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SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case No. CHI/00ML/OAF/2003/0002

Re: 1 Dolphin Mews, Manchester Street, Brighton, E. Sussex BN2 1TY
("the Premises")

BETWEEN

Mark Anthony O'Halloran

("the Applicant/Tenant")

and

Vanstian Limited

("the Respondent/Landlord")

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

In the matter of an Application under Section 9 Leasehold Reform Act 1967
(Landlords Costs payable by the Tenant)

1. The Application before the Tribunal by the Applicant/Tenant was for the determination of the price payable under section 9 of the Leasehold Reform Act 1967 ("the Act") in respect of the house and premises at 1 Dolphin Mews, Manchester Street, Brighton East Sussex BN2 1TY ("the Act"). The parties had subsequently agreed the price to be payable but had been unable to agree the amount of various elements of the Landlords fees which were to be payable by the tenant. Written submissions had been made by both parties and the Tribunal considered these before making a decision.

The fees being claimed by the Landlord were as follows:

- a. Conveyancing Fees £763.75
 - b. Mortgagees administration fee on release of Mortgage £117.50
 - c. Valuers fees £705.00
 - d. Managing Agents fees £522.39
- a. First of all the Tribunal reminded itself of the Statutory provisions. These are set out in Section 9 (4) of the Act. They provide that the Tenant shall pay to the Landlord "the reasonable costs of or incidental to any of the following matters:

- a. any investigation by the landlord of that person's right to acquire the freehold
- b. any conveyance or assurance of the house and premises or any part thereof or of any outstanding estate of interest therein
- c. deducing, evidencing and verifying the title to the house and premises or any estate or interest therein
- d. making out and furnishing such abstracts and copies as the person giving the notice may require.
- e. any valuation of the house and premises"

2. Helpful guidance was also available in Hague's Leasehold Enfranchisement (fourth edition). In that respect the following guidance is provided:

- a. Landlords valuation costs. Only the costs of valuation are payable, not the costs of any negotiations.
- b. Landlords ordinary conveyancing costs
- c. The costs of, or incidental to, any investigation by the landlord of that persons right to acquire the freehold. This item includes the landlords costs of investigating the claimants title. It does not include the landlords costs of preparing and serving a Notice in reply, nor taking general advice as to his rights under the Act

3. The Tribunal worked through the amounts being claimed.

- a. Conveyancing costs. £763.75

These were costs incurred by Christopher Davis, a Licensed Conveyancer. They were calculated according to a Timesheet which was a list of attendances during the relevant period. The total time being claimed for the transaction was 4 hour 45 minutes. The Tribunal worked through the list of timed attendances. There were a number of items which the Tribunal disallowed as they fell outside the limits contained in the Act. In particular there were references to considering Woodfall, which is a standard textbook on the subject. Such attendances were considered to be "taking general advice as to rights under the Act" and would be disallowed. Another item was "draft Landlords Counter Notice" which was also outside the limits contained in the Act. The Tribunal reduced the amount of time spent on the transaction that the Tenant would be liable for to 2 hours 50 minutes. If this was multiplied by the Conveyancer's charging rate of £145 per hour, this would make a total of £410. Besides the matter of how much time was spent, the Tribunal considered the consideration for the transaction, namely £2,840. The title was registered land and did not have the complications of deducing an unregistered title. The Transfer Deed did have some additional rights and covenants, although the conveyancer accepted the Transfer was based on a previous Transfer that had been settled by the Court of another house on the same Development. In addition to the above matters the Tribunal used its own expert experience in the local conveyancing market in reaching a conclusion. Taking all things into consideration the Tribunal considered that a reasonable amount for conveyancing fees would be £400 plus VAT of £70, total £470.

b. Mortgagees administration fee £117.50

The Freehold Deeds had been held by a Mortgagee and to enable the transaction to proceed an administration fee had to be paid for the release of the deeds. This amounted to £100 plus VAT of £17.50 Total £117.50. The Tribunal considered this to be a perfectly reasonable charge and is effectively part of the conveyancing fees. It approved this amount in full.

c. Valuers Fees £705

The Landlord had instructed local Valuers, Graves Son & Pilcher. A letter dated 4th February 2004 from that firm was before the Tribunal explaining the work they had done and how their fees were calculated. The time taken had been 4 ½ hours and the Valuer concerned had a charging rate of £150 per hour. That firm adopted a minimum fee of £600 plus VAT. The tribunal worked through the list of items involved and confirmed that these were all within the limits provided for in the Act. The Tribunal saw no reason why the Landlord should not instruct Valuers which it traditionally used. Indeed there was no obligation on the Landlord to use the cheapest Valuer it could find. The fee of £600 plus VAT seemed to be a perfect fair fee in all the circumstances and would be approved in full.

d. Managing Agents fees £522.39

This was set out in a letter from Hargreaves dated 6th February 2004. They claimed they were entitled to be reimbursed under Clause 3 (27) of the Lease and Section 9(5) of the Act. The Tribunal considered its jurisdiction over this item and noted Section 21 (ba) of the Act which referred to "the amount of costs payable under section 9(4) or 14(2)" The Tribunal has no jurisdiction over amounts claimed under the lease for which there may be other remedies. Accordingly this item would not be allowed.

6. DECISION

Accordingly for the reasons given above the Tribunal makes an Order as attached.

Dated this 24th day of February 2004



J.B. Tarling MCIM
(Chairman)

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ORDER OF THE LEASEHOLD VALUATION TRIBUNAL

UPON considering written representations from the Applicants/Tenants and the Respondent/Landlord and their representatives

IT IS ORDERED as follows:

That the costs payable by the tenant to the landlord under Section 9(4) of the Leasehold Reform Act 1967 shall be as follows:

a. Conveyancing costs	£470.00
b. Mortgagees administration fees	£117.50
c. Valuers fees	£705.00
d. Managing Agents fees	Nil
TOTAL	£1,292.50

Dated this 24th day of February 2004



J.B. Tarling MCIM
(Chairman)

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