

Introduction

- 1 In this case Plentview Limited applies for a determination of costs under Section 60 of the Leasehold Reform (Housing and Urban Development Act) 1993 "the Act" in respect of a lease extension pursuant to a notice served by the Respondent's solicitors under Section 42 of the Act for Flat 5,100 Brondesbury Villas London NW6 6AD ("the flat")
- 2 Directions were given on 18th May 2011 and the matter was directed to be heard by way of a paper determination following submissions by the parties.
- 3 The bill of costs submitted by the Applicant's solicitors amounts to £500 plus VAT under Section 60(1)(a) of the Act). In addition there is a claim for a valuer's fee in the sum of £750 plus VAT

The Law .

- 4 Section 60 of the Act provides as follows: -
"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 had been incurred by any relevant person in pursuance of the notice for the reasonable costs of and incidental to any of the following:-
(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
- 5 Apart from the above provisions no costs are payable by the tenant in seeking an extension to the lease. . Any costs claimed by the landlord, therefore must be shown to fall within one of the above heads
- 6 The application of principle in these cases has been considered by Professor Farrand in **Daejan Properties Ltd –v- Parkside 78 LON ENF 1005/03** and by Mr S Carrott in **Daejan Properties Ltd –v- Twin LON/**

00BK/2007/0026 and **Daejan Properties Ltd –v- Katz and Katz LON 00AC/OC9/2008/0004**. The principles in those cases establish that the landlord is entitled to instruct solicitors of his choice and is not required to shop around for the cheapest solicitors or those practising near to the property in question and that the approach of the Tribunal to the costs issue is in the nature of a “broad brush “approach.

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The Evidence

- 8 On 7th September 2010 the Respondent’s solicitors Solomon Taylor and Shaw served a notice under section 42 of the Act seeking a new lease. Apparently shortly after service of the notice the right to acquire the lease was assigned to a new purchaser. The Applicant’s solicitors Southgate a& Co in a letter dated 16th November 2010 disputed the validity of the notice but also served a protective counter notice under Section 45 of the Act
- 9 The landlord’s solicitors Messrs Southgate & Co have submitted their bill and have charged costs on the basis of £250per hour.for the investigation of title and consideration of the notice under section 42. No application was made either to the county court concerning the validity of the notice nor to the Tribunal for a valuation of the premium
- 10 Solomon Taylor and Shaw wrote that having assigned the notice and no claim having been pursued the landlord’s solicitors are not entitled to recover costs
- 11 The landlord’s solicitors in a letter dated 17th November detailed submissions on the costs explaining why it was necessary for them to obtain a valuation and also to serve a counter notice so that the Applicant if successful in showing the validity of the notice would be entitled to receive the property at a price £21,500 lower than that contended for in the counter notice

The Tribunal’s Decision

- 12 In the view of the tribunal the landlord’s solicitors were entirely correct in obtaining a valuation and serving a counter notice even though they

challenged the validity of the section 42 notice. The mere fact that the tenant or the assignee then chose not to proceed with the application is nothing to the point. Costs were incurred and must be paid.

13 The Tribunal has considered the bill of costs submitted by the solicitor and the valuer and considers that the amount of costs claimed, being unchallenged, is not unreasonable

14 Therefore the total recoverable by the landlord's solicitors under Section 60 is assessed at £500 plus VAT together with a valuation fee of £750 plus VAT and this sum should be paid by the Applicant forthwith

Chairman Peter Leighton

Date 6th December 2011