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LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 48 OF THE LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT: ACT 1993

Property:	**54 Clifford Way, London NW10 1NA**
Applicants:	**Daejan Properties Limited**
Represented by:	**Messrs Wallace LLP**
Respondent:	**Nasser Misri** **Stephony Misri**
Application date:	**11th October 2007**
Hearing date:	**5th November 2008**

Members of the Leasehold Valuation Tribunal:

Mr NK Nicol

Date of Tribunal's decision:	**07/11/2008**

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL
LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993

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Premises:	54 Clifford Way London NW10 1NA
Applicant:	Daejan Properties Ltd
Represented by:	Wallace LLP
Respondents:	Mr Nasser Misri Ms Stephony Misri
Tribunal:	Mr NK Nicol
Date of Decision:	07/11/08

REASONS FOR DETERMINATION

1. The Applicant is the freeholder and head lessee of 54 Clifford Way, London NW10 1NA. The Respondents jointly hold a long lease of that property for a term of 99 years commencing 24th June 1932. The Applicant has applied for a determination of costs payable by the Respondents under s.60 of the Leasehold Reform, Housing and Urban Development Act 1993:-

S60 Costs incurred in connection with new lease to be paid by tenant.

(1) Where a notice is given under section 42, then (subject to the provisions of this section) the tenant by whom it is given shall be liable, to the extent that they have been incurred by any relevant person in pursuance of the notice, 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;
   but this subsection shall not apply to any costs if on a sale made voluntarily a stipulation that they were to be borne by the purchaser would be void.

(2) For the purposes of subsection (1) any costs incurred by a relevant person in respect of professional services rendered by any person shall only be regarded 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.

(3) Where by virtue of any provision of this Chapter the tenant's notice ceases to have effect, or is deemed to have been withdrawn, at any time, then (subject to subsection (4)) the tenant's liability under this section for costs incurred by any person shall be a liability for costs incurred by him down to that time.

(5) A tenant shall not be liable under this section for any costs which a party to any proceedings under this Chapter before a leasehold valuation tribunal incurs in connection with the proceedings.

(6) In this section "relevant person", in relation to a claim by a tenant under this Chapter, means the landlord for the purposes of this Chapter, any other landlord (as defined by section 40(4)) or any third party to the tenant's lease.

2. The Applicant claims that a Notice of Claim was served pursuant to s.42 of the Act, as mentioned in s.60(1) above, by letter dated 11th February 2008. However, the Tribunal is satisfied that the letter did not constitute such a Notice of Claim and that this was obvious on its face, particularly when all the following points are considered collectively:-

   (a) The letter was typed but carried no other indication of formality. In particular, it is clear it was written without the assistance of any professional who might normally be expected to be involved in lease extensions.

(b) The letter was signed and apparently written by only one of the joint lessees.

(c) The Applicant's agents, Highdorn Co. Ltd., wrote back on 25th February 2008 and stated, "I am unsure as to how you wish the contents of your letter to be construed." This reaction is entirely understandable. Despite a passing reference to a legal right to extend the lease, the letter is entirely unclear as to how the First Respondent, the author of the letter, wished to proceed or whether he intended to rely on his rights under the Act.

(d) The Applicant's solicitors' letter of 11th April 2008 lists five matters which establish that the letter would be entirely invalid as a Notice of Claim. The Applicant's solicitors' submissions to this Tribunal (at paragraph 20) asserted that these five defects only became apparent after they had carried out all of the steps listed at paragraph 19(i)-(iii). This is clearly nonsense, not least because the first step, under paragraph 19(i), includes "consider ... the validity of the Notice of Claim served". In any event, the five defects were apparent on the face of the letter of 11th February 2008 and would be obvious to anyone experienced in dealing with these matters for the Applicant.

3. Despite the Applicant's agent's difficulty in construing the letter of 11th February 2008, the Respondent went ahead and treated it as a Notice of Claim. They did this on the basis that the Respondents did not reply to Highdorn's letter of 25th February 2008. However, neither the Applicant's will nor an absence of contact can turn a mere letter into a formal Notice of Claim under the Act. On that basis, the Applicant would be free to convert any letter of enquiry on lease extensions into a formal Notice of Claim, with all the implications that follow.

4. The Applicant has clearly been worried about the implications of not serving a Counter-notice. However, such fears clearly never had any substance. It should have been obvious to the Applicant from the beginning that there was never any serious risk on their part. It is not for the Applicant to shift what tiny risk there might have been onto the Respondents so that they end up having to pay the costs.

5. The Second Respondent has submitted that the First Respondent, her father, is a confused elderly man in the first stages of dementia and that this would have been

so obvious to the Applicant's agents when he visited their offices that they should have realised his letter was not a formal Notice of Claim. Unfortunately, the Tribunal has been unable to assess the validity of this claim because, at both parties' behest, this matter has been dealt with on the papers alone, without the benefit of an oral hearing at which the Tribunal could have formed their own opinion having met him. However, if the claim is true, it makes the Applicant's behaviour even more obviously wrong.

6. In this case, an unrepresented leaseholder sent an ambivalent letter to his landlord and failed to respond to the reply. For this unfortunate and inadvisable conduct, he and his co-lessee have found themselves buried in a proverbial pile of legal documentation and jargon. On the other hand, the Applicant is extremely experienced in these matters and represented by experienced and well-paid solicitors and other advisers. They should really know better than to develop such a mountain of unnecessary legal costs from a minor molehill of a letter. The application for costs is dismissed.

Chairman.....

Date 7th November 2008