

RESIDENTIAL PROPERTY TRIBUNAL SERVICE LEASEHOLD VALUATION TRIBUNAL

Property	:	Flats 3 and 6 Steyne Mansions, Steine Street, Brighton BN2 1TE
Applicants	:	(1) Storme Margaret Delanoix Tointon (2) Michael John Landmann
Respondent	:	Ionic Properties Ltd
Case number	:	CAM/00ML/OLR/2007/0029 + 0030
Type of Application	:	To determine the costs payable on enfranchisement (Section 60 of the Leasehold Reform and Urban Development Act 1993 ("the 1993 Act"))
Tribunal	:	Bruce Edgington (Lawyer chair) Richard Marshall FRICS FAAV John Shrive FRICS FAAV

DECISION

1. The reasonable legal costs of the Respondent in dealing with the matters set out in Section 60 of the 1993 Act are £488.80 for each flat assuming that the Respondent is unable to recover VAT.
2. The reasonable valuer's fees are £434.75 for each flat assuming that the Respondent is unable to recover VAT

Reasons

Introduction

3. The Applicants are lessees of flats in the property under long leases and have applied to the Respondent for the surrender of their existing leases and the granting of further long leases pursuant to Section 48 of the 1993 Act.
4. Agreement has been reached on all matters save for the costs to be paid by the Applicants pursuant to Section 60 of the 1993 Act.
5. Written representations have been received from the parties who have agreed to this matter being dealt with by way of paper determination i.e. without an oral hearing.

The Law

6. When lessees use the enfranchisement provisions, they become liable to pay the landlord's "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"

(Section 60(1) of the 1993 Act)

7. The method of assessment of both legal and valuation fees is what is sometimes called the solicitor and client basis. In other words the costs to be allowed by the Tribunal are those which would be payable by the client "if the circumstances had been such that he was personally liable for all such costs".

(Section 60(2) of the 1993 Act)

8. Of particular relevance to this dispute is Section 60(5) of the 1993 Act which says that "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 the proceedings".

9. If the Respondent is registered for VAT purposes, it will be able to recover the VAT on the legal and valuation fees because the legal and valuation services will have been supplied to the Respondent, not the Applicants. Therefore, if this is the case, no VAT will be payable by the Applicants.

The Issues

10. The issues in this case are the same for each flat. The claims for costs include items headed 'Valuer's fee in respect of negotiations' – £250 plus VAT in each case – and 'estimated costs to be incurred should the matter proceed to LVT' – legal and valuer's costs totalling £1,250 plus VAT in each case.

11. As all matters in dispute save for costs have been resolved, the Tribunal is not absolutely clear as to whether the second parts of these claims is still being pursued but it is assumed that they are, as the Respondent has given no indication that they are being withdrawn.

12. The Points of Dispute are clear and succinct. The Respondent says, in respect of each of these claims, that the 'Applicant (is) not liable under s60 of the 1993 Act'.

13. The Respondent's reply is equally succinct saying, in each case, 'reasonable cost of and incidental to matter in S60'.

Conclusions

14. For the avoidance of doubt the Tribunal agrees entirely with the Applicants' choice not to challenge the basic legal and valuation fees for dealing with the Initial Notices and the grant of the new leases. They are eminently reasonable.
15. As to the disputed matters, there would appear to be no reported cases which would guide the Tribunal in dealing with these particular issues. The parties have certainly referred to none. The members of the Tribunal therefore have to deal with the matter in accordance with standard methods of construction. The first resort is always to look at the ordinary meaning of the words of the Statute.
16. In respect of the valuer's fee, Section 60 merely says that the tenant is liable to pay for the "*reasonable costs of and incidental to...any valuation*". That is all. It is difficult to see how 'negotiations' can come within the ordinary meaning of those words.
17. As to 'estimated costs to be incurred should the matter proceed to LVT', it really is difficult to see how those words cannot come within the excluded category of work i.e. "*costs which a party.... incurs in connection with the proceedings*" before a Leasehold Valuation Tribunal.
18. For these reasons the Tribunal decides in favour of the Applicants on both issues. As to the valuer's fee, VAT on £370 is £64.75, not £69.75 as claimed which makes a total of £434.75.



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Bruce Edgington
5th September 2007