

**LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL**

DETERMINATION BY THE LEASEHOLD VALUATION TRIBUNAL

**LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993
(Sections 91 and 60)**

REF: LON/00AH/OLR/2007/0708 and 0710 - 0717

**Address: 13,18,26,35,37,39,40,46 and 47 Cumberland Court, 21 Cross
Road Croydon CRO 6TE**

Applicants: Lessees of 13,18,26,35,37,39,40, 46 and 47 Cumberland Court

Respondent: The Raphael Freshwater Memorial Association Ltd.

**Tribunal: Mrs JSL Goulden JP (Chairman)
Mrs S Redmond BSc (Econ) MRICS
Dr A Fox PhD MCI Arb**

1 The Applicants, who are the lessees of various flats at Cumberland Court, 21 Cross Road Croydon CRO 6TE ("the property"), have exercised their right to a lease extension under S48 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act").

2. The amounts sought by the Respondent in respect of legal fees are disputed by the Applicants. These fees are £1,099.20 plus VAT and plus disbursements in respect of each flat save for Flats 39 and 40 where, due to additional work, the fees claimed are £1,264.20 plus VAT and plus disbursements.

3. A hearing was held on 6 November 2007. The Applicants were represented by Mr N Robinson of Sandom Robinson, Solicitors. The Respondent was represented by Ms S Bone and Ms F Neale of Wallace LLP, Solicitors. Ms Bone provided a breakdown of her firm's costs at the hearing, and confirmed that this breakdown had been provided to Mr Robinson the day before the hearing.

4. At the commencement of the hearing, Ms Bone maintained that the Tribunal had no jurisdiction to deal with the anticipated costs in respect of completion, since these had not yet been incurred under S.33 of the Act. She said however that if the Tribunal was against her in this respect, she accepted that the anticipated costs were on the high side, since she did not know whether there would be any unforeseen problems in relation to completion. In her view it was prudent to build into the anticipated costs any such unforeseen circumstances. Ms Bone said that although the form of lease had been agreed in January 2007, the

premium had only been agreed last week and the nine engrossments of the lease had not yet been prepared. Ms Bone said that where appropriate, costs had been apportioned.

5. Mr Robinson, in oral submissions, said that since there were nine flats, there should be economies of scale and some of the letters sent out had been the same for all nine cases. The lease was in standard form and had merely been photocopied for all nine flats with blank spaces to be completed. The method of apportionment where used was not reasonable.

6. Mr Robinson did not dispute the hourly rates or the fact that partners in the Respondent's firm had conduct of this matter, and accepted that the Respondent was entitled to instruct solicitors of its choosing which happened to be a West End firm (and therefore had higher overheads). However, Mr Robinson, who was also a partner in his firm said that he charged, in similar matters, a fixed fee of £550 plus VAT. In the circumstances of this case, he said that if the Respondent's solicitors had charged say £750 plus VAT and reasonable disbursements "*we would not be here today*". Mr Robinson accepted that he had not suggested a compromise to the Respondent's solicitors, but said that he had only been informed the day before the hearing, from Ms Neale, that the legal costs would be in the region of £1,250 plus VAT and plus disbursements, and had only received the breakdown of such costs late on the day before the hearing.

7. Mr Robinson also challenged disbursements relating to land registry fees (£16 in each case) and courier fees (£3.06 in each case). With regard to the land registry fees, Mr Robinson said that each of his clients had been requested to deduce title by the provision of office copy entries and the relevant lease. It was therefore unreasonable for the Respondent's solicitors to obtain similar office copies and a copy of each lease since this was an unnecessary duplication of costs for which the Applicants should not be liable. Courier fees were unreasonable since there were other methods of ensuring that the Respondent's Counter Notice was served, for example, by the DX post or by recorded delivery and in his experience, couriers were only used because the Respondent's solicitors had "*panicked*" due to impending time limits.

8. In response, Ms Bone said that each case had to be considered separately and it was essential that all facts were checked carefully before the Counter Notices were served. If the Counter Notice had not been valid, the consequences for the Respondent would be considerable. Wallace LLP had acted for the Respondent for a considerable length of time on all enfranchisement matters. There were costs savings in that all such matters were dealt with by Ms Bone who had full knowledge of all the relevant matters and therefore could deal with them expediently. She said that the form of lease was not "*just a blank canvas...you must look at each flat and each existing lease*". Ms Bone maintained that the apportionment of costs was reasonable.

9 In respect of the land registry fees, Ms Bone pointed out that office copy entries of the freehold interest had to be obtained. Since there was a very short window to investigate title and since sometimes lessees produced neither office copy entries on the register nor their lease, Wallace LLP applied for office copy entries of the leasehold interest and the existing lease in all cases. She said that there

was no requirement for the tenant to produce the existing lease. As to courier fees, she denied that the firm had panicked but said that sending Counter Notices by courier was the only reliable method of service. With regard to anticipated costs in connection with completion, Ms Bone said that she dealt with matters such as preparation of the completion statement and apportionment of service charges etc and preparation and engrossment of the documentation was carried out by the conveyancing partner. Ms Bone said that if Mr Robinson had suggested a compromise of £750 plus VAT and disbursements, she would have given the suggestion "*serious consideration*" subject to taking her Client's instructions.

The Tribunal's determination

10. S 60(1)(b) of the Act provides that where a tenant's notice to exercise the right to a new lease is served under S42 of the Act, the tenant is liable **"for the reasonable costs of and incidental to any of the following matters, namely (a) any investigation reasonably undertaken of the tenant's right to a new lease; (b) any valuation of the tenant's flat obtained for the purpose of fixing the premium or any other amount payable by virtue of Schedule 13 in connection with the grant of a new lease under section 56 (c) the grant of a new lease under that section;...."**

11. S 33(1) of the Act states:

"(1)Where a notice is given under section 13, then (subject to the provisions of this section and sections 28(6), 29(7) and 31(5) the nominee purchaser shall be liable, to the extent that they have been incurred in pursuance of the notice by the reversioner or by any other relevant landlord, for the reasonable costs of and incidental to any of the following matters, namely-

- (a) any investigation reasonably undertaken –**
 - (i) of the question whether any interest in the specified premises or other property is liable to acquisition in pursuance of the initial notice, or**
 - (ii) of any other question arising out of that notice;**
- (b) deducing, evidencing and verifying the title to any such interest;**
- (c) making out and furnishing such abstracts and copies as the nominee purchase may require;**
- (d) any valuation of any interest in the specified premises or other property;**
- (e) any conveyance of any such interest;.....**

(2) For the purposes of subsection (1) any costs incurred by the Reversioner or any other relevant landlord in respect of professional services rendered by any person shall only be regard as reasonable if and to the extent that costs in respect of such services might reasonably be expected to have been incurred by him if the circumstances had been such that he was personally liable for all such costs"

12. The charging rates on which the bill was based were not challenged. However, the Tribunal considers that there should have been significant economies of scale reducing the total time engaged which would reasonably have been expected in accordance with S33(2). This was not a complex transaction and the Tribunal reduces the number of hours chargeable to the lessees for these reasons and also because some of the work appears to be unnecessary to meet the requirements of the Act. Using a broad brush approach, the Tribunal determines that in respect of each of the nine flats, legal fees of £850 plus VAT are reasonable. It should be noted that of this figure, the sum of £150 plus VAT is included for anticipated time for dealing with completion.

13. The disbursements are allowed and are to be added to the legal fees as set out in the paragraph above save in respect of land registry fees and courier fees, where the Tribunal's determination is set out below.

14. There is no provision for the lessees to deduce title, but the Tribunal was shown a letter addressed to the tenant from the Respondent's solicitors of 13 Cumberland Court dated 8 November 2006. This stated quite clearly "*we hereby give you notice requiring you....to deduce title to your tenancy to include the provision of up to date office copy entries of your title together with a copy of your lease*". It is understood that all the letters to the lessees were in similar terms. Since the Respondent's solicitors had specifically requested each tenant to deduce title, it is considered unreasonable then to incur identical costs for further office copies of each lessee's title and lease, although it is accepted that the Respondent would need office copies of superior titles. Accordingly the Tribunal determines that that part of the land registry fees which relate solely to office copies of each lessee's title and also to each lessee's lease is disallowed. The Tribunal accepts Mr Robinson's contention that there is no necessity to serve Counter Notices by courier and that there are other less expensive ways in which to ensure that they are properly served. The cost of the courier fee in each case is disallowed.

CHAIRMAN.....

DATE.....8 November 2007.....