

2005

MIDLAND RENT ASSESSMENT PANEL

Case No: BIR/00CR/0C9/2010/0004

Leasehold Reform Housing and Urban Development Act 1993

DETERMINATION OF THE LEASEHOLD VALUATION TRIBUNAL

on an application under section 91(2)(d) to determine the Tenant's liability for costs pursuant to section 60

Applicant Tenant: Mr Gary Knock

Respondent Landlord and the Freeholder: Sinclair Gardens (Kensington) Investments Ltd

Property: Ground Floor Flat, 18 Pippin Avenue, Halesowen
West Midlands B63 2PW

Applicant's Application dated: 14 July 2010

Date of Tenant's Notice claiming to acquire the freehold: 7 August 2009

Heard at: The Panel Office

On: 30 September 2010

Appearances:

For the Tenant: Mr. Gary Knock and written representations from LHP Law, solicitors. Mr. Knock requested leave to put this case forward in tandem with 29 Wiltshire Drive, Halesowen. Leave was granted.

For the Landlord: No appearance but written representations from Mr. P. Chevalier & Co, solicitors

Members of the Leasehold Valuation Tribunal:

Mrs A J Rawlence BSc MRICS (Chair)
Mr T F Cooper BSc FRICS FCI Arb

Date of Tribunal's determination:

08 OCT 2010

1. **Background:** By a notice dated 7 August 2009 under s.42 of the Act, the Tenant exercised the right to a new lease (extended by 90 years) of Ground Floor Flat, 18 Pippin Avenue, Halesowen, West Midlands B63 2PW (the 'Property'). The Landlord Freeholder, by its solicitor, served a s.45 counter-notice dated 13 August 2009 requiring the Tenant to deduce his title to the tenancy and to provide evidence that he had been a Qualifying Tenant thereof for a period exceeding 2 years.

2. By an application dated 14 July 2010 (the 'Application'), the Tenant, by his solicitor, applied to the Leasehold Valuation Tribunal (the 'Tribunal') to determine the reasonable costs payable by the Applicant to under s.60 of the Act.

3. S.60 of the Act provides as follows:

'(1) Where a notice is given under s.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) 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.

(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) ...

(4) ...

(5) 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.

(6)'

4. **Hearing and appearances:** The Application was heard on 30 September 2010. Mr J Knock appeared and written representations from his solicitors LHP Law were served. Mr P Chevalier, Chevalier & Co, solicitors for the Respondent had previously notified the Tribunal that, while no appearance would be made, written representations were served.

5. **VAT:** All figures the Tribunal refer to are exclusive of VAT. We have no jurisdiction to determine conclusively VAT matters as they are a matter for HM Revenue & Customs. Therefore, we make our determination exclusive of VAT, save that VAT shall be added at the appropriate rate if applicable. Our understanding, while not conclusive, is that, if the Landlord is not registered for VAT or is unable to recover the VAT element of its costs, allowed by us, as an input tax, VAT should be added to the amounts we determine.

6. **Common ground:** It is common ground that premium payable for the lease extension has been agreed.

7. **The contentions:**

7.1 Mr. Knock submits that the Tribunal should determine his liability for the s.60(1)(a) and (c) costs (the 'Legal Costs') at no more than £675 plus valuation costs of £200.

7.2 Mr Chevalier submits, in his written representations, that the Legal Costs should be £1,040 plus valuation costs of £300.

8. **Evidence and submissions on behalf of the Applicant:**

8.1 Mr Knock referred to the Leasehold Valuation Tribunal decision dated 18 March 2010 *113 Lyde Green, Halesowen, West Midlands B63 2PS* (BIR/00CR/OLR.2009/0116) where the Applicant submitted that Legal Costs should be proportionate to the value of the interest of the Respondent.

8.2 Mr. Knock also referred to the SGIK (Sinclair Gardens Investments (Kensington) Limited) route which is a non-statutory path for lease extension whereby a longer lease but higher ground rent may be granted. Legal Costs are approximately £575 and valuation costs £450.

8.3 Mr. Knock turned to the Respondent's written submissions and noted that paragraph 6.4 of the submission (page 7) stated that notes were made on the file which have been reproduced in Paragraph 6.1. He believed that these sleeve notes should be produced. He further questioned the number of determinations dealt with by Mr. Chevalier since February 2010.

8.4 Mr. Knock questioned the statement in paragraphs 17.6 and 17.7 that there had been a 'deemed withdrawal' of the claim for a lease extension. Mr. Chevalier stated that 'the tenant failed to apply to the County Court pursuant to s.48(3) of the Act by reason of the new lease not being completed within 4 months of the terms of acquisition'. Mr. Knock had received legal advice that the lease could not be completed until the all matters had been resolved - see s.48(3) of the Act.

8.5 He further stated that there had been no inspection of his property by a valuer, as far as he was aware. Referring to the invoice he believed that a desk top valuation had been carried out.

9. **The Respondent's written submissions:**

9.1 Mr. Chevalier had submitted that legal costs included obtaining instructions, investigating title, instructing valuers as well as conveyance works. He set out the list of steps to be taken in the work prior to conveyancing. As a sole practitioner Mr. Chevalier personally provided all the legal services.

9.2 He further stated that the test in s.60 of the Act was the whether the Landlord would have reasonably paid the costs if paying them personally. He referred to the determination by Professor Julian Farrand QC in *1-30 Hampden Court, London N10* (LON/ENF/785/02).

9.3 Mr. Chevalier referred to 3 recent decisions of the Midlands LVT where 4 hours at £240 per hour had been determined and stated that these decisions ignored that each notice of claim gave rise to different considerations.

10 **Decision:**

10.1 While s60 allows reimbursement of the cost of and incidental to investigations reasonably undertaken of the Tenant's right to a new Lease, of any valuation of the Property for the purposes of the Counter Notice and of the grant of the new Lease, insofar as the Landlord would have incurred those costs if he had been paying himself, the costs incurred still have to be within the 'reasonable' bracket.

10.2 The Tribunal also recognise that the law is complex and that there are pitfalls to be avoided. Chevalier & Co is an exceptionally experienced practitioner in this field as evidenced by its written submissions and the large number of matters it has dealt with.

10.3 The Tribunal, as an expert tribunal, is fully aware of the steps that need to be taken and with this knowledge it is its considered finding that legal work in respect of the claim and notice is largely repetitive in each case and could reasonably be completed in a maximum of four hours by a firm so highly experienced as Chevalier & Co. charging at a rate of £240 per hour, which the Tribunal consider can be justified in view of their expertise in this area. Accordingly, the Tribunal determines £960 as the Legal Costs.

10.4 As regards the valuer's costs the Tribunal finds, on the evidence, that a 'desk top valuation' was carried out and no inspection had been made nor charged under the invoice dated 17 August 2010. The Tribunal finds and determines a sum of £200 as reasonable for the work.

10.5 As our final determination: the Applicant Tenant shall, to the extent that such costs have been incurred in pursuance of the Tenant's s.42 notice, (a) be liable for £960.00 (Nine hundred and sixty pounds) plus VAT, if appropriate, as the reasonable costs of and incidental to the matters in s.60(1)(a) and (c) of the Act; and (b) be liable for £200 (Two hundred pounds) plus VAT, if appropriate, as the reasonable costs of and incidental to the matters in s.60(1)(b) of the Act.

Date: 7 October 2010

Andrew J. Rawlence

A J Rawlence MRICS (chair)