

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL & COMPENSATION ACT (NORTHERN IRELAND) 1964
LAND COMPENSATION (NORTHERN IRELAND) ORDER 1982

IN THE MATTER OF A REFERENCE

R/35/2011

BETWEEN

GALE GILLESPIE - CLAIMANT

AND

NORTHERN IRELAND HOUSING EXECUTIVE – RESPONDENT

Re: Premises at 48 Kitchener Street, Belfast

Lands Tribunal - Mr M R Curry FRICS Hon.Dip.Rating

Background

1. Mrs Gillespie's mother bought a house at 48 Kitchener Street when she was a sitting tenant almost 40 years ago. In 1988 Mrs Gillespie bought the house from her mother. At that time she was living with her mother. In or about 1991 she moved out of the house to live elsewhere with her future husband. From around 1991 until around 2006 Mrs Gillespie's mother lived at the property rent free. However, in or around 2006 she agreed to enter into a tenancy and pay a small amount - £10 per month - a contribution towards maintenance and insurance.
2. In April 2010 the property was compulsorily acquired by the Northern Ireland Housing Executive by way of a Vesting Order and Mrs Gillespie received the sum of £84,000 in agreed compensation for her interest in the property. Then, relying partly on a buy-to-let mortgage, Mrs Gillespie and her husband then bought a house at 42 Riverside Drive, Lisburn at £115,000 and in November 2011 let that to her mother at a rent of £300 per month.
3. She claimed a number of items, as disturbance, in connection with the purchase of that accommodation:
 - Solicitors costs - £1013.06;
 - Mortgage related costs:
 - Arrangement fee - £800;
 - Booking fee - £250; and
 - Telegraphic transfer fee - £35.

TOTAL £2,105.

Procedural Matters

4. Keith Gibson BL appeared for the claimant instructed by Joe Allen, Chartered Surveyor. Mel Power BL appeared for the respondent instructed by Donaghy Carey, Solicitors.
5. The Tribunal received written evidence from Mrs Gillespie.
6. A hearing took place on 13th June 2012.

Positions

7. Prior to the hearing the Housing Executive had opposed payment for any of the items. However, at the hearing, Mr Power BL accepted that, in light of the earlier decision in Maxol Oil v Department of the Environment for Northern Ireland R/60/1999 [2004], the respondent's objection to payment in principle was not sustainable. He did however invite the Tribunal to consider whether the amounts were recoverable in full.

Discussion

8. Mr Power BL suggested that each case must be considered on its on merits and in its individual factual matrix.
9. In the instant case Mr Power BL pointed out that the replacement accommodation had been bought by Mr & Mrs Gillespie jointly and not Mrs Gillespie alone and awarding the amount claimed would, in effect, subsidise his investment purchase. Further, the value of the property purchased was £115,000 whereas the value of the property vested was £84,000; and the rent was now £300 per month as opposed to £10 per month. However he accepted that there was no evidence that the costs would have been materially different if the value of the replacement property had been closer to that of the vested property.
10. Mr Gibson BL suggested that but for the vesting the expenditure would have been unnecessary and referred to Mrs Gillespie's evidence that the only reason for the joint purchase was that she could not obtain the mortgage based on her own financial circumstances.

Conclusion

11. The respondent's objection to payment for the items claimed in principle was not pursued.

12. The Tribunal accepts that awarding the sums claimed probably would result in some collateral benefit to Mr Gillespie and also, because there was a difference in value between the property acquired and the property purchased, some expenses probably exceeded what would have been incurred on a strict view of a like-for-like basis. But, in the circumstances of this particular case the Tribunal is not persuaded that these factors are sufficient to justify any adjustment to the amounts claimed. The Tribunal concludes that it should award Mrs Gillespie the sum of £2,105 as claimed.

ORDERS ACCORDINGLY

18th July 2012

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

Appearances

Claimant: Keith Gibson BL instructed by J Allen, Chartered Surveyor.

Respondent: Mel Power BL instructed by Donaghy Carey, Solicitors.