

SOUTHERN RENT ASSESSMENT PANEL AND LEASEHOLD VALUATION
TRIBUNAL:

Case No.CH1/OOHN/OC9/2009/0001

In the matter of Section 60 of the Leasehold Reform, Housing and Urban
Development Act 1993 (as amended).

Case No. CH1/OOHN/OC9/2009/0001

BETWEEN

D. R. Knight Applicant
Represented by Coles Miller Solicitors LLP

And

Sir G.C.C.T.G. Meyrick Respondent
Represented by Lee Bolton Monier- Williams
Solicitors

PREMISES Flat 2 Mavis Bank, 25 Bordorgan Road, Bournemouth, Dorset BH2
6NQ

TRIBUNAL Mrs B. M. Hindley LL.B
Mr P Turner Powell FRICS

Preliminary

1. An application, dated 16 February 2009, to determine the costs payable by the applicant under Section 60 of the Leasehold Reform Housing and Urban Development Act 1993 was received from Coles Miller, Solicitors for the applicant. This application arose as a result of an earlier application under Section 48 of the Act..

The Law

2. Section 60(1) states
'Where a notice is given under Section 42 the (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 notices, 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.....
3. Section 60(2) states
'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 unreasonable if and to the extent that the 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 such costs.
4. Section 60(5) states
'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 those proceedings.

The Positions of the Parties

5. The solicitors for the respondent, Lee Bolton Monier-Williams, claim costs in the sum of £2,760 plus VAT based on 16.4 hours (units of 6 minutes) worked by a legal executive at an hourly rate of £168 and a partner at an hourly rate of £194.
6. The applicant's solicitors agree the charge out rates but claim that only some units (81) are properly chargeable under the Act and that, therefore, only costs of £1,360 80p are payable.
7. Attached at Annex 1 is a copy of the document submitted by the respondent's solicitors showing the breakdown of their claim and the costs as disputed by the applicant's solicitors.
8. In addition to the annotated schedule the applicant's solicitors provided written submissions setting out their reasons for disallowing some units of time.
9. The respondent's solicitors provided replies to points of dispute and final submissions. They also wrote a letter, received by the Tribunal on the day of its determination, asking that their letter of 26 October 2006, sent to DTW Solicitors in connection with another costs matter under Section 33 of the Act, and provided to the Tribunal by the applicant's solicitors, should be disregarded.

The Tribunal's Reasoning on the units remaining in dispute between the parties

10. In coming to their determination the Tribunal disregarded the determinations of previous Tribunals offered by the applicant's solicitors which related to applications arising out of different Sections of the Act. They also bore in mind that determinations of one Tribunal are not binding on subsequent Tribunals, although, of course, the Tribunal recognises the need for

consistency. Throughout their deliberations the Tribunal accepted that costs can only be regarded as reasonable if the respondent would have incurred them had he been liable to pay them.

11. Week ending 26 December 2004

The Tribunal accepts the applicant's contention that an element of the work could relate to the service rather than the contents of the counter notice and allows 5 units.

12. Week ending 16 January 2005

For the reason given above the Tribunal allows 2 units only.

13. Week ending 23 January 2005

For the reason given above the Tribunal allows 8 units only.

14. Week ending 30 January 2005

For the reason given above the Tribunal allows 2 units only

15. Week ending 6 March 2005

The Tribunal does not accept the unsubstantiated suggestion of the applicant's solicitors that the time spent was excessive. They, therefore, allow all 13 units.

16. Week ending 24 April 2005

The Tribunal does not accept the unsubstantiated suggestion of the applicant's solicitors that the time spent was excessive. They, therefore, allow all 23 units.

17. Two weeks ending 15 May 2006 (in fact 2005 claim the applicants)

The applicant's solicitors propose that this should be disallowed in its entirety. The respondent's solicitors claim these costs to be incidental to Section 60 (a)(b) and (c). The Tribunal see some force in the argument of the respondent's solicitors but allow only 2 units.

18. Period 27 June 2006 – 24 July 2006 (in fact 2005 claim the applicants)

The Tribunal notes that the terms of acquisition were agreed on 29 March 2005 and, therefore, accepts the contention of the applicant that costs incurred after this date cannot be claimed.

19. Period 25 July 2006 – 14 October 2006 (in fact 2005 claim the applicants)

The applicants claim that completion should have taken no more than 30

minutes. The Tribunal does not consider one hour to be unreasonable given the complexity of the lease.

20. The Tribunal's Determination

Accordingly, the Tribunal determines the costs as set out below-

Legal Executive	110 units = 11 hours @£168 ph = £1848.
Partner	2 units = .2 of an hour @ £194ph = £38.80p
Total	£1886. 80p plus VAT

Chairman *P. D. H. Kelly*

Date 26/5/09.

TO OUR PROFESSIONAL CHARGES

*TENANT'S
COMMENTS*

Week ending 5th December 2004

Receiving instructions in connection with this matter; receiving the Notice to extend the Lease under Section 42 of the Leasehold Reform Housing & Urban Development Act 1993 and considering the same; informing the Estate's Valuer of receipt of the Notice; requesting details of Tenant's Title and existing Underlease; initial correspondence with Head Lessees to find out who will be representing them with regard to advice on the Section 42 Notice.

1 letter in; 3 letters out; 3 e-mails
24 minutes

Allow 4 units

Week ending 12th December 2004

Receipt of title documentation and sending details to Estate's Surveyor.

1 letter in; 1 letter out
6 minutes

Allow 1 unit

Week ending 19th December 2004

Chasing Head Lessees regarding representation.

1 letter out; 1 e-mail
6 minutes

Allow 1 unit

Week ending 26th December 2004

Perusing Title documentation; correspondence with one of the Head Lessee's solicitors regarding service of Counter Notice; receipt of correspondence from Mr David Knight, one of the Head Lessees regarding his representation; further correspondence with Mrs Hodges's solicitors; copy correspondence from Estate's Valuer and subsequent e-mail regarding outstanding correspondence with Head Lessees.

4 letters out; 1 letter in; 1 e-mail
36 minutes

*Allow 5 units
Disallow 1 unit*

Week ending 9th January 2005

Further chasing correspondence with Mrs Hodges's solicitors regarding the Notice; e-mail to Estate's Surveyor regarding the position concerning the Head Lessees' response to the Notice; subsequent letter from Mrs Hodges's solicitors confirming that they were asking their client for further information regarding the Notice which has been served.

1 letter out; 1 letter in; 1 e-mail
6 minutes

Allow 1 unit

Week ending 16th January 2005

Correspondence with Mrs Hodges's solicitors regarding the Counter-Notice and confirming details of her valuer, Colin Weatherell; e-mail with Estate's Surveyor regarding valuation matters.

1 letter out; 1 letter in; 1 e-mail
18 minutes

*Allow 2 units
Allow 1 unit*

Week ending 23rd January 2005

E-mail to Estate's Surveyor regarding valuation matters and service of the Counter-Notice; receiving details of solicitors acting for Mr Hughes, one of the Head Lessees; further e-mail correspondence with Estate's Surveyor on the above; correspondence with Mr Hughes's solicitors; drafting of Counter-Notice.

2 letters out; 1 letter in; 5 e-mails; drafting
1 hour 42 minutes

*Allow 2 units
Allow 15 units*

Week ending 30th January 2005

E-mails with Estate regarding Counter-Notice; service of Counter-Notice including correspondence with all Head Lessees' solicitors.

5 letters out; letter in; 2 e-mails
24 minutes

Allow 4 units

Week ending 6th February 2005

Drafting form of Lease.

30 minutes

Allow 5 units

Week ending 13th February 2005

E-mails with DTW solicitors regarding negotiation of the premium and representation for the Tenant in their capacity as one of the Head Lessees.

12 minutes

Allow 2 units

Week ending 27th February 2005

Correspondence and e-mails with Tenants' solicitors regarding draft Lease and also Head Lessees' solicitors

3 letters in; 4 letters out; 2 e-mails
48 minutes

Allow 8 units

Week ending 6th March 2005

Further negotiations regarding terms of draft Lease, in particular, clause 10(D); e-mails between Tenants' solicitors; Estate's Surveyor and clients regarding draft Lease.

10 e-mails
1 hour 18 minutes

*Allow 10 units
Disallow 3 units*

Week ending 13th March 2005

E-mail with Tenants' solicitor; e-mail with clients and e-mails with Estate's Surveyor regarding clause 10(D) of the draft Lease; correspondence and e-mails with Mr Hughes's solicitors; telephone calls to Tenant's solicitors to discuss drafting of Lease.

1 letter in; 4 e-mails; 3 telephone calls
36 minutes

Allow 6 units

Week ending 20th March 2005

Further negotiations with the Tenants' solicitor regarding clause 10(D) of the draft Lease;

1 letter in; 3 e-mails
30 minutes

Allow 5 units

Week ending 3rd April 2005

Consideration of clause 10(D) of draft Lease. Further e-mail correspondence with Tenant's solicitors regarding clause 10(D) of the draft Lease and subsequently receiving confirmation that clause 10(D) was agreed.

2 emails
48 minutes

Allow 8 units

Week ending 17th April 2005

E-mails with Tenants' solicitor regarding plans for engrossments of Lease.

3 emails
6 minutes

Allow 1 unit

Week ending 24th April 2005

Correspondence and e-mails with Tenants' solicitors regarding the plan for engrossments of Lease; arranging for engrossments of agreed form of Lease to be prepared; submitting engrossments to the Tenant's solicitors and clients for execution; e-mails with clients and Estate's Surveyor regarding Completion Statement; drafting Completion Statement for approval by clients before submitting to Tenants' solicitors.

1 letter in; 1 letter out; 15 e-mails in/out.
2 hours 18 minutes

*Allow 10 units
Disallow 13 units*

Week ending 1st May 2005

Correspondence with solicitors acting for Mr Hughes regarding execution of Leases; correspondence and e-mails with the Tenants' solicitors regarding Head Lessees' solicitors' fees and execution of Leases; e-mails with solicitors acting for Mrs Hodges regarding her execution of the Leases for this flat.

2 letters in; 2 letters out; 4 e-mails

12 minutes

Allow 2 units

Note – The above was the breakdown prepared by the legal executive who was dealing with this matter up to the week ending 1st May 2005. It was anticipated at the time the matter would take an hour to complete, but in fact the lease extension was only completed on 13th October 2005. The following further time is recorded

For two weeks ending 15th May 2006

Preparing this breakdown of this firm's fees recoverable under section 60

2 letter in; 2 letters out, 2 e-mails

36 mins

Allow 6 units

Week ending 5th June 2006

Chasing for engrossment of leases from tenant's solicitors and receiving this

1 letter out; 1 letter in

6 mins

Allow 1 unit

For week ending 26th June 2006

Sending lease to Meyrick Estate for execution and revised headlease to intermediate landlord's solicitors

2 letter out

12 mins

Allow 2 units

For the period from 27th June 2006 to week ending 24th July 2006

DTW Solicitors chasing for engrossed documents to be executed by all necessary parties; possibility of deemed withdrawal unless application made by tenant's solicitors to County Court for a vesting order; reason for delay due to time spent by tenant and then intermediate landlord in executing documentation which had been agreed (no delay on the part of the freehold estate); a sale contract prepared by DTW was considered which had this proceeded

would have protected tenant's position, but the difficulty was that the intermediate landlord's co-operation was needed with this

Time spent 7 hours 18 minutes over this period, but some of this relates to research of the law by the person dealing with this as well as various letters out and in and e-mails. We propose only 2.5 hours of this to the conveyancing issues arising

allow 2.5 units

For the period from 25th July 2006 to 14th October 2006

The legal executive dealing with the conveyancing spent a further 3 hours on this matter, but we anticipate some of this would have been in connection with support to her colleague in litigation providing him with the information necessary to defend the county court proceedings issued which he did successfully.

The matter completed on the 13th October 2006 and we would allocate 1 hour of this time to dealing with a completion involving three separately represented parties; settling completion statements; dealing with pre-completion requisitions; and dealing with completion monies

*allow 5 units
if allow 5 units*

Total chargeable hours under s60:	16.4 hours
Fee-earner: Sally Trevaskis	(16.2 hours)
Hourly charge-out rate:	£168.00 = £2,721
Partner: Guy Stephenson	(0.2 hours)
Hourly charge-out rate:	£194.00 = £38.80
	= £2,760 plus VAT