

Courts and Tribunals

Introduction

- Leasehold Valuation Tribunals (LVTs) were set up under the Leasehold Reform, Housing & Urban Development Act 1993 from the membership of Rent Assessment Panels. From 2002 both LVTs and Rent Assessment Panels have been incorporated into the Residential Property Tribunal Service and from 1 July 2011 the RPTS joined Her Majesty's Courts and Tribunals Services (HMCTS).
- The name RPTS will remain in use until April 2012 (this may be delayed) when it will cease and is likely to become part of what is to be called the First Tier Property, Land and Housing Chamber.
- The names Leasehold Valuation Tribunal, Rent Assessment Committee and Residential Property Tribunal which are used by the RPTS for the various types of cases it handles will remain.
- From 30 April 2011 the Residential Property Tribunals took over jurisdictions for most types of dispute arising from Park Homes.

An LVT is made up of a Chairman and one or two other (wing) members drawn from the Panel. Each LVT is serviced by a clerk who will communicate with the parties. LVTs have their own rules of procedure which are currently under review by the Ministry of Justice.

Jurisdiction

LVTs can:

- Decide the price to be paid when a leaseholder wants to buy (enfranchise), extend or renew the lease of their home and the value cannot be agreed with the freeholder
- Vary estate management schemes under the Leasehold Reform, Housing and Urban Development Act 1993
- Adjudicate in disputes about the right of first refusal procedure (which gives leaseholders the right of first refusal to buy the freehold when the landlord wishes to sell it) and the compulsory acquisition of the landlord's interest in blocks of flats
- Decide payability and reasonableness for payment of service charges
- Settle disputes about the landlord's choice of insurer
- Decide applications on dispensation of service charge consultation requirements
- Decide on the payability and reasonableness of administration charges
- Decide on disputes about the right to manage
- Appoint a manager or receiver by order if fault of the landlord is proven
- Determine applications for variation of leases
- Determine estate charges if an estate management scheme is in place

LVTs are only authorised to hear cases on certain matters. The main matters under the specific acts are:

- Under the Leasehold Reform Act 1967: (the right of a long lessee of a leasehold house to acquire the freehold or to be granted an extend lease):
 - a. The terms of the transfer or of the lease
 - b. The price payable for the freehold and any intermediate leases
 - c. The modern ground rent payable under an extended lease
 - d. The landlords' reasonable costs payable.
 - e. The amount of any compensation payable to the tenant
- Under Chapter I of the Leasehold Reform, Housing & Urban Development Act 1993 (the right of long leaseholders of flats collectively to purchase the freehold and any intermediate leasehold interests):
 - a. The terms of the transfer(s) of the freehold and any leasehold interests including the extent of the freehold to be acquired
 - b. The price payable for the freehold and any intermediate leases
 - c. The landlords' reasonable costs payable by the claimant under s33

- Under Chapter II of the Leasehold Reform, Housing & Urban Development Act 1993 (the right of a long leaseholder to acquire an extended lease):
 - a. The terms of any new lease to be granted;
 - b. The premium for the new lease and any 'other amounts' payable to any intermediate leaseholders
 - c. The landlords' reasonable costs payable by the claimant under s60
- Under the Landlord and Tenant Act 1985 (the 1985 Act):
 - a. The reasonableness of service charges payable and payability under s27A;
 - b. Whether the landlord's costs of the LVT proceedings can be recovered as part of a service charge;
 - c. A challenge to the landlords choice of insurer for a dwelling;

Note: If there is a counter claim for damages, the LVT may hear this, but plaintiffs are encouraged to send claims to the County Court.

- Under the Landlord and Tenant Act 1987 (the 1987 Act):
 - a. To appoint a manager of the premises where there have been failings of management and to vary or discharge a previous appointment;
 - b. The terms of the transfer under the right of first refusal

Right to manage

Under the 2002 Act the LVT can hear disputed claims for Right to Manage and

- a. They can also hear issues relating to disputed handovers, such as uncommitted service charges held by the landlord or previous manager.
- b. They can hear breach of lease cases under s168(4). However, a landlord can only pursue forfeiture after he has got the determination from the LVT that there is a breach of lease. This often requires a chartered surveyor to give an expert opinion on such things as whether alterations have been carried out in breach of the lease, etc.

The LVT also has some jurisdiction in regard to Houses in Multiple Occupation.

Procedure

Once a dispute has been referred to an LVT (using the forms issued by the LVT), the clerk will advise the other party to the dispute and then start to put the procedure in place leading to a hearing. The LVT has the power to conduct case reviews, to give directions and to dismiss frivolous applications. It will adapt a procedure to suit the circumstances and to ensure the parties understand the LVTs expectations.

A party may appear in person or be represented by anyone including a barrister, a solicitor or a chartered surveyor. This person is known as the advocate. The advocate's duty is not only to present a party's case but also to assist the LVT on issues of law, both for and against the party. A chartered surveyor acting as an advocate should be fully aware of the RICS Guidance Note Surveyors acting as advocates.

The issues considered are often complex and an advocate may call evidence from two types of witness and generally neither is required to give evidence under oath. A witness of fact may only testify about facts and may include the party to the case. Expert witnesses may express opinions but those opinions generally have to be supported by evidence.

LVTs also offer a mediation service which can be particularly useful in cases of disputed service charges where there is an on-going relationship between the landlord and the tenant which would be damaged by the usual adversarial proceedings.

Appeals from the LVT are to the Upper Tribunal (Lands Chamber). Many issues have been clarified over the years but decisions on those remaining will reflect the quality of evidence given in that particular case.

The role of the expert chartered surveyor

Chartered Surveyors are often asked to give expert evidence on:

- Values, prices to be paid for freeholds and premiums to be paid for leases
- Service charges properly payable, in relation to applications under the 1985 Act
- Standards of management, in relation to applications under the 1987 Act

An expert should be appointed well before a case is referred to an LVT and to allow the expert sufficient time to form a considered opinion and to comply with the LVTs directions on the exchange of valuations and evidence ahead of the hearing.

Chartered surveyors providing expert evidence must have regard to the mandatory RICS Practice Statement Surveyors acting as expert witnesses, which imposes a primary overriding duty to provide independent, objective and unbiased evidence to the LVT.

Reference Web Sites

Application to the Leasehold Valuation Tribunal advice website:

www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/residential-property

Commonhold and Leasehold Reform Act 2002

www.hms0.gov.uk/acts/acts2002/20020015.htm

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