

SOUTHERN RENT ASSESSMENT PANEL AND TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/24UL/OLR/2009/0018/19

In the Matter of The Leasehold Reform Housing And Urban Development Act
1993 - Section 91

BETWEEN:-

FRANK MAITLAND AND PAMELA MAITLAND

Applicants

and

SINCLAIR GARDENS INVESTMENTS (KENSINGTON) LIMITED

Respondent

PREMISES: Flats 3 and 6 Barton Court, Cambridge Road West, Farnborough,
Hampshire GU14 6QA ("the Premises")

TRIBUNAL: Mr D Agnew BA LLB LLM (Chairman)
Mr D Lintott FRICS

DATE OF DETERMINATION: 29 July 2009

Solicitors for the Applicants: Samuels & Co
Solicitors for the Respondent: P Chevalier and Co

DETERMINATION AND REASONS

DETERMINATION

The Tribunal determines that the amount of cost to be paid by the Applicants to the Respondent under Section 60(1) of the Leasehold Reform Housing and Urban Development Act 1993 ("the Act") shall be £1308.33 plus vat at the appropriate rate per flat.

REASONS

1. Background

1.1 The Applicants sought new extended leases under the Act. The premium and the terms of the new leases were agreed but the parties were unable to agree the amount of Landlords costs pursuant to Section 60(1) of the Act and therefore an application was made to the Tribunal to determine the amount of those costs.

1.2 The Applicants claimed the following by way of costs:-

(a) legal costs connected with investigating the Tenant's right to acquire a new lease £697.67 plus VAT at the appropriate rate, per flat.

(b) valuers costs £350.00 plus VAT per flat.

(c) costs in connection with the grant of the new lease £356.50 plus VAT per flat.

2. The Applicants' points of dispute

2.1 With regard to the legal costs in connection with investigating the Tenant's right to acquire a new lease the Applicants challenged the following items:-

(a) personal attendances on client obtaining instructions and advising on three occasions totalling thirty minutes - £115.00 plus VAT.

(b) Section 41 notice (ten minutes) - £38.33 plus VAT.

(c) drafting counter-notice (fifteen minutes) - £57.50 plus VAT.

(d) considering valuation and discussing the same with client and valuer (fifteen minutes) - £57.50 plus VAT.

2.2 With regard to the Valuer's fee the Applicants sought to challenge the whole of the fee on the basis that Section 60(1)(b) of the Act must be interpreted as

meaning fixing the premium for the purpose of preparing the counter-notice, otherwise landlords' costs of negotiating the premium would be allowable. The Applicants referred to Hague on Leasehold Enfranchisement Fourth Edition, paragraph 28-21(d) which states that the costs covered by the statute are those of and incidental to, inter alia "any valuation of any interest in the specified premises or other property. This will not include the cost of negotiating with the nominee purchaser's valuer." The Applicants contend that there is no evidence that the Respondent incurred valuation costs prior to the service of the counter-notice and that therefore the valuation costs are not allowable. The Applicants referred to the Tribunal decision in 176 Peckham Rye, London SE22 9QA ref: LON/ENF/926/03 where inspection of the property took place after service of the counter-notice. The Tribunal considered that the costs incurred in connection with the inspection were clearly not incurred in pursuance of the reversioner's counter-notice in connection with negotiations and were therefore disallowed.

- 2.3 With regard to the conveyancing costs the Applicants contended that each notice of claim was served at the same time on behalf of the same tenant, the leases of each flat were in substantially the same form and identical letters were sent by the Respondent's solicitor in respect of each flat the only difference being in the flat number in the heading. The Applicants submitted that there were economies of scale justifying a reduction in the Respondent's legal costs. They referred to two tribunal decisions in support of that contention namely Cumberland Court, 21 Cross Road, Croydon ref: LON/00AH/OLR/2007/0708 and 0710-0717 and 64 Laburnum Close, London, N11 ref: LON/NL/4324/05.

2.4 The Applicants did not object to the Respondent's solicitors charge out rate at £230 plus VAT per hour.

2.5 With regard to the legal costs of investigating the tenant's right to a new lease the Applicants' solicitor made the following points:-

- a) the claim for thirty minutes for personal attendances was too long. They cited the tribunal case of 64 Laburnum Close London N11 (Ref LON/NL/4324/05 where fifteen minutes was allowed.
- b) Section 60 provides for costs pursuant to a notice under Section 42 and does not provide for the costs incurred in connection with a Section 41 notice.
- c) service of a counter-notice is not provided for under Section 60 nor is drafting the counter-notice, considering the valuation and discussing it with the client. They cite the Tribunal decision in 31 and 33 Effingham Close, Sutton Road SM2 6AF (ref BG/LON/BF/OCE/0710170 in support of the latter point.

3. The Respondent's solicitors' response

3.1 Personal attendances. The Respondent's solicitors contend that the amount of time spent on personal attendances in advising the Landlord and keeping it informed as to progress throughout the entire lease extension progress was reasonable. The fact that another Tribunal considered fifteen minutes to be reasonable was not authority for allowing fifteen minutes in connection with other cases. He cites the Laburnum Court case as an example where the Tribunal allowed total costs based on two hours forty-five minutes of time spent whereas in this case the solicitors have sought to charge two hours twenty minutes time.

- 3.2 Section 41 Notice. The Respondent's solicitors argue that the response to the notice of claim is mandatory and consequently incidental to it. They say it would be "extraordinary" if Parliament had intended that the Landlord should pay all such incidental and unavoidable costs out of its own pocket.
- 3.3 Counter-notice. The Respondent's solicitors state that most Tribunals have allowed time spent on the counter-notice. They argue that the costs of the counter-notice are recoverable because it is the means by which the results of the investigation are communicated to the Tenant and are clearly incidental to the initial notice. They argue that a counter-notice "sets the scene for a process of negotiations" and is not part of the negotiations themselves.
- 3.4 Valuation. The Respondent's solicitors contend that it is incidental to the valuation that it is fully considered and instructions taken thereon before a valuation is included in the counter-notice. "A prudent solicitor does not simply ignore the opinions of an expert instructed by his client and leave his reports and valuations unread in his file". In this case the Landlord's solicitors say that the Tenant obstructed the access of a valuer (although this is disputed by the Applicants' solicitor) giving him insufficient time to inspect prior to the deadline for serving a counter-notice. A desktop valuation was therefore carried out for the purpose of the counter-notice. There is no time limit set out in the legislation as to when the valuation should take place and it is not therefore restricted to a period prior to the issue of the counter-notice. Costs in connection with the application to the Leasehold Valuation Tribunal are irrecoverable but in this case the application was not issued until March 2009. Negotiations did not commence until after the issue of the application.

- 3.5 Economies of scale. The Landlord's solicitors claimed does take into account that two similar applications were being made at the same time and that the costs claimed are significantly less than similar applications the Landlord's solicitors have made in other cases before the Tribunal.
- 3.6 The Respondent's solicitors provided evidence that the Landlord accepts the costs claimed and under the principle that the Landlord should recover indemnity costs the onus is on the paying party to prove that the Landlord would not be prepared to pay the costs as claimed. The Landlord's solicitors argue that the Tenant's solicitor has not shown that the costs as claimed come outside a band of reasonable costs charged that a Landlord acting reasonably would not agree to pay. They say that in the case of doubt the benefit of that doubt should be given to the Landlord.

4. **The Law.**

Section 60 of the Act provides that:-

“(1) Where notice is given under section 42, then.....the tenant by whom it is given shall be liable, to the extent that they have been incurred by the 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.....”

By section 60(2) of the Act it is provided that:

“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.

5. The Tribunal’s Determination

Attached hereto is a schedule of costs claimed and allowed by the Tribunal. In reaching its determination the Tribunal made the following decisions:

- a) Each party cited a number of previous cases most of which were decisions of the Leasehold Valuation Tribunal. Whilst those decisions were noted and whilst the Tribunal will always strive for consistency wherever possible previous Leasehold Valuation Tribunal decisions are not binding on this Tribunal and are therefore of limited value.
- b) This Tribunal does not consider that reference to “indemnity costs” or what may or may not have been Parliament’s intention as to whether or not the Landlord should be out of pocket as a result of the legislation for lease extensions under the Act is of any assistance in deciding the issue of costs in these circumstances. The Civil Procedure Rules do not govern the Tribunal’s jurisdiction in such cases. The sole authority for the Tribunal’s jurisdiction is set out in Section 60 of the Act. Reference to what the Landlord would be prepared to pay in Section 60(2) of the Act is a check and provides a limit as to what may be regarded as reasonable for the paying party to pay. It is not, in this Tribunal’s view, intended to mean that the paying party is to pay whatever the Landlord shall regard as a reasonable sum to pay had he been responsible

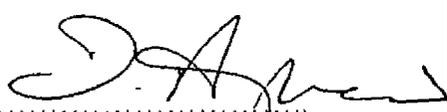
for the cost. Further, even if it were appropriate for the Tribunal to try to discern Parliament's intentions in laying down this legislation, this Tribunal does not subscribe to the view that the aim was to ensure that the Landlord is not out of pocket at all as a result of the 1993 Act procedure. If that had been the case then there would have been no need for the Act to specify in Section 60 subsections (1)(a) to (c) the items for which the Landlord can recover his costs from the Tenant.

- c) This Tribunal, in interpreting Section 60 of the Act, does not agree that the Landlord is entitled to recover costs incurred in serving a Section 41 notice as these are not costs "where a notice is given under Section 42", nor are they incurred "in pursuance of the notice", nor are they "incidental to ... any investigation reasonably undertaken of the Tenant's right to a new lease".
- d) This Tribunal does not consider that the service of a counter-notice is, strictly speaking, "incurred ... in pursuance of" a Section 42 notice "and incidental to" investigations to the Tenant's right to a new lease although the work of investigation as to the Tenant's right to a new lease so that the Landlord's solicitor is in a position to serve the counter-notice would be claimable.
- e) This Tribunal considers that the valuer's valuation cannot be seen in isolation and that the Landlord's solicitor does have a role in considering the valuation and discussing it with his client as part of the valuation process.
- f) This Tribunal considers that economies of scale is a matter to be taken into account when considering the reasonableness of the Landlord's claim for costs. In this case the Landlord says that those economies of scale have resulted in a lower time charge than would have been the case had there not been more than one similar application and transaction being carried out at the

same time. The Tribunal considers that the claim in respect of the new lease itself is within the band of reasonableness in this case.

- g) This Tribunal does not consider that if part of the valuation process is carried out after the counter-notice has been served that the costs incurred cannot be claimed by the Landlord. There is no restriction on time for the valuation to be carried out specified in the section and this Tribunal does not consider that there is anything to prevent a Landlord receiving a provisional valuation for the purpose of the counter-notice and for that provisional valuation to be confirmed, or indeed, adjusted, after the counter-notice has been served provided that the further work done is not truly part of the negotiation process.

Dated this *29th* day of *July* 2009



 D Agnew BA LLB LLM (Chairman)

SCHEDULE

Investigation of Tenant's claim to new lease

Item No	Description of Work done	Challenged (C) or Not Challenged (NC)	Amount Claimed	Amount Allowed
1.	Personal attendances on Client obtaining instruction and advising	C	£115.00	£115.00
2.	Section 41 Notice	C	£38.33	Nil
3.	Considering Lease/Deed of Variation etc	NC	£57.50	£57.50
4.	Instructing Value	NC	£38.33	£38.33
5.	Preliminary Notice	NC	£38.33	£38.33
6.	Considering Tenant's notice and researching Tenant's right to new lease	NC	£134.17	£134.17
7.	Drafting counter-notice	C	£57.50	Nil
8.	Considering valuation	C	£57.50	£57.50
9.	Four letters out and three telephone attendances	NC	£161.00	£161.00

				£601.83 plus VAT
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Drafting New Lease

Description of Work done	Challenged (C) or Not Challenged (NC)	Amount Claimed	Amount Allowed
Drafting new lease, considering amendments Preparing engrossments Preparing completion statements and agreeing same	C	£287.50	£287.50
Three letters out	C	£69.00	£69.00
			£356.50 plus VAT

Valuer's costs

Description of Work done	Challenged (C) or Not Challenged (NC)	Amount Claimed	Amount Allowed
Valuer's fees	C	£350.00	£350.00 plus VAT

The above figures apply for each of the new leases for numbers 3 and 6 Barton Court Farnborough