

SOUTHERN RENT ASSESSMENT PANEL AND TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

CASE NO: CH100MS/OLR/2008/0024

15 & 32 SHELLEY COURT, HILL LANE, SOUTHAMPTON SO15 5SN

BETWEEN:-

JEREMY R. STANLEY-SMITH

DAVID B. HUGHES

&

RICHARD D. McNEIL

APPLICANTS

and

SINCLAIR GARDENS INVESTMENTS (Kensington) LIMITED

RESPONDENT

CERTIFICATE PURSUANT TO REGULATION 18 (7) OF THE LEASEHOLD VALUATION
TRIBUNALS (PROCEDURE) (ENGLAND) REGULATIONS 2003 (SI 2003/2099)

I certify pursuant to the above mentioned regulation that there is an error in the decision of the tribunal in this matter dated the 1st April 2009.

The error is contained in paragraph 6 of the tribunal's determination. That paragraph should read as follows:-

"B. Conclusion

The Tribunal determines that the Applicants shall pay to the Respondent costs under Section 60 of the Act in the total sum of £2,404.78 plus VAT where appropriate plus valuer's fee of £750 plus VAT if appropriate."

Otherwise the decision remains unaltered.

The time within which to seek permission to appeal is 21 days from the date of the decision as amended.

Dated this 8th day of April 2009



D Agnew BA, LLB, LLM

Chairman

RESIDENTIAL PROPERTY TRIBUNAL SERVICE SOUTHERN RENT ASSESSMENT PANEL
AND LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/00MS/OLR/2008/0024/25

IN THE MATTER OF AN APPLICATION UNDER SECTION 91(2)(d) OF THE LEASEHOLD
REFORM, HOUSING & URBAN DEVELOPMENT ACT 1993
AND
IN THE MATTER OF 15 & 32 SHELLEY COURT, HILL LANE, SOUTHAMPTON, HAMPSHIRE
SO15 5SN

BETWEEN:

JEREMY R. STANLEY-SMITH
DAVID B. HUGHES
&
RICHARD D. McNEIL

Applicants

- and -

SINCLAIR GARDENS INVESTMENTS (Kensington) LIMITED

Respondent

THE TRIBUNAL: Mr D Agnew BA LLB, LLM (Chairman)
Mr D Lindott FRICS

DETERMINATION AND REASONS

1. The Application

- 1.1 The parties having been unable to agree costs payable by the Applicants to the Respondent pursuant to Section 60 of the Leasehold Reform, Housing & Urban Development Act 1993 ("the Act") following lease extensions an application was made to the Tribunal to determine the costs payable.
- 1.2 By directions given on the 5th December 2008 the Tribunal directed that the application be dealt with as a paper determination without an oral hearing unless either party objected.
- 1.3 Neither party did object to the matter being dealt with by means of a paper determination.

2. The determination

- 2.1 The determination took place at the Tribunal office in Chichester on the 24th March 2009.

3. The evidence
- 3.1 The Respondent's submissions as to the costs sought were dated the 11th December 2008. The Applicants supplied Points of Dispute and the Respondent responded to those Points of Dispute.
- 3.2 The Respondent's submissions
- 3.2.1 The Respondent's solicitor is Mr Paul Chevalier who is a sole practitioner who specialises in leasehold enfranchisement and lease extension claims. He is the only fee earner in his firm. He seeks to recover on behalf of the Respondent costs at his charging rate of £220 per hour in respect of the work done in respect of notices of claim served prior to the 1st July 2007 and thereafter £230 per hour plus VAT in each case. The Respondent instructs only Mr Chevalier in such matters and they accept that they are liable to pay such costs as are not recovered from the Applicants in such cases. Mr Chevalier asserted that the landlord was not required to find the cheapest or even cheaper solicitors than himself.
- 3.2.2 Lease extension applications are complex in nature and, Mr Chevalier says, it is reasonable for the landlord to instruct a specialist in such work.
- 3.2.3 Mr Chevalier set out the steps he was required to take in respect of each of the notices served in this case. Three defective notices were served before the fourth valid notice was served by the Applicants' solicitors but each notice that was served involved Mr Chevalier in a certain amount of work. The total costs claimed are therefore much higher than would have been the case had only one notice been served.
- 3.2.4 Attached hereto is a schedule setting out the costs claimed and the amount allowed by the Tribunal and, where appropriate, a brief explanation as to why an item has been disallowed. Where the claim has simply been reduced this is because the Tribunal considered that the amount allowed was a reasonable amount for the item claimed and that any additional amount would have been unreasonable. In such instances no specific reason is given in the schedule for the reduction.
- 3.2.5 The Respondent's solicitors further contended that with regard to lease extensions, as for leasehold enfranchisement, Parliament has in effect compelled landlords to deal with their properties in ways which are often contrary to what they want to do and that in those circumstances "it would be surprising if reversioners were expected to be further out of pocket in respect of their inevitable incidental expenditure incurred in obtaining the professional services of valuers and lawyers for a transaction and proceedings forced upon them". This is a quotation from the decision of the London Leasehold Valuation Tribunal in Hampden Court (LON/ENF/785/02). The Respondent's solicitors submitted that, accordingly, they were entitled to recover indemnity costs where the burden of proof is on the paying party "to establish that the landlord would without a shadow of doubt not have paid such costs if it had been personally liable for the same". If there was any doubt

at all the Respondent's solicitors said that the costs are to be regarded as reasonably incurred.

3.3 The Respondent's submissions

3.3.1 The Applicants' solicitors made some general Points in Dispute before commenting on each item of costs claimed. They submitted that £220/£230 per hour is excessive and that the guideline rates issued by the Court Service for a Grade A fee earner for 2006 is £184 per hour and for 2007 £195 per hour and for 2008 £203 per hour. They make the point that the subject property is in Southampton, the Respondent company's registered office is in Bognor Regis, West Sussex and that the Respondent's solicitors were in Chessington, Surrey. They say it was not reasonable in the circumstances for the Respondent to instruct a sole practitioner in Surrey whose charge out rate is 13%-14% above that set out by the court guidelines. They further submit that this matter did not require expertise of a Grade A fee earner. They say that it is not reasonable for the Respondent to have instructed a sole practitioner who was unable to delegate some of the functions to lower grade fee earners. In commenting upon the individual items claimed the Applicants' solicitors suggested that either the work carried out was unnecessary or it took an excessive length of time.

3.3.2 The Applicants' solicitors submit that there is no reference in the Act to "indemnity costs" per se.

3.3.3 The Applicants' solicitors accept that some costs would have been incurred by the service of defective notices but they say that the costs flowing from those notices should be minimal. There were areas of duplication where the Respondent's solicitor has claimed to have carried out work which had already been carried out and did not need to be repeated.

4. The Law

Section 80 of the Act provides as follows:-

"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 the 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) 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 sub-section 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.

(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 determination

5.1.1 Before turning to look at each item of costs claimed by the Respondent's solicitors the Tribunal made the following determinations on the general points raised by this application.

5.1.2 The Tribunal considered that it was reasonable for the Respondent to have instructed Mr Chevalier to act on its behalf in connection with this matter. Judging by the number of decisions of the Leasehold Valuation Tribunal involving the Respondent company as evidenced by the number of reports contained in the bundle submitted by the Respondent's solicitors for this determination, the Respondent company has an extensive portfolio of properties in diverse locations. It is reasonable that the Respondent should want to instruct one solicitor to handle all such applications and that that solicitor should have some particular expertise in this area of the law which is by no means straightforward.

5.1.3 The Tribunal considered that Mr Chevalier's charging rates of £220 per hour in respect of notices of claim served prior to 1st July 2007 and £230 per hour in respect of notice of claim served thereafter were reasonable. It was not incumbent upon the Respondent to find the cheapest or cheaper solicitors and the rates claimed were not unreasonable for the type of work concerned.

5.1.4 The Tribunal found that it was Section 60 of the Act and Section 60 alone which governs the costs which the Tribunal can require the Applicant tenants to pay to the Respondent landlord in cases of lease extensions. The Civil Procedure Rules have no place in such determinations and this Tribunal finds it unhelpful to refer to costs payable as "indemnity costs". There is no reference to "indemnity costs" in Section 60 and whilst this Tribunal finds that there is some force in the argument that in lease extensions under the Act and leasehold enfranchisements a landlord is being required to deal with his property in a way which may well be contrary to his wishes Parliament has not ensured that the landlord is not to be found to be out of pocket at all as a result of the procedure. First, the costs which are claimable have to come within the ambit of sub-paragraphs (a) – (c) of Section 60 (1)

of the Act and any work which may reasonably be thought necessary to look after the landlord's interests, if it does not come within those sub-paragraphs, is not claimable. Secondly, if an application has to be made to the Leasehold Valuation Tribunal to determine the premium for the new lease or price for the acquisition of freehold under an enfranchisement then those costs are not claimable by the landlord by virtue of Section 60 (5) of the Act.

5.1.5 This Tribunal finds that Section 60 of the Act requires a two stage process:

First it is to determine whether the landlord's claim for costs is reasonable; that is, that it falls within a range of costs and that any claim within that range is reasonable but anything higher than the upper end of the range would be unreasonable. The second stage is to carry out the check which is required by virtue of Section 60(2) of the Act. If the costs as claimed are higher than those which the landlord might reasonably be expected to pay if he was personally liable for them then they cannot be reasonable. It is difficult to see that Section 60(2) adds very much to the requirement that the costs payable by the tenant have to be reasonable because if they are higher than the Respondant would expect to pay if he were bearing the costs himself they are unlikely to be regarded as reasonable. However, as previously stated, Section 60(2) acts as a check to test whether what has been claimed or what the Tribunal is considering to determine is in fact reasonable.

5.1.6 The Tribunal did not find the extensive reference by the Respondent's solicitors to other Tribunal decisions to be of particular assistance. Tribunal decisions are not binding on another Tribunal, although it is acknowledged that Tribunals will aim to be as consistent as possible with each other.

5.1.7 The Tribunal was not supplied with copies of the old and new leases or of copies of correspondence. It has therefore had to use its experience as an expert Tribunal in determining what it considers to have been a reasonable amount of time spent on the various activities giving rise to the claim for costs.

5.1.8 The Respondents are entitled to be paid for work done in connection with defective notices but the Tribunal does take the point that some of the work would have been repetition of work done in respect of previous notices served and that there should therefore be a saving of time in respect of the second, third and fourth notices.

5.1.9 In allowing Mr Chevalier his full charging rate as a practitioner specialising in this field the Tribunal expect him to use his skill to work more efficiently than a less experienced person in the field and this should be reflected in the amount of time spent in respect of the items of costs claimed.

5.1.10 The Tribunal, having determined the general points set out above, proceeded to consider each item of costs claimed by the Respondent and the result of the Tribunal's determination in that regard is set out in the attached Schedule. The Tribunal had no

evidence as to whether the Respondent company is able to re-claim VAT or not. The Tribunal's determination is therefore for the amount of costs net of VAT but the Applicants are liable to pay VAT on those figures if the Respondent is unable to re-claim the same.

6. Conclusion

The Tribunal determines that the Applicants shall pay to the Respondent costs under Section 60 of the Act in the total sum of £2,311.33 plus VAT where appropriate plus valuer's fee of £750 plus VAT if appropriate.

Dated this 1st day of April 2009



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D. Agnew BA, LLB, LLM
Chairman

Schedule

A. First Notice	Claimed	Allowed	Comment
a) Personal attendances on client (45 minutes)	165	165	
b) Considering lease (No. 15) and Office Copy Entries (15 mins)	55	55	
c) Considering lease (No. 32) and Office Copy Entries (15 mins)	55	18.33	
d) Instructing valuer (15 mins) Preliminary Notices (20 mins)	55 73.33	55 36.66	
e) Considering tenant's notices and researching questions re investigating tenant's right to new lease (75 mins)	275	185	
f) & g) Drafting counter notices	110	-	Not within ambit of Section 60
h) Considering valuation etc (30 mins)	110	91.66	
j) & k) 5 letters out and 2 telephone attendances	154	154 <hr/> 740.65	
B. Second Notice			
a) Personal attendances on client (15 mins)	55	55	
b) & c) Reconsidering leases and OCE's (20 mins)	73.33	55	
d) Considering tenant's notices and researching questions re right to			

new lease (30 mins)	110	33.66	
e) & f) Drafting counternotices (30 mins)	110	--	Not within ambit of Section 60
g) Reconsidering valuation (15 mins)	55	33.66	
h) 4 letters out and 2 telephone attendances	132	132 ----- 309.32	
C. Third Notice			
a) Personal attendances (15 mins)	57.50	57.50	
b) & c) Reconsidering leases (20 mins)	76.66	38.33	
d) Considering tenant's notice and researching questions re right to new lease (30 mins)	115	38.33	
e) & f) Drafting counternotices (30 mins)	115	--	Not within ambit of Section 60
g) Reconsidering valuation (15 mins)	57.50	38.33	
h) & i) 4 letters out and 2 telephone attendances	132	132 ----- 304.49	
D. Fourth Notice			
a) Personal attendances on client (30 mins)	115	115	
b) Preliminary notice (10 mins)	38.33	38.33	
c) & d) Reconsidering leases and			

OCE's	76.66	38.33	
e) Considering tenant's notices and researching questions re right to new lease (60 mins)	230	38.33	
f) & g) Drafting counternotices (30 mins)	115	--	Not within ambit of Section 60
h) Reconsidering valuation (15 mins)	57.50	38.33	
i) & j) 6 letters out and 3 telephone attendances	207	207 ----- 475.32	
Grant of new leases	632.50	460	
5 letters out	115	115 ----- 575	
Summary of costs allowed			
First notice		740.65	
Second notice		309.32	
Third notice		304.49	
Fourth notice		475.32	
Grant of lease		575.00 ----- 2404.78	
Plus valuer's fee of		750.00	
All plus VAT if appropriate			