

MAN/20UD/OC9/2009/0001

LEASEHOLD VALUATION TRIBUNAL
OF THE
NORTHERN RENT ASSESSMENT COMMITTEE

THE LEASEHOLD REFORM ACT 1967 – SECTION 14 (2)
THE LEASEHOLD REFORM, HOUSING AND URBAN
DEVELOPMENT ACT 1993 – SECTION 60

Property: 15 Elgin Grove, Stanley, Co. Durham DH9 5UP

Applicant: Freehold Properties Limited

Represented by: Olswang

Respondent: Mr Trevor Ames

Represented by: Graham Patterson

Tribunal: Mrs E Thornton-Firkin
Mr A Robertson

Decision

The Tribunal determined that the respondent will pay to the applicant costs of £1,011.50 excluding VAT.

Application and Preliminary

1. The applicant applied to the Leasehold Valuation Tribunal (The Tribunal) on 19 May 2009 to determine costs following three notices served by the respondent on the applicant. The first notice was under the Leasehold Reform Act 1967 (LRA) and the following two under the Leasehold Reform Housing and Urban Development Act 1993 (LRHDA).
2. On 9 June 2009 the Tribunal issued directions giving the parties the opportunity to request an oral hearing. Neither party made a request.
3. The applicant's representative, having made a written submission with its application, did not make any further submission within the 28 days provided for in the directions. The respondent's representative did not make a statement of any objections to the sum sought as per the directions. The clerk to the Tribunal contacted the respondent's office to check that he was not going to do so but received no response. The respondent's representative did confirm that he had received from his client the Tribunal's letter dated 9 June 2009 which enclosed the directions.
4. The respondent had served on the applicant three notices of claim to extend the lease of the flat, 15 Elgin Grove. The first notice was served on 10 October 2007 under LRA. The applicant suggested the notice should be withdrawn as the property was a flat and not a house. There is no evidence from either party that the withdrawal happened but a second notice (under LRHDA) was served. The copy of this notice submitted to the Tribunal was undated but the counter notice not admitting the claim stated that the notice was dated 5 December 2008. The counter notice did not admit the claim on two grounds – that is, the time given for the landlord to serve the counter notice was insufficient and that the amount stated in the notice was nominal and therefore not a realistic figure. The counter notice was dated 1 February 2008.
5. In the applicant's submission there was again no evidence that the second notice was withdrawn but a third notice was served on 13 March 2008. A counter notice was served on 21 May 2008 admitting the tenant's right to acquire a new lease but disputing the price and certain terms of the lease.
6. After the service of the counter notice the evidence of the applicant was confined to two e-mails from the applicant to the respondent dated 16 February 2009 and 27 March 2009. The first e-mail asked if application had been made to the LVT otherwise the applicant would deem the notice of claim withdrawn. Unless an application had been made to the LVT (under section 48 of the LRHDA) the deemed withdrawal of the notice takes place 6 months after the service of the counter notice. The second e-mail asked for costs incurred as no reply had been received to the first e-mail.

Law

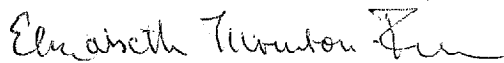
7. Section 14 (2) of LRA provides that where a person gives notice of his desire to have an extended lease of the house and premises under this Part of this Act.....there shall be borne by him (so far as they are incurred in pursuance of the notice) the reasonable costs of or incidental to any of the following matters
 - (a). any investigation by the landlord of that person's right to acquire the freehold
8. Section 60 of the LRHUDA provides that
 - (1) where a notice is given under Section 42 then the tenant by whom it is given shall be liable, to the extent 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.....
 - (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
 - (3) where...the tenant's notice ceases to have effect, or is deemed to have been withdrawn, at any time, then the tenant's liability under this section for costs incurred by any person shall be a liability for costs incurred by him down to that time.
9. Section 48 gives the date of the deemed withdrawal as the period of six months beginning with the date on which the counter notice was given to the tenant

Decision

10. The Tribunal considered the schedule of costs submitted by the applicant. The amounts shown fitted within the timescale when the three notices were operative with two exceptions. The first exception was a claim for the costs of a meeting between Steve Nicholson of Olswang and A Balcombe on 4 February 2008 (£29.50). This figure is disallowed. The meeting occurred at a time between the counter notice of 1 February 2008 and the third notice being served. It was unlikely that a meeting was necessary at this point and there was no explanation of A Balcombe's involvement. The second exception was the last claim on the schedule

dated 15 February 2009 (£36.00) which was after the time the applicant claimed that there had been a deemed withdrawal and is therefore not allowed by Section 60 (3).

11. The rate charges of £295 per hour between October 2007 and April 2008 and £360 per hour thereafter for a fee earner were above the Tribunal's expectations of costs but the time taken appeared reasonable. The fee estimate of £200.00 shown near the top of the schedule of the costs of the Applicant was substantially exceeded. Details of the correspondence were not provided neither was there an explanation of how some of the recipients were related to the present subject matter. However without any submission concerning costs from the respondent's representative and his service of two invalid notices which the applicant had to deal with, thus increasing the time involvement, the Tribunal believes that the costs can only be regarded as reasonable. It allows the claim in full with the exception of the two items noted above.



Mrs E Thornton-Firkin
Chairman

3 September 2009