

LEASEHOLD VALUATION TRIBUNAL

MIDLAND RENT ASSESSMENT PANEL

re: 32 Trafalgar Court, Tividale, Oldbury
Warley B69 2JD

LEASEHOLD REFORM, HOUSING AND URBAN
DEVELOPMENT ACT 1993, SECTION 60

Applicant : JULIE APRIL ROGERS
Respondent : TRAFALGAR COURT PROPERTY LIMITED
Property : 32 Trafalgar Court, Tividale, Oldbury, Warley, B69 2JD
Tribunal : Mr D Jackson (Chairman)
Mr J Turner
Mrs N Jukes
Date of Decision :

1. This is a determination of a Leasehold Valuation Tribunal of the Midland Rent Assessment Panel under Section 91(2)(d) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") to determine the amount of costs incurred in connection with the grant of a new lease payable by the Applicant to the Respondent under Section 60(1) of the Act.
2. On 24th June 2008 the Applicant gave Notice of Claim pursuant to Section 42 of the Act. The terms on which the new lease is to be granted have been agreed between the parties as have valuation costs and the only outstanding matter on which agreement cannot be reached are the costs incurred in connection with the new lease to be paid by the Applicants.
3. The parties have asked that this matter be determined on the basis of written representations only.
4. Written representations dated 30th January 2009 have been received from Hogan & Co on behalf of the Respondent. Written representations have been received from Mr N Plotnek dated 5th February 2009 on behalf of the Applicant.
5. The relevant provisions of Section 60 of the Act are as follows:-

(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 right to a new lease;

(b) [not applicable]

(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 with stipulation that they were to be borne by the purchaser would be void.

(2) For the purposes of subsection (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 tenants shall not be liable under this section for any costs which are a party to any proceedings under this chapter before a Leasehold Valuation Tribunal incurs in connection with the proceedings.

6. The Respondents break down their costs into two headings –

6.1 Dealing with the Notice and Counter-Notice – 3.5 hours

6.2 Conveyancing – 2 hours

The hourly rate claimed is £245 per hour.

7. The Tribunal has considered the claim for 3.5 hours which is supported by a Matter Time Card. This includes 2.5 hours in relation to drafting the Counter Notice. The Counter Notice consists of a single sheet of paper setting out the name of the parties, the property, an admission of the tenants right to a new lease, together with the Respondents proposed premium of £5,500. The Counter Notice also proposes a new lease on the same terms and conditions as the existing lease subject to certain modifications. In relation to drafting the new lease the Tribunal consider

that that is a matter which is allowed for in the conveyancing costs, indeed drafting the new lease is the only part of the conveyancing transaction that the Respondent's Solicitors are expected to carry out and is included within the 2 hour estimate. The Tribunal does not consider that the Respondent might reasonably be expected to have incurred 2½ hours of his solicitors' time in the preparation of a single page Counter Notice had he been personally liable for all of those costs. The Tribunal determines that one hour should be allowed for the preparation of the Counter Notice and accordingly allows 2 hours in total under the Respondent's claim for dealing with Notice and Counter Notice.

8. The Tribunal considers the estimate of 2 hours to be reasonable in relation to conveyancing on the grant of a new lease. However as set out above this 2 hours should include the preparation of the new lease which is the responsibility of the Respondent's solicitors in this transaction albeit that amendments e.g. to comply with the CML Handbook are likely to come from the Applicant's solicitors who will want to ensure that the new lease is acceptable to any potential lender.
9. As far as hourly rate is concerned, it is accepted that the Respondent is entitled to use a solicitor of its own choice and further need not choose the cheapest available. Indeed the Applicant may derive some considerable advantage from the use by the Respondent of its "usual" solicitor who no doubt will have dealt with many similar properties as part of their client's portfolio and will be able to deal more quickly, efficiently and therefore more cheaply due to their existing knowledge.
10. The Tribunal has considered the Guideline Figures for the Summary Assessment of Costs 2008 published on the HMCS website.
11. Messrs Hogan & Co's offices are in Band I outside London area. Mr N Hogan who had conduct of this matter is a grade A fee earner. However the Tribunal has to consider whether the Applicant might reasonably be expected to incur the cost of the grade A fee earner had it been personally liable for those costs.
12. The amount claimed in the Counter Notice is £5,500 and the premium finally agreed between the parties was £4,000. Sums of that sort do not justify a grade A fee earner. The Respondents would reasonably have expected that a routine matter of this sort would be delegated to a less senior fee earner particularly as the tenant's right to a new lease is not disputed and the sum involved is small. The Tribunal therefore determines that the Respondent would reasonably have expected his solicitor to use a grade B fee earner.

13. Mr Plotnek whilst arguing that a "grade A" fee earner is not required suggests £225 per hour. It is not clear how the hourly figure has been arrived at. Mr Plotnek refers to a Midland LVT case of 37 Lock Drive, Stetchford B33 8AB (BIR/OOCN/OC6/2008) where £222 per hour was allowed. However that involved a London West End Law Practice not seeking to apportion work between relevant grades. As noted above, Hogan & Co are based in Surrey which is Band I outside London area. The Tribunal therefore determines that the appropriate hourly rate is Band B at £180 per hour.
14. The Tribunal using its knowledge and experience as an expert Tribunal has stepped back to look at the matter as a whole. The Respondent's Notice seeks a premium of £5,500. The Respondent claims costs of £1,347 exclusive of VAT. That means that if the Respondent was to pay for his solicitors work out of his own pocket then 25% of the premium he hoped to receive will be eaten up by solicitors costs. The Respondent would not reasonably have been expected to incur such a level of costs. The Tribunal in adopting a rate of £180 per hour determines costs in relation to the Notice and Counter Notice of £360 and a further £360 in relation to conveyancing costs. Whilst the Respondent could no doubt have obtained such a service more cheaply elsewhere the Tribunal does not consider it would be reasonable for it to do so.
15. The costs payable by the Applicant to the Respondent pursuant to Section 60 of the Act are £720 plus VAT.

Signed



MR D JACKSON