



Residential  
Property  
TRIBUNAL SERVICE

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
DECISION BY LEASEHOLD VALUATION TRIBUNAL for the  
MIDLAND RENT ASSESSMENT PANEL**

**LEASEHOLD REFORM, HOUSING  
AND URBAN DEVELOPMENT ACT 1993**

---

**BIR/00CN/OLR/2006/0051**

**Premises:** 12 Hamble Court, Garrard Gardens, Park Road,  
Sutton Coldfield, West Midlands B73 6BY

**Applicants (Lessees):** Zbigniew Lupa, Maria Lupa, Henry Tomasz Lupa,  
Alina Marta Schilling

**Represented by:** Eddowes Perry and Osbourne, Solicitors

**Freeholder:** Friends Provident Life and Pensions Limited

**Represented by:** Gardner Weller, Solicitors

**Intermediate Landlord:** Halliard Property Co Ltd

**Represented by:** Wallace LLP, Solicitors

**Tribunal:** Mr J C Avery BSc FRICS  
Mr D R Salter LLB  
Mrs N Jukes

---

**Decision**

For the reasons given below the Tribunal finds that it does not have jurisdiction to determine the Application.

**Preliminary**

1. On 26 May 2006 the Tribunal received an application dated 24 May 2006 from the Lessees to determine (i) the price payable for a lease extension under the provisions of the Leasehold Reform and Urban Development Act 1993 (the Act) and (ii) the reasonableness of the Landlord's costs.
2. The Lessees' notice to the Landlord (Friends Provident), under section 42 of the Act, was dated 11 October 2005 and required the Landlord to give a counter notice by 23 December 2005.

3. No counter notice was served by the Friends Provident but, nevertheless, on 5 December 2005 the Intermediate Landlord (Halliard), gave notice to the Tribunal under Schedule 11 paragraph 7(1) of the Act that it intended to act independently, referring to a "Counter Notice dated 29 November 2005 under Section 45 of the 1993 Act served by or on behalf of the Competent Landlord".
4. On 28 June 2006 the Tribunal wrote to the parties notifying them of a preliminary hearing on 2 August to decide whether, in the absence of counter notice served by Friends Provident, the Tribunal had jurisdiction to determine the matters raised in the application.
5. In a letter to the Tribunal dated 5 July 2006 Gardner Weller confirmed that a counter notice had not been served by Friends Provident, but suggested that it was pre-empted by the service of the Intermediate Landlord's notice to be separately represented.
6. On the day before the hearing -1 August - postponement of the hearing was requested on the ground that agreement had been reached between the parties. The request was refused but the parties were invited to renew the request at the hearing.
7. In the event, none of the parties attended the hearing and the Tribunal made its determination on the papers before it, including the letters from the parties' representatives.

#### **Refusal of request for postponement**

8. The fact that the parties indicated that they had reached agreement on the premium was not sufficient reason at 24 hours notice to postpone a hearing that was not concerned with determining that issue. The Applicants did not withdraw their application and, in case the terms did eventually need to be determined, it was in the interest of the just, expeditious and economical disposal of proceedings that the issue of Tribunal's jurisdiction should be decided.

#### **The Act**

9. Section 42 provides that a qualifying tenant may serve a notice on the landlord and any third party, claiming to exercise the right to a new lease, and specify, inter alia, the date (not less than two months later) by which the landlord must respond with a counter notice.
10. Section 45 (2) specifies the requirements of the counter notice as follows: it must state whether the tenant's right is admitted or not and, if admitted, which of the tenant's proposals are accepted and which are not. *Burman v Mount Cook Land Ltd* [2001] EWCA Civ 1712 (*Burman*) clarifies the importance of these requirements.
11. Schedule 11, paragraph 7 provides that an intermediate landlord may, at any time *after* the giving of the landlord's counter notice, give notice of its intention to act independently.

12. Section 48 prescribes the procedure for application to the Tribunal "where the landlord has given the tenant a counter notice..."
13. Section 49 provides that, if the landlord fails to give a counter notice, the County Court, on application from the tenant within six months of the date by which that counter notice was required, may determine the terms of acquisition "in accordance with the proposals contained in the tenant's notice".

### **The Representations**

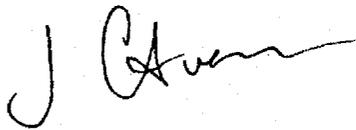
14. In separate letters, each dated 1 August 2006, and written in response to the refusal of the Tribunal to grant the request for a postponement of the hearing, the representatives of the parties contended as follows:
15. Eddowes, Perry & Osbourne for the applicants asserted that "*the immediate landlord did give a counternotice dated 29<sup>th</sup> November 2005 which we believe may be sufficient to give the Tribunal jurisdiction*".
16. Gardner Weller for Friends Provident said "*bearing in mind that a Counter Notice was not served... ..*"
17. Wallace LLP for Halliard said that "*as a result of the fact that no Counter-Notice was served, it is the Intermediate Landlord's position that the Leasehold Valuation Tribunal does not have jurisdiction to determine the terms of acquisition... ..*"

### **Reasons for the Decision**

18. It was conceded by Gardner Weller that no counter notice had been served by Friends Provident. However, it was suggested by Gardner Weller in its letter to the Tribunal dated 5 July 2006 that, notwithstanding the failure to serve a counter notice by Friends Provident, the intermediate landlord's notice to act independently 'pre-empted the service of the counter notice'.
19. It would appear that a similar view was taken by Eddowes, Perry & Osbourne in its letter to the Tribunal dated 1 August 2006, although there is some doubt about this as the letter refers, erroneously, to a counter notice given by the immediate landlord dated 29 November 2005 rather than to the notice dated 5 December 2005 which was served on behalf of Halliard (the intermediate landlord) indicating the intention of Halliard to act independently.
20. No arguments were adduced by either Gardner Weller or Eddowes, Perry & Osbourne to support the view that the intermediate landlord's notice of intention to be separately represented can obviate the need for the service of a counter notice in accordance with section 45 of the Act.
21. In the Tribunal's opinion, the Act makes clear that in the event of a failure to serve a counter notice in accordance with section 45 the Tribunal has no jurisdiction to determine an application made under section 42. Indeed, the Tribunal's lack of jurisdiction in the absence of such a counter notice was acknowledged by Wallace LLP in its letter to the Tribunal dated 1 August 2006 (see The Representations above).

22. It follows that the Tribunal is not persuaded by the view that the service by the intermediate landlord of a notice under Schedule 11 paragraph 7(1) indicating an intention to act independently constitutes, or is a substitute for, a counter notice for the purposes of section 45. Indeed, such notice to act independently was served on the assumption (mistaken) that an appropriate counter notice had already been served.
23. However, even if the notice to act independently may be so regarded it fails to meet the requirements of a valid counter notice as amplified in *Burman*, namely that such a notice should leave the tenant in no doubt as to whether his claim is admitted, and, if not, what the landlord's counter proposals were.
24. Accordingly, the Tribunal concludes that it has no jurisdiction to determine the tenant's application and related landlord's costs.

Signed



Date

8 August 2006