

## ***Trinity Newington Residents' Association***

### ***LEASEHOLD ENFRANCHISEMENT ON NEWINGTON TRUST ESTATE by Max Lewis***

This article may be of interest to long leaseholders on the Estate. It is not relevant to short leaseholders or assured shorthold.

About 65 of the leaseholds on the estate are long leaseholds. Those that are long leaseholds on the estate are for about either 53 or 77 years.

We have just finished extending the lease on our flat by 90 years to December 2173. It is now virtually freehold. We will no longer have to pay ground rents and whilst ground rents at £150 a year are modest at the moment they will increase substantially in about 8 years time to 0.2% of the then value of the property and will then increase thereafter in line with the value of the property. In 20 years' time ground rents could be substantial.

Our leasehold extension was a DIY job and in so doing we reckon we saved about £7,000 over what other properties at the time managed on agreed settlements. We also saved about £1,000 on the landlords' expenses which the tenant has to pay and probably saved over £1,500 on our expenses for a negotiated settlement. Our own expenses could have been over £10,000 if we had professional representation at the Leasehold Valuation Tribunal and Lands Tribunal.

It was a lot of work. It probably took eight man days over nearly 30 months but it was enormous fun and winning at the Leasehold Valuation Tribunal, winning again at the steps of the appeal tribunal and winning on the steps of the Leasehold Valuation Tribunal yet again on the costs issue was enormously satisfying.

I did get help.

The first step for anyone wanting to extend a lease is the Government sponsored LEASE. Their web site [www.lease-advice.org](http://www.lease-advice.org) is excellent. This web site explains the law and how the 'marriage value' is calculated. (To simplify the marriage value is the difference in value between the actual remaining lease, ie, 78 years in our case and what the property would be worth with a 168 year lease. This marriage value is split between the landlord and a tenant by an agreed formula). The LEASE web site also contains every Leasehold Valuation Tribunal and Lands Tribunal decision and reason for decision and is formatted so that you can research properties similar to your own. LEASE are however obviously overloaded with work and as a consequence are not timely in responding to personal queries. LEASE are not a free substitute for professional advice.

It was unfortunate for us that we only heard about LEASE nine months after the process started as we would have been able to save on some of the modest legal and valuation costs we incurred. We would also have saved a lot of research time.

I was also helped by the text book Hague on Leases which your library can obtain. There are probably only about 15 relevant pages in the 1,000 page book and it is a nice feeling to become an expert on a tiny bit of property law. However, when I first got the book I nearly gave up our case as in the preface the author gives especial thanks to Julian Briant of Cluttons for his assistance. It was then that I realised that we were up against professionals even though the quantum in dispute was small.

The Leasehold Valuation Tribunal's own web site and their leaflets are also helpful.

We were especially helped in the early stages by Roland Jones (tel 0207 379 3475) a solicitor who has represented several people on the estate on enfranchisement issues. Roland's fees were reasonable and his advice excellent. He is obviously accustomed to our landlords' somewhat difficult professional representatives.

Tenants must realise that professional fees are such that it is just not feasible for an individual to go to a full day tribunal with a paid solicitor and valuer because Cluttons will fight every step of the way and will probably take decisions to appeal when substantial further costs will be incurred. The landlords' representatives are well aware of this and use the costs issue to pressure tenants to settle on much worse terms than the tribunal awards. Professional costs in lease extensions are out of all proportion to the sum in dispute and it is a shame that other tenants and TNRA could not use us as a test case.

We had little help or advice from TNRA but it would not have been reasonable for us to expect the Association to finance a test case to establish a precedent. The costs could have exceeded £10k. I hope this article helps those who wish to proceed on a DIY basis in future and will reduce the telephone calls to me as to how to proceed.

Whilst we have 'won' against the landlords on three instances, our settlement has been 'amicable' ie outside of the tribunal. Whilst our settlement has some precedent for future cases it carries substantially less weight than a formal tribunal adjudication. It would have been very helpful for other tenants on the estate in the future if we had not settled outside of the appeal tribunal's door but we got what we wanted. There was a slight risk at the appeal tribunal that we could lose and if we had we would have had to pick up all the landlord's costs which could have been more than £10,000 which is why we did not go all the way. The reality is that there are no tribunal precedents for the square and this is obviously part of the landlords' tactics or to be precise their professional advisers' tactics.

I was most disappointed at the general lack of interest from all other leaseholders who I circulated and tried and failed to get involved in a 'class action'. Indeed other leaseholders' own actions were to my distinct disadvantage. Two other leaseholders in our building with very similar properties and identical leases settled just prior to our tribunal. One leaseholder settled for logical reasons for them at over 50% higher than the tribunal awarded in my case a month before our tribunal and the landlords were able to and did try to use this as evidence of the market price. A second leaseholder settled a few weeks before the appeal tribunal at the landlords' full asking price. This again was perfectly logical for that tenant and there were special circumstances for

that tenant but I did not relish appearing at the appeal tribunal and arguing that two tenants who were both professionally advised were not precedents.

A proper test case would have stopped the landlords picking tenants off individually which is exactly what happened and will happen again unless long leasehold tenants work together. (As an aside the only way to improve the service issues matters if the long leaseholders work together.)

Cluttons, Forsters (the landlords' lawyers) and I spent the first year of the process communicating with each other. To be precise we communicated and Cluttons normally had to be chased 4 or 5 times before they replied. It was near the end of the whole process that I learned that the only way to get the landlords' professionals to respond expeditiously to correspondence was to threaten to report them to their professional associate for bringing their profession into disrepute by not responding to correspondence in a timely manner.

Both Cluttons and ourselves provided detailed written evidence to the tribunal. Cluttons provide evidence as experts. I was fortunate that Cluttons made a number of errors in their evidence including the condition of comparator properties they had not visited, incorrect comments about the council managed properties at the end of the street and indeed got the sale price of one comparator property wrong. Neighbours down the street in comparators were very helpful in giving us information and allowing us access to take photos. Cluttons provided their evidence only a few days before the tribunal rather than a month before as the tribunal directs as they were convinced that I would cave in. My information was submitted on time which I am sure gave me brownie points.

The tribunal itself was the least stressful part of the whole process especially when I learned that at the Leasehold Valuation Tribunal each side pays their own costs. There were two senior lawyers and a surveyor who made up the tribunal. They were obviously very experienced and professional but as a layman acting against a large firm they allowed me to take enormous liberties with the rules of evidence and in cross-examining Mr Briant of Cluttons.

The tribunal gave me every opportunity to present my case and even prompted me but were firm in stopping my irrelevancies on matters such as the landlords' management of the estate. The tribunal also drew to my attention the crucial and interesting case of 'Delaforce' of which I was ignorant at the time which gave them the logic to give little if any weight to my neighbour's settlement at close to asking price a few weeks earlier. The case lasted most of the day with the landlords represented by Julian Briant and another professional colleague

A few weeks after the tribunal hearing the tribunal visited our flat, the comparator we organised and walked round the area. The landlords were unable to arrange for the tribunal to visit the comparator they were supposed to organise because the landlords wrote to the leaseholder and not the subtenants who actually lived in the property. (An issue which certainly helped us at the tribunal was the landlords' obvious lack of knowledge over who actually lived in their properties which explains the recent correspondence from the landlords to long leasehold tenants.)

The costs of the tribunal members and the Leasehold Valuation Tribunal process which must have been many thousands of pounds were paid for by the State. Both parties pay their own costs. Our costs were a bus fare but the landlords' costs involved two of Cluttons professionals for probably 4 man days, their lawyers and support staff ie probably £10k+.

The decision with detailed reasons were delivered a month later and the tribunal award was less than my final offer and nearly 40% below the landlords' final offer. We were very pleased with the result.

Unfortunately the landlord decided to take the matter to appeal – the Lands Tribunal – and refused my request to use the ‘simplified process’.

This was all part of the landlords' tactics to force me to settle as if the Leasehold Valuation Tribunal had never taken place. The Lands Tribunal – the appeal tribunal – is a court and costs normally follow the award. If I lost and the landlords were right the costs would have out of all proportion to the sum in dispute. I was strongly advised by everyone (including the landlords' lawyers!) to settle before the Lands Tribunal as the Lands Tribunal costs could be enormous ie over £20k.

I produced very detailed evidence why the appeal tribunal should not disturb the Leasehold Valuation Tribunal. This evidence was submitted to the landlord and the Lands Tribunal. The landlord appeared to find it difficult to believe we were taking the risks of Lands Tribunal hearing without legal advice and without our costs underwritten by other tenants.

We heard nothing from the landlords' representatives until a week before the appeal tribunal when they offered to settle for £1,000 less than they originally wanted (ie ignoring the Leasehold Valuation Tribunal) with each side bearing their own costs. I was warned by them that the costs at the Lands Tribunal could be very large.

Each day thereafter they brought the amount down and we finally settled ‘amicably’ at £101 more than I had offered over two years previously and for a few hundred pounds more than the tribunal awarded. By settling ‘amicably’ no tribunal precedent was established which is crucial for the next long leaseholder.

We then had to agree the quantum of ‘statutory costs’ which we are required to pay. These are the costs the landlord has incurred in the lease extension but specifically excluding the tribunal process. The landlord’s representatives eventually came up with £2,750 + vat which was not unreasonable considering the landlords use, as they are entitled to, top of the range professionals. The landlords refused to advise us how they calculated this figure so I took them to the tribunal and offered £1,550. The tribunal asked them to provide evidence of their charge out rates and time spent which they did not do.

Again just two days before the tribunal the landlords' representatives threw in the towel and we settled at £1,550 in total which probably only buys six or seven hours of professional time and was a bargain.

Do I recommend that other long leaseholders extend their lease on a DIY basis? Most definitely yes. Remember, however, that the charity that owns the estate has a duty to maximise the returns to the beneficiaries of the charity which is not the same thing at all as coming up with a fair deal for tenants. This means that their professional advisors 'employ tactics'. The law books, LEASE and the tribunal literature are not very helpful in advising about tactics. If there is a next time I will be aware of these tactics and will respond accordingly and be less of a gentleman.

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