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**HM Courts
& Tribunals
Service**



**Residential
Property
TRIBUNAL SERVICE**

LEASEHOLD VALUATION TRIBUNAL

**LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT
1993 Sections 60 and 91(2)(d) ("the Act") and COMMONHOLD AND
LEASEHOLD REFORM ACT 2002 schedule 12 paragraph 10 ("the 2002
Act")**

LON/00AC/OLR/2012/1155

Property: 185 Shurland Avenue, Barnet, Herts EN4 8DF

Applicant: Boltstand Limited

Respondent: Tulsense Limited.

**Representatives: For the Applicant:
Cavendish Legal Group
For the Respondent:
SA Law LLP**

Date of Application: 3rd April 2013

Date of Determination: 5th June 2013

**Tribunal Members: Mr Andrew Dutton - chair
Mr Duncan Jagger FRICS
Mr John Barlow FRICS**

Date of decision: 5th June 2013

DECISION

The tribunal determines that the sum payable by the Applicants in respect of the Respondent's legal costs pursuant to section 60 of the Act is £937.50 with VAT of £187.50 and valuers fees of £687 inclusive of travel and VAT of £137.40.

The tribunal determines that the application for costs under the 2002 Act is dismissed

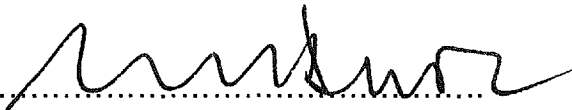
REASONS

BACKGROUND

1. This matter came before the tribunal for a paper determination on 5th June 2013. The application was made by letter by S A Law LLP dated 3rd April 2013, and is for the determination of the legal and valuation fees payable by the Applicant under section 60 of the Act and for costs said to be due as a result of the Applicants actions in issuing an application under section 48 of the Act.
2. There is a paucity of information available to us as the Applicant has failed to comply with the directions issued, confining their comments on the s60 costs to a letter of 7th May 2013 in which they state "the costs of the freeholder solicitors are plainly excessive and disproportionate". The letter also asks us to consider the costs associated with a further initial notice, to which it seems, no counter notice has yet been served.
3. A brief history is appropriate. In February 2012 the Applicant served an initial notice. A counter notice was served dated 17th April 2012 purporting to admit the Applicant's right to an extended lease but apparently served on a without prejudice basis. It was said that the Applicant had not served the initial notice on a third party, the management company. Correspondence was exchanged but eventually, on or about 4th October 2012, the Applicants sent an application to the Tribunal seeking a determination of the terms of acquisition in respect of the property. The Respondent's solicitors wrote to the Tribunal setting out the history but it was not until 3rd December 2012 that an application was made to the County Court by the Respondent challenging the validity of the initial notice. On 12th

hours. The costs amount to £687 plus vat of 137.40 making a total due of £824.40 and not the rounded up figure of £900, for which no justification is given.

8. As to the costs of SA Law LLP, we find that the hourly rates quoted are reasonable. We take issue with four matters. We do not believe that it is appropriate to charge for incoming correspondence and therefore disallow the charges of £15 on 20th February 2012 and 21st February 2012. We also consider that, having regard to the terms of the counter-notice, notwithstanding the without prejudice element of same, spending over three hours on preparing and issuing same is excessive. We find that the matter should and could have been dealt within two hours. We therefore reduce the Respondent's solicitor's costs by £345, reducing the total fee payable to £937.50 with VAT of £187.50
9. As to the application under the 2002 Act the relevant circumstances appear to be these. The application by the Applicant was made on or about 4th October 2012. The proceedings in the County Court were not commenced until around 3rd December 2012 and the order was not made until 28th March 2013. Importantly however, the proceedings before the Tribunal were stayed on 12th December 2012. Accordingly it is difficult to see what actions of the Applicant could fall foul of the provisions of the 2002 Act. There was delay on the part of both parties to regularise the position following the service of the initial notice in February 2012 for which each should bear some responsibility. In addition the Respondent is entitled to its costs up to the date of the order in the Court, being March 2013. We therefore find that it would be inappropriate to make an order under the 2002 Act.

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Andrew Dutton - chair

5th June 2013

The Relevant Law

60 Costs incurred in connection with new lease to be paid by tenant.

(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 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) Where by virtue of any provision of this Chapter the tenant's notice ceases to have effect, or is deemed to have been withdrawn, at any time, then (subject to subsection (4)) 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.

(4) A tenant shall not be liable for any costs under this section if the tenant's notice ceases to have effect by virtue of section 47(1) or 55(2).

(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) In this section "relevant person", in relation to a claim by a tenant under this Chapter, means the landlord for the purposes of this Chapter, any other landlord (as defined by section 40(4)) or any third party to the tenant's lease.

Commonhold and Leasehold Reform Act 2002

Schedule 12, paragraph 10

- (1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).
- (2) The circumstances are where—
 - (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
 - (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
- (3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
 - (a) £500, or
 - (b) such other amount as may be specified in procedure regulations.
- (4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.