

LON/00AD/OC9/2007/0071

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER THE LEASEHOLD REFORM HOUSING
AND URBAN DEVELOPMENT ACT 1993 SECTIONS 60 and 91**

**PROPERTY: GROUND FLOOR FLAT 25 MARINER'S WALK
MANOR ROAD ERITH KENT DA2 PE**

**APPLICANT: SINCLAIR GARDENS INVESTMENTS (KENSINGTON)
LIMITED**

RESPONDENT: MIRIAM STERN

TRIBUNAL

Mrs T I Rabin Chairman
Mr J R Humphrys
Ms M Daley

Date of Tribunal's decision: 5th February 2008

INTRODUCTION

FACTS

1. The Tribunal was dealing with an application under Sections 60 and 90 of the Leasehold Reform Housing and Urban Development Act 1993 ("the Act") for a determination of the level of costs to be paid in relation to an application under Section 42 of the Act made by the Landlord Sinclair Gardens Investments (Kensington) Limited. The application related to Ground Floor Flat 5 Mariner's Walk Manor Road Erith Kent DA8 2PE ("the Property"). The Tenant Respondent was Mrs Miriam Stern, the long leaseholder of the Property.
2. The Respondent made an application under Section 42 of the Act stating that she was prepared to pay £800 for an extended lease of the Property. The Respondent served a counter notice which admitted the Applicant's right to acquire a long lease but proposed the sum of £1,960.
3. The parties had negotiations which resulted in a deemed withdrawal of the initial notice by the Respondent and the Respondent made an application to the County Court which was subsequently dismissed. This application related to the costs incurred following the service of the initial notice and are disputed by the Applicant and the Tribunal will determine the costs in accordance with Section 91(d) of the Act.

The Law

4. The Respondent's costs for which the Applicants are responsible following the service of a notice under Section 42 of the Act are set out in Section 60 (1) of the Act. This states:
 - 60(1) 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 have been incurred by any 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 rights 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;But this subsection shall not apply to any costs if on a sale made voluntarily a stipulation that they were to be borne by the purchaser would be void
 - 60(2) For the purposes of sub-section (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 made directions on 22nd November 2007 directing (inter alia) the application was suitable for determination without an oral hearing on the paper track.

EVIDENCE AND DECISION

6. The Applicant was represented by P Chevalier & Co who submitted a breakdown of the costs incurred by their firm and the valuer. The Respondent was represented by Clarke Mairs who submitted a response to the application. The Applicant's solicitors replied and submitted case law. The Tribunal carefully considered the bundles submitted before coming to its decision.
7. The Applicant's representative's breakdown of their costs at paragraph 11.1 is at page 3 of the Applicant's submissions. All the work was undertaken by Mr P Chevalier and his charge rate is £220 per hour. The charge rate was agreed by the Respondent's solicitors and the Tribunal is satisfied that this charge is reasonable.
8. The costs claimed are as follows:
 - (a) Personal attendances on client obtaining instructions -35 minutes. This was agreed by the Respondent.
The Tribunal accepts the time spent was reasonable and it is allowed
 - (b) Considering the lease and office copy entries – 20 minutes. The Respondent considers that 10 minutes would have been adequate.
The Tribunal accepts that it is important for a landlord's adviser to review the documents of title with care and having reviewed the lease and copy entries, both of which are quite lengthy, the Tribunal considers that 20 minutes is not unreasonable and is allowed.
 - (c) Drafting preliminary notice – 10 minutes. The Respondent considered that, in view of the fact that the Applicant had been collecting ground rent for years, it was not necessary to investigate title.
The Tribunal takes the view that the landlord is entitled to require his representative to investigate the tenant's title. However, the preliminary notice is simply a printed form which could easily be completed as part of the work undertaken on 6th April 2006. This is accordingly disallowed.
 - (d) Instructing valuer-15 minutes and considering valuation and discussing with client and valuer -45 minutes. The Respondent objected to the time spent in instructing the valuer on the grounds that instructions are standard and that 10 minutes would be adequate. Objections were raised for the time spent in discussing the valuation with the client and valuer on the basis that this was a duplication of the time spent under the first item. The Respondent also pointed out that they had undertaken a search at Companies House which showed that First Management Ltd, trading as Hurst Managements shared a registered office, directors and secretary with the Applicant and the Respondent concluded that they were sister companies.

The Applicant stated that the valuer appointed, Mr Goodman, was a quantity surveyor and, although he was a director of First Management Ltd he was not a director of the Applicant.

The Tribunal noted that no details of Mr Goodman's qualifications were provided nor was the Applicant prepared to disclose the letter of instruction or the valuation report when requested by the Respondent.

The Tribunal must consider under the provisions of Section 60(2) whether the Applicant would have incurred the cost of instructing a valuer had they been responsible for the costs themselves. The initial notice quoted a figure of £800. The Applicant proposed a premium of £2,335 in a letter dated 2nd May 2006 which may have been as a result of the valuation, although this does not explain why the counter notice dated 2nd June 2006 quoted a lower figure of £1,960. The Applicant's representative claimed that he had spent 45 minutes on 1st June 2006 considering the valuation and discussing same with the Applicant and the valuer. However the premium is small and the Tribunal questions whether a landlord with considerable interests in properties of this nature would agree to spend his own money in instructing an independent valuer. In the subject case when Hurst Managements is closely connected to the Applicant, sharing the same secretary and directors.

Having regard to all the circumstances and to the expert experience of the Applicant, they would have been unlikely to pay their solicitors more than a token sum of money to deal with these issues. Certainly they would not instruct their solicitors to formally request a valuation from Hurst Managements. The Tribunal therefore considers that 15 minutes would be more than ample time. Therefore 45 minutes is disallowed and there should no allowance for instructing the valuer.

- (e) Considering Tenant's notice and researching the questions which needed to be confirmed – 75 minutes. The Respondent's representative objected as the 13 items identified by the Applicant's representative in paragraph 7 at page 2 of his submissions had mainly been covered by reading the lease and office copy entries or reviewing the initial notice. He considered that for an experienced solicitor 30 minutes would be ample time.

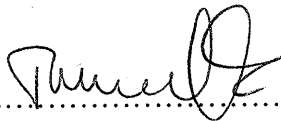
The Tribunal agrees that the 13 items identified could be easily ascertained from procedures for which charges had already been raised and that 30 minutes would be adequate. 45 minutes of the time claimed is disallowed.

- (f) Drafting counter-notice -15 minutes. The Respondent's representative accepted that this was a reasonable figure and the Tribunal agrees and allows 15 minutes.

- (7) The Applicant's representative has claimed for 8 letters and 3 telephone calls. The Respondent's representative produced two letters dated 6th April and 2nd June 2006 both serving notices, on the Respondent and claimed that these were duplicates of items already charged. The third letter produced is dated 2nd May 2006 and is a without prejudice offer of settlement, prior to the issue of the counter notice. The Tribunal considers that time for claimed for the letters dated 6th April and 2nd June 2006 is reasonable and it is allowed.

However the without prejudice letter of 2nd May 2006 does not fall within the chargeable items under Section 60(1) of the Act. Therefore 6 letters are allowed and 3 telephone calls at £22 each making a total of £198 equivalent to 54 minutes.

9. The valuer has charged £380 plus VAT making a total of £446.50. In view of the Tribunal's comments in paragraph 8 (d) above the Tribunal determines that if the Applicant was paying the valuer from their own resources, they would not have agreed to pay such a sum for a relatively simple valuation from a qualified valuer. Bearing in mind the low figure involved the relationship between the Applicant and Hurst Managements and the acknowledgement that they are not qualified valuers a figure of £380 plus VAT is disproportionate and unreasonable. A figure of £100 plus VAT is more than adequate.
10. The Tribunal therefore determines that an appropriate amount of time would be 2 hours and 19 minutes and that at a rate of £220 per hour the total fee allowed is **£508.74** plus VAT if appropriate. The valuation fee allowed is **£100** plus VAT.



T I RABIN
Chairman

Date: 5th February 2008