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MIDLAND RENT ASSESSMENT PANEL

Case No. BIR/47UB/OAF/2005/0206

Leasehold Reform Act 1967

Commonhold and Leasehold Act 2002

Applications under Section 21 of the 1967 Act to determine:-

- (1) The price payable on enfranchisement by the Tenants under Section 9(1) of the 1967 Act (agreed at the hearing);
- (2) Reasonable costs under Section 9(4) of the 1967 Act.

Applicant Tenants:- David Russell Scott and Vera Mildred Scott

Respondent Freeholder:- Afshan Zabir

Property:- 7, Barkers Lane, Birmingham, B47 6BY

Date of Tenants' Notice to acquire Freehold:- 23rd February 2005

Heard at:- The Panel Office

On:- 9th November 2005

MEMBERS OF THE TRIBUNAL

Mr A.J.ENGEL (Chairman)
Mr J.RAVENHILL
MRS C.SMITH

Date of Tribunal's Decisions:- 29th November 2005

DECISIONS

- A. The sum to be paid by the Tenants for the acquisition of the freehold interest in the property, in accordance with Section 9(1) of the 1967 Act, is £9,524 (Nine thousand five hundred and twenty-four pounds) – as agreed, by the parties, at the hearing.

B. The costs to be borne by the Tenants, under Section 9(4) of the 1967 Act are limited to legal costs of £275 (+VAT, if applicable).

REASONS

Agents

1. Mr N. Plotnek (Surveyor of Nick Plotnek Associates) acted for the Tenants and represented them at the hearing.
2. Mr P. Jackson (Surveyor of Paul Jackson Surveyors) and Taylor Walton, Solicitors acted for the Freeholder, who was represented by Mr Mohammed Zabir at the hearing.

Background

3. By written Notice, dated 23rd February 2005, the Tenants gave to the Freeholder notice of their desire to have the freehold.
4. By written Notices, both dated 9th September 2005, the Tenants applied to the Tribunal for the determinations.

Hearing

5. At the hearing, on 9th November 2005, the parties agreed the amount to be paid by the Tenants for the acquisition of the freehold in the sum of £9,524.
6. The parties also agreed that the costs of the Freeholder under Section 9(4)(b) of the 1967 Act (costs of conveyance of the freehold interest) should be limited to £275 (+ VAT, if applicable).

Other Costs

7. A valuation, dated 13th October 2005, had been carried out on behalf of the Freeholder. At the hearing, Mr Zabir informed the Tribunal (and the Tribunal accepted) that the survey for this valuation was carried out on 12th October 2005.

Mr Zabir submitted that the (reasonable) cost of this valuation was

to be borne by the Tenants, pursuant to Section 9(4)(e) of the 1967 Act.

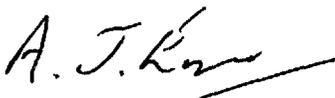
However, Section 9(4)(A) of the 1967 Act (inserted by Section 176 and Schedule 13 of the 2002 Act) provides:-

“Subsection (4) above does not require a person to bear the costs of another person in connection with an application to a leasehold valuation tribunal.”

As both the survey and the valuation were carried out after the Notice of Application (dated 9th September 2005) and the costs thereof were, clearly, costs incurred “in connection” with these proceedings , the Tribunal determines that the costs thereof are not to be borne by the Tenants – by reason of Section 9(4)(A) aforesaid.

8. By letter, dated 21st October 2005, the Freeholder’s solicitors submitted that their costs in connection with these proceedings should be borne by the Tenants. The letter refers to “our fees necessitated by the tenants’ application”.

However, the Tribunal determines that such legal costs are not to be borne by the Tenants, by reason of Section 9(4)(A) aforesaid.

Signed  (A.J.ENGEL - Chairman)

Dated 29th November 2005