the Tribunal for determination of terms in dispute. It would appear that the letter dated 31st July 2006 was sent by fax and received at Panel Offices on 1st August at 12.37 p.m. The "hard copy" was received at Panel Offices on 2nd August 2006.

4. THE APPLICANT'S SECOND NOTICE

Following correspondence between the Respondent Freeholder and the Applicant, the Applicant served a further notice (the Applicant's Second Notice) being "Tenant's Claim to a New Lease" in form LRHUD1 dated 17th October 2006.

In response to the Applicant's Second Notice the Respondent Freeholder served a Counter-Notice dated 24th October 2006 admitting at paragraph 2 that the Applicant had on the relevant date the right to acquire a new lease.

5. THE HEARING

A hearing was held on 23rd January 2007. The Tribunal was satisfied that notice of the preliminary hearing had been given to the Applicant, Respondent Freeholder and Intermediate Landlord on 12th December 2006. Neither the Applicant nor the Intermediate Landlord attended. However Mr Davis did attend the hearing to represent the Respondent Freeholder.

6. LAW

The relevant Law is to be found in sections 46 – 51 of the 1993 Act.

It is clear from section 46 that proceedings relating to the validity of the tenant's notice can only be determined by the Court and accordingly this Tribunal has no jurisdiction to make a determination on the validity of the tenant's Notice.

However, where terms of the acquisition remain in dispute the Tribunal does have jurisdiction as provided for in section 48 as follows:-

"48. Application where terms in dispute or failure to enter into a lease

(1) Where the landlord has given the tenant –

- (a) a counter-notice under section 45 which complies with the requirement set out in sub-section (2)(a) of that section, or
- (b) a further counter-notice required by virtue of section 46(4) or section 47(4) or (5),

but any of the terms of acquisition remain in dispute at the end of the period of 2 months beginning with the date when the counter-notice or further counter-notice was so given, a Leasehold Valuation Tribunal may, on the application of either the tenant or the landlord, determine the matters in dispute.

(2) Any application under sub-section (1) must be made not later than the end of the period of 6 months beginning with the date on which the counter-notice or further counter-notice was given to the tenant."

The relevant provisions in relation to the Landlord's counter-notice are found in section 45:-

"Section 45(2) The counter-notice must comply with one of the following requirements –

- (a) state that the Landlord admits that the tenant had on the relevant date the right to acquire a new lease of the flat;
- (b) state that, for reasons specified in the counter-notice, the Landlord does not admit that the tenant had such a right on that date;
- (c) contains such a statement as is mentioned in paragraph (a) or (b) above but states that the Landlord intends to make an application for an Order under section 47(1) on the grounds that he intends to re-develop any premises in which the flat is contained."

## 7. JURISDICTION IN RELATION TO THE APPLICANT'S FIRST NOTICE

As set out above the Tribunal has no jurisdiction in relation to proceedings relating to the validity of the tenant's notice. However where terms of acquisition remain in dispute at the end of the period of 2 months beginning with the date when the counter-notice has been given, either party may refer matters in dispute to the Tribunal for determination. However

the Tribunal's jurisdiction to determine matters in dispute is dependent on a counter-notice being served which complies with the requirements of section 45(2)(a).

It is clear from the Respondent Freeholder's Counter-Notice of 1st February 2006 that the Respondent Freeholder did not admit that the tenant had on the relevant date the right to acquire a new lease. Under those circumstances the Respondent Freeholder's Counter-notice of 1st February 2006 does not comply with section 45 (2) (a) and accordingly the Tribunal has no jurisdiction to determine matters in dispute on the Applicant's First Notice.

8. JURISDICTION IN RELATION TO THE APPLICANT'S SECOND NOTICE

In relation to the Applicant's Second Notice served on 17th October 2006 the Respondent Freeholder has served a Counter-Notice dated 24th October 2006 which does comply with section 45(2)(a).

However, by virtue of section 48(2) any application made to the Leasehold Valuation Tribunal "must be made not later than the end of the period of 6 months beginning with the date on which the counter-notice was given."

The Tribunal determines that no application under section 48(1) has been made in relation to the Applicant's Second Notice or the Respondent Freeholder's Counter-Notice of 24th October 2006. Accordingly as no application has been made to the Tribunal then there is no jurisdiction to consider the Applicant's Second Notice.

9. DECISION

The decision of the Tribunal is that the Tribunal does not have jurisdiction under section 48 of the 1993 Act to make a determination on either the Applicant's First Notice or the Applicant's Second Notice.

Should the Applicant wish to seek a determination on her Second Notice then an application in the usual form needs to be made to the Tribunal within the time limit set out in section 48(2) of the 1993 Act.

Signed .....  .....

MR D JACKSON – Chairman

7 FEB 2007