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**Residential
Property**
TRIBUNAL SERVICE

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
DECISION
OF THE LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL**

Leasehold Reform, Housing and Urban Development Act 1993 section 60

LON/00BK/OC9/2010/0015

Property: 44 Park West, Edgware Road, London W2 2QG
Applicant: Daejan Properties Ltd
Respondent: Steven Kenneth Twin
The Tribunal: Adrian Jack, Chairman; Colin White FRICS; Rosemary Turner JP

1. This is an application by the landlord for a wasted costs order against the tenant under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002.
2. In early 2009 the tenant served a notice on the landlord seeking a lease extension. Very shortly afterwards he sold the lease to a Mr Qaisar Mahmood with an assignment of the benefit of the notice. The tenant's solicitors, Bayham Solicitors LLP, informed Wallace LLP, the landlord's solicitors, of the assignment, but did not include a copy of the deed of assignment.

3. Wallace never requested a copy of the deed of assignment from Bayhams, but seem to have corresponded with Mr Mahmood's solicitors, Cranbrooks, about the lease extension. Wallace served a counternotice disputing the terms offered in the initial notice.
4. Mr Mahmood did not apply to the Tribunal in time and accordingly the rights based on the initial notice lapsed. The landlord was entitled to its abortive costs of the initial notice.
5. It is common ground between the parties that, if there was a valid assignment of the initial notice to Mr Mahmood, then Mr Mahmood is liable for the landlord's costs. However, if there was no valid assignment, then the landlord has a claim against the tenant.
6. The landlord issued proceedings against the tenant. The background of this appears to be that Mr Mahmood has sold the flat on and that Cranbrooks have been intervened into by the Solicitors Regulatory Authority, so that the prospects of recovery against Mr Mahmood may be poor.
7. Be that as it may, the position is that Bayhams have now produced a copy of the deed of assignment and Wallace accept that the current application is against the wrong respondent. Wallace, however, say that Bayhams should have produced the deed a lot earlier and that the tenant should pay the abortive costs of the current application.
8. The Tribunal only has jurisdiction to award costs if a party has behaved frivolously, vexatiously or otherwise unreasonably. The degree of unreasonableness has to be a high one.
9. In our judgment, whilst it would no doubt have been better if Bayhams had produced the deed sooner, that behaviour on Bayhams' part comes no where near the degree of unreasonableness required to justify a costs order. Likewise the tenant has not acted frivolously or vexatiously.
10. The Tribunal sympathises with the landlord's understandable concern that it may not be able to recover its costs of responding to the initial notice, but it has no alternative but to refuse the current application.

DECISION

The Tribunal refuses the landlord's application for costs under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002.

Adrian Jack

Adrian Jack, Chairman
26th May 2010