

Let's hear it for the LVT

The other day, a small group of us walked out of a courtroom £24,000 richer.

We were representatives of our self-managed apartment building and had spent two years vainly trying to recover an ever-increasing debt from a non-paying owner. Yet it took a Leasehold Valuation Tribunal just 90 minutes to find in our favour.

And where angry letters, debt collection agencies and county courts had signally failed, the LVT triumphantly succeeded.

What's more, the judgement is enforceable, not some wishy-washy recommendation. The tribunal has teeth, so now, if our recalcitrant resident does not pay up in full within three months, either her lease will be forfeited or her mortgage company will repossess. Either way, she can no longer wriggle out of it, and the upshot is, she has to sell up to meet the debt.

So, grateful thanks all round to the LVT panel. The three members, consisting of a solicitor, surveyor and a lay person were calm, scrupulously fair to both sides, and most importantly, totally expert in all the arcane ramifications of leasehold law.

The Leasehold Valuation Tribunal, an offshoot of the Rent Assessment Panel, is now 10 years old. It was set up in 1997 to deal with leasehold issues such as service charges and lease extensions. The LVTs are rapidly taking over from county courts in these areas and are getting steadily busier as ever more of us begin to live in flats rather than houses.

Barrister Siobhan McGrath, Senior President of the Residential Property Tribunal Service, of which the LVT is an important part, says: "We seek to provide accessible and straightforward dispute resolution. The tribunals are run by experts and are relatively informal and low-cost. People can, if they like, represent themselves.

"Housing disputes may not seem very big to county courts, but they are very important to the parties involved. Service charge disputes, for instance, are all but impossible to deal with unless you do it regularly enough to see a pattern.

"It's important to have a tribunal service as once a decision is made, the parties accept it, and can both go away with some dignity."

So how does it all work? Anthony Essian, principal advisor to the Leasehold Advisory Service, says: "LVTs are more straightforward than courts and they rely on 'reasonableness' rather than strict rules of evidence. The tribunals are held in accessible venues near the property, and anybody can attend. County court judges are increasingly referring seemingly intractable leasehold cases to the LVT, as these tribunals can cut through all the arguments in minutes and come up with a completely fair decision.

"Although judges of course know the law," Essian continued, "very often service charge and other leasehold matters don't turn on the law, but on what is reasonable. This is where the LVT constantly scores over the cumbersome court procedures."

Essian advises anybody facing a difficult leasehold problem to attend a few such tribunals, to get a feel of how they operate. But although they are more informal than courts, they are far from being a free-for-all, as I discovered. You are not allowed to speak unless representing yourself or are specifically called as a witness. Although the LVT may be considered a court-lite procedure, it is by no means a round table or friendly discussion.

There must also be a meticulous paper trail. Vague memories will not do, as every claim and counterclaim must be supported by appropriate documentation in order to be considered.

And although you are perfectly entitled to represent yourself, there are so many ways in which the horrendously complicated leasehold laws can trip up the lay person, that it is often advisable, although undoubtedly expensive, to instruct a lawyer. There can be enormous emotional strain too, when a neighbour has illegally laid laminate flooring or is refusing to pay service charges. At least for the lawyers representing the parties, it is just a job.

It takes typically 10 weeks for an application to be heard and usually, the LVT panel come personally to inspect the property.

Fees are low, usually between £150 and £350, depending on the complexity of the matter in hand. But as it can be extremely time-consuming and expensive to prepare the enormous 'bundle' of paperwork necessary, recourse to the LVT should be considered only as a last resort when the parties concerned cannot reach a negotiated or mediated settlement.

Chartered surveyor Mark Wilson, of myLeasehold.com, who specialises in valuations for lease extensions and enfranchisement, says: "By the time you get to the hearing, legal fees could have reached £12,000 or more. "

"Also, people often misinterpret the LVT's requirements for works or charges to be 'reasonable', thinking this means 'cheap'. But the LVT can, if it sees fit, regard the most expensive quote as the most 'reasonable' under the circumstances."

"But I am very much in favour of the LVT system. They have to observe natural justice and they bend over backwards to be fair to both sides. You could turn up in a clown's outfit and they will still treat you with respect. But as they can only go on what they have in front of them, you must provide every last bit of documentation to have a chance of success."

Solicitor Steven Kinch, of the Sussex firm Burt, Brill and Cardens, says: "LVTs are user-friendly and courteous to all sides. And whereas a county court might have to

call expert witnesses, the LVT people are already the experts. But you do need the factual matrix, and documents are king.

“The LVT is people and humanist based and exists to be fair, not to criticise. These tribunals are removing a lot of areas of dispute away from the court system, as we edge nearer to the European model. They also take away much of the mystique, mystery and fear still attached to going to court.”

Examples of recent cases:

- One resident of an enfranchised central London mansion block took his own management company to the LVT, complaining that they had undertaken ‘repairs’ to his windows when the lease only specified ‘re-decoration’. An additional factor was that the managing agents had given only 28 days’ notice of the works, when Section 20 of the Landlord and Tenant Act 1985 specifies one month. The arguments became highly technical, but the LVT found for the management company and disapplied Section 20, as they have discretion to do.
- In another recent case, the applicants, who were residents in a retirement housing scheme in Doncaster, took the Johnnie Johnson housing trust to their local LVT complaining about paying for the cost of installing an Astraline alarm monitoring system. Again, many abstruse and technical arguments followed, but the LVT ruled these costs to be ‘reasonable.’
- A case heard in Bolton, Lancs, in May 2006, concerned a leaseholder who wanted to replace a flat roof with a pitched roof. He applied to the freeholders, Metroland Developments, Ltd, for permission and they sent a bill for £5000 to cover paperwork. The leaseholder felt this was excessive and took the case to the LVT who ruled that a ‘reasonable’ fee required to give consent for the works was £100, plus VAT if the lessor was VAT-registered.
- At an LVT hearing in Brighton last September, residents of a 1930s block of flats won £286,000 back from the freeholder, Witnesham Ventures. Here, the LVT ruled that the works were carried out with a disregard of the lessees’ rights and they should have paid only £64,000 of the £350,000 demanded by the freeholder. The cost of the works was not recoverable, due to the freeholders’ previous neglect.

LVT enquiry line: 0845 600 3178

For free advice on all leasehold issues, Lease, the Leasehold Advisory Service: 020 7374 5380