

SOUTHERN RENT ASSESSMENT PANEL AND LEASEHOLD VALUATION
TRIBUNAL

Case No: CHI/21UC/OC9/2008/0002

In a matter under the Leasehold Reform Housing and Urban Development Act 1993,
as amended, [“the Act”].

BETWEEN:-

Barbara A. Norton [Flat 1], Church Pastoral Aid Society [Flat 2], Mark Fagan [Flat
3], Maharg Properties Ltd. [Flat 5], John W. Fenwick [Flat 12], Anne C. Block [Flat
13], Sheila D. Jennings [Flat 15], Alfred F. Howard and Sylvia M. Howard [Flat 16],
Joan S. Neville [Flat 17] and Derek E. Farge [Flat 20].

[the Applicants]

And

Abbey View Estates Ltd.

[the Respondent]

Property Earlsmead Court, 15 Granville Road, Eastbourne, East Sussex BN20 7HE

Tribunal Mr. J.S. McAllister F.R.I.C.S. [Chairman]
Mr. R.P. Long LLB.

Determination 18th. August 2008

DETERMINATION AND REASONS

SUMMARY DECISION

[a] the Respondent’s reasonable legal costs payable by the Applicants is the total sum
of £1200.00 plus vat. for the eight Flats nos.- 1,3,5,12,13,15,16 and 20 Earlsmead
Court.

[b] In arriving at the decision in [a] above the Tribunal took no account of a bundle of
copy correspondence between the Parties for the period October 2007 to March 2008.

1. The Application

1.1 This is an application, dated 2nd. May 2008, for the determination of a number of
issues pursuant to Section 91[2][d] of the Act viz. the amount of the Respondent
Landlord’s reasonable costs. These costs related to the serving of notices and
applications for extended leases of the Flats and follow the deemed withdrawal of the
initial notices served by the Applicants under Section 42 of the Act.

1.2 The Parties are agreed, in principle, that the costs are payable by the Applicants under Section 60 of the Act, but have requested that the Tribunal determine the amount of the costs. They have also agreed that the disputed costs relate solely to the Respondent's legal costs in the matter.["Issue 1"]

1.3 The second issue for determination by the Tribunal relates to a bundle of copy correspondence between the Applicant's Solicitors, Mayo Wynne Baxter, and the Respondents for the period October 2007 and March 2008.["Issue 2"].

2. Directions

2.1 The Tribunal issued Directions, dated 30th May 2008, that the matter be dealt with by written submissions by the Parties, without an oral hearing. The Parties agreed with this method of determination.

3. The Law

3.1 The relevant parts of Section 60 of the Act state:-

[1] "Where a notice is given under section 42 then 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;.....

[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 the 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.....

[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.

4. Issue 2 [Correspondence Bundle]

4.1 Briefly, the Applicants' solicitors sent the bundle to the Respondents and the Tribunal, under the cover of a letter dated 4th August 2008. The Respondents had objected, in a letter to the Tribunal dated 31st July 2008, to the Tribunal considering this bundle, stating that each Party's case should be limited to the matters set out in their respective written statements.

4.2 The Applicants' solicitors, in a letter to the Tribunal dated the 6th August 2008, stated that the correspondence gave a factual background to the dispute and was a ... "valuable tool for the Tribunal in determining the costs issue...". They also stated that none of the correspondence "...is without prejudice and should, in our view be seen by the Tribunal."

5. Determination of Issue 2

After careful consideration the Tribunal decided that both written statements or submissions provided them with sufficient evidence for them to be able to make a fair and properly considered decision on Issue 1. Accordingly they decided not to inspect or consider the relevant bundle of copy correspondence.

6 Issue 1 [Legal Costs]

6.1 The Applicant's case was set out in a written statement by their solicitors, dated 18th July 2008 in which they do not dispute the Respondent's valuation costs but consider that the Respondent's legal costs claimed are excessive and unreasonable. In their opinion the reasonable costs should be a total of £1200.00 plus vat, this sum based on a basic cost of £500.00 for consideration of the first notice, preparation of the first counter notice and general investigation of title. They then stated that the corresponding reasonable costs relating to the remaining seven flats would be £100.00 each, having regard to the relatively brief consideration, alteration and duplication of work, documents etc. They also stated that a "Grade C fee earner", acting for the Respondent would be suitably qualified to deal with relevant notices and subsequent work in the matter and, as such the hourly rate claimed of £250.00 per hour was excessive.

6.2 The Applicants' solicitors made detailed submissions concerning the Respondent's legal employee, a Mrs. Sandler. Whose work and time in the matter was apparently agreed to cover only [1] her considering the initial notices served and [2] investigating the leasehold titles to the 8 flats. They also referred to 2 previous determinations of the Southern Leasehold Valuation Tribunal which they considered "...limited costs to realistic figures..."

6.3 The Respondent's written statement was dated 29th July 2008. [which also had reference to part of their letter to the Tribunal dated 4th July 2008]. In it they stated that their claim for legal costs for each flat was £400.00 i.e. a total for the 8 flats of £3200.00 plus vat. They referred to Mrs. Sandler as having a comparable charge out rate to a "Grade A fee earner", currently in the region of £250.00 per hour for solicitors in outer London. They stated that the costs claimed equated to less than 2 hours work per flat, that they were in no way exorbitant and that they would be prepared to pay the same costs if they were personally liable for them. They also referred to Mrs. Sandler as being their senior in house solicitor. As such her costs are by reference to an estimate of time expended, for time sheets are not completed by her. They consider that a "Grade C fee earner" would not be suitably qualified to deal with legal work of this nature and that they do not employ such a fee earner. Reference was also made to three previous Tribunal decisions with a statement that the Tribunal will not be bound by earlier decisions, each case being considered on its own merits.

7. Determination of Issue 1

7.1 The Tribunal noted that there was no dispute, as such, as to the scope of the legal work carried out in the matter by the Respondent's in house solicitor, Mrs. Sandler. The issue was simply a matter of determining a reasonable cost or charge for the work undertaken with regard to the 8 flats concerned, i.e. considering the initial notices served, issuing the counter notices and investigating the leasehold titles.

7.2 The Tribunal bore in mind that, in this case, there had been eight identical applications. The Respondents were seeking payment as if the same amount of work had been required in each case. In practice it would have been necessary only to deal in detail with one case and then, subject to checking that there were no variations in the nature of the matter, to replicate the documentation in respect of each of the other seven matters. In the Tribunal's judgement it was not reasonable to expect that the Applicants should pay legal costs as if each matter had been dealt with on a completely separate basis when, quite plainly, that had not happened here. The Tribunal took into account the fact that the Respondent had stated that it would have been prepared itself to pay legal costs on the basis on which it had sought to recover them from the Applicants. However in the Tribunal's experience that would have been a very unusual attitude for any client to take of a professional person's fees in such circumstances, where the client is personally liable for the payment.

7.3 In consequence and after careful consideration of both Parties' written statements etc, the Tribunal decided that the Applicants, being the 8 lessees of Flats 1,3,5,12,13,15,16 and 20 should pay the total of the Respondent's reasonable legal costs being £1200.00 plus vat. It accepted the Applicants' case in its entirety.

A handwritten signature in black ink, appearing to read 'I.S. McAllister', is written over a horizontal line. The signature is somewhat stylized and includes a large loop on the left side.

I.S. McAllister F.R.I.C.S.
Chairman

Dated 28 AUGUST 2008