SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case No. CHI/00HP/OC9/2010/0001

DECISION AND REASONS

Application: Section 60 Leasehold Reform, Housing and Urban Development Act 1993 as amended ("the 1993 Act")

Applicant/Leaseholder: Ms A A Currie

Respondent/Landlord: Mr M Spelman

Premises: Flat 5 & garage, The Pentagon, 94 Stanley Green Rd, Poole, Dorset, BH15 3AG

Date of Application: 12th February 2010

Date of Directions: 24th February 2010

Hearing: determined on the papers without a hearing

Members of the Tribunal: Mr A J Mellery-Pratt FRICS (Chairman), and Mr P R Boardman JP MA LLB

Date of Tribunal's Decision and Reasons: 19th May 2010

DECISION

The tribunal finds that:-

1. **In respect of legal costs, the Applicant/Leaseholder is liable to pay £819.00 plus VAT towards the Respondent/Freeholders costs.**

2. **In respect of the Surveyor's fees the Applicant/Leaseholder is liable to pay £250 plus VAT, if applicable, in respect of the account of Mr Magowan.**

REASONS

Introduction

3. At a Hearing on 28th October 2009 the Tribunal made Determinations concerning substantive matters.

4. The present application seeks a Determination as to "the liability of the Applicant to pay any costs and the amount thereof".

5. Directions were issued and became Substantive Directions on 24th February 2010.

6. The Solicitors for the Applicant, Coles Miller, have submitted representations in respect of each item on the schedule of costs provided by the Respondent's solicitors and the Surveyor's account.

7. No further representation had been received from the Respondent or his Solicitors, Hodders.

8. The Directions provided for the matter to be determined on the basis of written Representations and without an oral hearing.

General

9. The Tribunal considered the wording and effect of Section 60 of the 1993 Act and concluded that the relevant parts in respect of this matter are :-

(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) 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) to (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.

10. The Tribunal concluded that the list in this section is exhaustive and that only the named items are chargeable.

The Tribunal also concluded that it was necessary to ensure that any such charge was reasonable.

Items in Dispute

11. Surveyors fee. The parties had previously agreed that an amount of £850 in respect of 'tribunal attendance' was not chargeable.

Coles Miller pointed to the dates of the counter-notice and Hodders letter of 6th May confirming that the valuation had not been received from their surveyors.

They therefore concluded that the valuation was for the purposes of the Tribunal hearing and should not be chargeable, in accordance with the provisions of S.60(5).

The Tribunal finds that S.60(1)(b) does not require the valuation to be carried out before the service of counter-notice but that it must be 'for the purpose of fixing the premium .....' The instruction to value was certainly given and the Respondent should be allowed to recover.

However, when considering the reasonableness of the charge, the Tribunal noted that Mr McGowan had not inspected the property at any time before the substantive Tribunal hearing. On the other hand, to arrive at a valuation he will have had to:-

read the Lease
obtain comparables
study relativities
consider the deferment and capitalisation rates

The Tribunal therefore consider that £250 would be a reasonable fee for this work. There is no evidence that VAT is chargeable, but if Mr Magowan is registered for VAT, this would be in addition.

LEGAL COSTS

General

12. Coles Miller have agreed the hourly rate of £195 on the basis of no additional charges for routine incoming correspondence and that the Solicitor would be experienced in dealing with this type of case. The Tribunal concurs with this approach.

13. It has not been mentioned by either party, but the Tribunal has assumed that 1 unit equates to 6 minutes.

14. In considering the 'Schedule of Section 60 costs' provided by Hodders, a number of items have been marked as 'agreed'. The Tribunal totals these items to 16 units and has included this in the final calculation.

15. The remaining items, the Tribunal refers to by the notation on the 'Schedule of Section 60 costs'.

16. 18.03.2009 - Telephone out to A Jestyn Coke, Chartered Surveyors.

The Tribunal concluded that there was no evidence that Mr Coke produced any valuations. Indeed, Hodders' letter of 6th August 2009 notes that the Surveyor had not complied with client's instructions and that instructions had been removed and given to Mr Christopher McGowan (sic). The Tribunal found that the time/cost was not 'incidental to any valuation' and this was disallowed.

17. 18.03.2009 – Consideration of initial notice.
18.03.2009 – Letter of advice to client.

18.03.2009 – Client case letter out.

The Tribunal considered these 3 items together. Coles Miller had proposed 2 units for the first items, but contested any charge for the other 2 items.

The Tribunal considered that the first item came within Section 60(1)(a) and that the other 2 items were incidental to this matter. The Tribunal concluded that a total allowance of 5 units for all 3 items was chargeable.

18. 18.03.2009 – Letter to Coles Miller.

The Tribunal considered that this referred to the letter to Coles Miller dated 19th March, the difference being the dates of dictation and typing. The Tribunal concluded that this was a half page letter of standard content and allowed 1 unit.

19. 24.03.2009 – Letter in from Coles Miller.
02.04.2009 – Letter in from Coles Miller.
31.03.2009 – Letter in from Coles Miller.

The Tribunal concluded that these letters were routine incoming letters and therefore not chargeable.

20. 06.04.2009 – Letter to client.

The Tribunal had no evidence that this letter fell within the scope of Section 60(11) and determined that it is not chargeable.

21. 24.04.2009 – Review of title documents.

The Tribunal was doubtful that this item fell within Section 60(1) at all, but noted that 4 units are not in dispute. The Tribunal allows 4 units.

22. 24.04.2009 – Initial drafting of Counter Notice.
06.05.2009 – Review finalising Counter Notice.

The Tribunal noted the two LVT Decisions included in the representations, and concurred that dealing with the counter-notice does not fall within Section 60(1). These items are not chargeable.

23. 30.04.2009 – Review of LVT Decision.

The Tribunal noted the points made by Coles Miller and concluded that this item is not chargeable.

24. 06.05.2009 – Letters to Coles Miller.

The Tribunal concluded that there was no evidence that the letter(s) of that date fall within Section 60(1) and therefore the item was not chargeable.

25. 12.5.2009 – Letter to Surveyor.

Hodders' letter of 6th August suggested that on 12th May, the previous Surveyor, Mr Coke, was still instructed and there is no evidence that he ever produced a valuation. The Tribunal concluded that this item was not chargeable.

26. 13.05.2009 – Letter in Coles Miller.

The Tribunal concluded that this was a routine incoming letter and not chargeable.

27. 14.5.2009 – Letter to client.

There was no evidence that this fell within Section 60(1) and the Tribunal concluded that it was not chargeable.

28. 18.05.2009 – Letter in from client.

The Tribunal concluded that this was a routine incoming letter and not chargeable.

29. 29.07.2009 – Review and Production of Lease.

This matter does fall within Section 60(1) but the Tribunal concluded that it is a standard document of 6 pages which required:-

Landlord title number
Tenant name and address
Landlord name and address
Property address
Lease details
Lease schedule numbers for easement
Premium not inserted as not agreed at that date

The Tribunal concluded that 6 units were chargeable.

30. 12.08.2009 – Letter from Coles Miller.
12.08.2009 – Review of Leaseholders required Lease amendments.

The Tribunal accepted these fall within Section 60(1) but concluded that 4 units were chargeable.

31. 13.08.2009 – Letter to Client – advice on Lease amendments.

The Tribunal accepted that this falls within Section 60(1)(c) in principle but concluded that 2 units were chargeable.

32. 12.09.2009 – Reviewing engrossment fee.
Preparing completion statement – instructions.

The Tribunal noted that the date for this item was prior to the substantive LVT Hearing and well before the decision was issued. However, the premium determined by the LVT was included and an engrossment would not have been prepared before the premium was known. The Tribunal concluded that the noted date must be incorrect but that the item was, in principle, within Section 60(1)(c) and that 4 units were chargeable.

33. 30.11.2009 – Letter from Coles Miller re Conveyance.

There was no evidence of the existence of this letter, or that it was anything other than routine. The Tribunal concluded that it was not chargeable.

34. 11.02.2009 – Telephone calls attempting to complete.

There was no evidence of the calls having been made and the Tribunal concluded that this was not chargeable.

35. 22.02.2009 – Letter in Coles Miller.

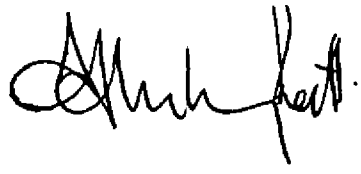
The Tribunal concluded that this was a routine incoming letter and therefore not chargeable.

CONCLUSION

36. The Tribunal found that of the disputed units, it had allowed 26, to which were added the 16 units agreed by the parties.

37. The total of 42 units at £19.50 per unit gave a total payable of £819.00 plus VAT.

38. Additionally, the Tribunal found that £250.00 plus VAT, if appropriate, was payable towards the Surveyor's costs.



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A J Mellery-Pratt FRICS (Chairman)

Dated: 19th May 2010

A Member of the Tribunal
appointed by the Lord Chancellor