

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL & COMPENSATION ACT (NORTHERN IRELAND) 1964
PROPERTY (NORTHERN IRELAND) ORDER 1978

IN THE MATTER OF A REFERENCE

R/11/2008

BETWEEN

MALCOLM LIFTON DAVIES & MARGARET ELDER DAVIES – APPLICANTS

AND

ESTHER GREENE – RESPONDENT

Re: 29 & 31 Jordanstown Road, Newtownabbey, County Antrim

Lands Tribunal - Mr M R Curry FRICS IRRV MCI.Arb Hon.Dip.Rating Hon.FIAVI

1. The applicants, Mr and Mrs Davies ('the Davies'), are owners of adjoining semi-detached properties at 29 and 31 Jordanstown Road, Newtownabbey. No. 29 had been owned by them since 1968 and No. 31 was purchased in 1997, apparently with a view to linking the two to make one dwelling.
2. In February 2008, the Davies applied to the Tribunal for extinguishment of two covenants. It appears that the first restrictive covenant required the retention of all divisional walls, hedges and fences and the second required written consent of the Respondent for alterations.
3. The Tribunal was informed promptly that there had previously been and currently were negotiations between the parties through their solicitors. However despite further discussions between the parties and their representatives, a compromise could not be achieved. In August 2008 the Davies wrote to the Tribunal indicating an intention to withdraw and later formally requested withdrawal of the application.
4. It was agreed that the issue of costs would be dealt with by written representations. Mr Glenn Breen of Shean Dickson Merrick, Solicitors, wrote on behalf of the Respondent. The Davies had had legal representation in the case but wrote on their own behalf.
5. Mr Breen claimed legal fees of £750 plus VAT, being the amount the Respondent had put forward as their reasonable fees for payment as part of a negotiated settlement. He also claimed valuer's fees of £500 plus VAT. He waived any additional costs flowing from the application to withdraw and suggested that the figure for legal fees was modest in the context of the time spent on the case. He referred the Tribunal to the general presumption that the

party seeking the withdrawal would be assumed to have recognised that they were unlikely to succeed on the substantive issues and would be ordered to pay the other party's costs. He suggested there were no exceptional circumstances. The Respondent had no desire to litigate or be involved in a Lands Tribunal application and was compelled to incur the costs of defending such an application by the reference from the Applicants. He suggested that it would be wholly inequitable for the Respondent to be liable for costs.

6. The Davies suggested that they should not have to pay the Respondent's costs and should receive some of their own costs because of unreasonable conduct by the Respondent. They wrote at some length about that conduct. In particular they suggested that their offer of compensation was generous and there was a change of stance, at a late stage, by the Respondent in regard to the second issue of the requirement for written consent of the Respondent for future alterations. They said that the valuer instructed to negotiate with them saw no difficulty with allowing that requirement to be removed but the Respondent's solicitors advised it to be contrary to normal conveyancing practice in Northern Ireland and unworkable.
7. Generally, in the ordinary case of this nature, the Tribunal will assume that respondents through no fault of their own will be put to some expense. There is a presumption that it will award them their initial reasonable costs up to the point where a case takes on the character of contentious litigation. From then on, a losing party is at risk of having to meet a successful party's costs in the usual way.
8. There having been prior negotiations, this case took on the character of contentious litigation when the Davies applied to the Tribunal for extinguishment. Prior to that the Davies are presumed to be responsible for the Respondent's reasonable costs.
9. In regard to the further presumption, which follows from the Davies' application to withdraw, that they would not have succeeded on the substantive issues, the Tribunal is satisfied that the presumption is not displaced.
10. In their reference to the Tribunal the Davies expressly referred to the second issue - the requirement for written consent. The valuer was appointed by the Respondent to take on the role of negotiator on her behalf. Whatever the merits of the Respondent's stance, there appears to have been a misunderstanding or the valuer does not appear to have been fully instructed. That should be reflected in a modest reduction in costs.
11. The total amount claimed is £1,250 plus VAT. Rather than apportion a reduction the Tribunal awards a lump sum of £1,000 plus VAT.

ORDERS ACCORDINGLY

15th June 2009

**Michael R Curry FRICS IRRV MCI.Arb Hon.Dip.Rating Hon.FIAVI
LANDS TRIBUNAL FOR NORTHERN IRELAND**