



Residential  
Property  
TRIBUNAL SERVICE

Ref: LON/00BK/OC9/2009/0071

**LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT  
ASSESSMENT PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN  
APPLICATION UNDER SECTION 91 of the LEASEHOLD REFORM,  
HOUSING AND URBAN DEVELOPMENT ACT 1993, IN RELATION TO  
COSTS UNDER SECTION 60**

**Property:** 9 STRUTTON COURT GREAT PETER STREET  
LONDON SW1P 2HH

**Applicants:** SEBASTIAN LYLE

**Represented by:** The Applicant was not represented

**Respondent:** BRITANIA CENTRAL LIMITED

**Represented by:** Ms S Bone of Wallace LLP

**Application date:** 5<sup>th</sup> September 2009

**Hearing date** 4<sup>th</sup> November 2009

**Date of Tribunal's  
decision:** 4<sup>th</sup> November 2009

**Members of the Leasehold Valuation Tribunal:**

Mrs T I Rabin JP  
Mrs A Flynn MA MRICS

## FACTS

1. This is an application for the determination of the landlord's reasonable costs under section 60 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act").
2. The Applicant tenant is Sebastian Lyle and the Respondent landlord is Britannia Central Limited. It relates to a proposed extended lease of the 9 Strutton House Great Peter Street London SW1P 2HH ("the Property"). The Applicant made an application to the Tribunal to determine the price to be paid for an extended lease having served a notice under Section 45 of the Act. The application was subsequently withdrawn. The Applicant has made this application for the reasonableness of the Respondent's Section 60 costs to be determined by the Tribunal. Mr Lyle attended in person and the Respondents were represented by Ms S Bone of Wallace LLP.
3. Both parties made written submissions and gave evidence to the Tribunal. Ms Bone had prepared a schedule of costs setting out the date they were incurred, the nature of the work undertaken and the status of the person undertaking the work. Ms Bone gave evidence that the actual costs were slightly different from the costs shown in the schedule, as the VAT had not been calculated correctly. The total costs were £2,360.43, including VAT at either 15% or 17.5% as appropriate. In addition there were charges for courier and land registry fees which were not challenged by the Applicant. The Applicant also accepted the valuer's fee of £750 plus VAT
4. The Applicant considered that the nature of the work was familiar to Wallace LLP and did not merit the length of time spent by a partner in dealing with this matter. He considered that an assistant would have been able to undertake much of the work involved. Although he queried whether the Respondent should have selected a firm of solicitors more familiar with the Property, he acknowledged their right to select whom they wished to act for them in this matter. He also considered that the information provided by Wallace LLP was not particularly helpful as he was not clear as to the contents and length of the letters. The

Applicant also considered that the length of time spent was inordinately long and that a total of seven hours was spent of which 77% was spent by a partner.

5. The Applicant drew the Tribunal's attention to comments made by one of the advocates in a case before the Tribunal in 2009 relating to Flat 2 36 Stanhope Gardens and also submitted that in that case a lower figure was determined for the costs. It had been suggested in the Stanhope Gardens case that fees of £360 per hour were excessive
6. Ms Bone reminded the Tribunal of the items that were chargeable under Section 60. She explained in detail in her written submissions why the amount of time had been allocated. In essence, she submitted that this area of law was very complex with draconian consequences to both the landlord and tenant if there was any inaccuracy. The matter was further complicated by the fact that the original claimant assigned the Property and the claim to the Applicant and there was also an intermediate landlord. In this case an assistant had prepared the draft lease as the conveyancing partner was on holiday but that a partner would have reviewed the draft lease and taken responsibility for its drafting had he been in the office.
7. Ms Bone pointed out that the proceedings differed from a county court or High Court taxation in that there was no requirement to produce the whole file and that adequate information had been provided. She had reviewed her schedule and removed one or two items that she did not consider were properly chargeable under Section 60 and these were removed. This explained the discrepancy in the original costs estimate provided to the Applicant. Ms Bone acknowledged that the VAT had not been properly calculated. She issued interim bills to the Respondent and had now charged VAT at 17.5% on the bill issued prior to December 2008 and 15% on the bill issued thereafter.
8. Ms Bone referred the Tribunal to the case of **Chivelston, 78 Parkside, London SW19 LON/ENF/1005/03** where the principle of the landlord's right to freely choose his own solicitor was established.

## DECISION

9. By section 60(1) of the Leasehold Reform, Housing and Urban Development Act 1993, a tenant who serves a section 42 notice becomes liable to pay the landlord's reasonable costs of and incidental to –

- (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 the connection with the grant of a new lease...

10. By section 60(2), the costs imposed for professional services should only be regarded as reasonable –

if and to the extent 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 to pay the costs.

11. The reasonable expectation test was explained more fully by Professor Farrand in the **Chilveston** case when he stated –

... leasehold enfranchisement under the 1993 Act may understandably be regarded as a form of compulsory purchase by tenants from an unwilling seller and at a price below market value. Accordingly it would be surprising if freeholders were expected to be further out of pocket in respect of the inevitable incidental expenditure incurred in obtaining the professional services of valuers and lawyers for a transaction and proceedings forced upon them ....

As to what is 'reasonable' in this context, it is merely provided that "any costs incurred by the reversioner or any other relevant landlord 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.

12. This statement by Professor Farrand has been adopted in numerous decisions by the Tribunal and will be followed by this Tribunal. The Respondent was entitled to select their own solicitor and level of expertise of the chosen fee-earner. The Tribunal must determine whether the costs charged by the chosen solicitors are reasonable in all the circumstances. The Tribunal did not find the Stanhope Gardens decision helpful as the comments about the level of fees were made in

submission to the Tribunal which was not accepted as the Tribunal found that the level of charges was within an acceptable range. The actual costs determined can be of no assistance to the Tribunal without knowing the full details of the transaction.

13. The Tribunal noted that the costs were reduced after being reviewed by Ms Bone. However, this was after the original request for payment had been made and greater care should be taken in ensuring that all costs are properly chargeable under Section 60 before any demand is made or indication given to a tenant. As the Applicant rightly pointed out, had he accepted the original estimate he would have overpaid.
14. The Tribunal agrees that it is appropriate for a partner to spend an hour considering the notice of claim. It is also appropriate for a partner to spend 20 minutes checking the lease and office copies. The assignment is a simple document and would not take more than 12 minutes to review. The time for preparation of the draft lease was reasonable but the time claimed for reviewing the counter notice was excessive and half the fee is disallowed. However, the Tribunal will allow the full fee claimed for finalising the counter-notice.
18. The Tribunal considers that the amount charged for letters throughout the transaction was excessive. There were 22 letters and e-mails and one phone call for which a fee in excess of £650 was charged. In the Tribunal's experience many of these letters would have been repetitive and/or short and a total of £400 is, in the Tribunal's view, a more realistic reflection of the time spent. The only other item was the cost of obtaining the office copy entries, which the Tribunal found acceptable.

## CONCLUSION

19. The Tribunal determines that the landlord's reasonable costs are £1,552 together with VAT at either 17.5% or 15% whichever is the appropriate rate

Chairman



4<sup>th</sup> November 2009