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**Residential
Property**
TRIBUNAL SERVICE

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL
LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993**

LON/00BK/OC9/2008/0018

Premises: Flat 10A 96-100 New Cavendish Street London
W1W 6XN

Applicant: Howard de Walden Estates Ltd

Represented by: Speechly Bircham LLP

Respondent: Aranda Overseas Corporation

Represented by: Roger Pittalis

Tribunal: Ms M Daley
Mr I Thompson

Date of Hearing: 30/04/08

Date of Decision: 19/05/08

The Application

1. This application, was issued by the solicitors for Howard de Walden Estates Limited, on 12 March 2008 for a determination of the cost payable by the Respondent under sections 60 and 91 2 (d) of the Leasehold Reform Housing and Urban Development Act 1993 ("the Act").
2. On 18th March 2008 the Tribunal gave directions that this matter was suitable for a paper determination. The Applicant was directed to provide detailed statements of cost on 1st April and the Respondent was directed to provide a detailed statement in reply by 15 April 2008.
3. On 30 April 2008 the matter came before the Tribunal as a paper determination. The Application dated 12 March 2008 stated that the Applicant had incurred cost of £7,463.65 Inclusive of Vat.

Background

4. The background was set out in the Applicant's detailed statement of cost. The Applicant is the freehold owner of premises known as flat 10A, 96-100 New Cavendish Street, London W1N 7SA. The Respondent, Tenant occupied the premises under a lease dated 19 May 1972, made between Park Avenue Investments Ltd, Cecilia Raymen and Holdings & Management Ltd.
5. On 22 December 2005 the Respondent's predecessor (the Respondent) in title served a Notice of Claim exercising their right to a new lease under section 42 of the Act. On 30 March 2006 the Applicant served a counter notice on the Respondent admitting the claim. The Respondent had 6 months in which to make an application to the leasehold valuation, namely by 30 September 2006. The Applicant failed to make an application by the deadline and accordingly the claim was deemed to be withdrawn.

The Law

6. The Law applicable to this case is summarized below:-
Section 60 of the Act entitles a landlord to recover its reasonable costs following service of a Notice of Claim pursuant to the provisions of section 42 of the Act.

Section 60(2) of the Act provides that a landlord may recover the costs that it would have incurred had it been personally liable for those costs.

Section 60(3) provides that where, by virtue of any provision of Chapter II of the Act, the tenant's Notice ceases to have effect or is deemed to be withdrawn, and the tenant's liability for costs incurred by a landlord following service of a Notice of Claim shall be a liability for cost incurred by the landlord up to that date.

The Facts.

7. The cost of £7,463.65 Inclusive of Vat, was broken down by the Applicant's Solicitor in this way
 - a) Investigation Charges –Applicant's Solicitor's cost including Vat £1,919.95.
 - b) Investigation Charges- Applicant's in-house investigation charge (agreed on 17/1/06) £500.00.
 - c) Valuation Fees- Fees of Carter Jonas (including Vat) £1,083.94
 - d) Valuation Fees-Fees of Gerald Eve £2,292.43
 - e) Conveyancing Costs-£1,667.33
8. Altogether 8.6 hours work was undertaken by the principle fee earner JXH (an assistant) at an hourly rate of £165 plus vat, an additional hour was undertaken by two partners JCH and GSL and an assistant fee earner JIS. This was set out in the detailed statement of costs at pages 47-50 of the bundle.
9. The Respondent's Solicitor in their reply at pages 54-56, state that they consider that 4 hours work was reasonable undertaken They consider that given, they had agreed to pay the £500 in house charges for the Applicant to undertake some of the investigative work, they should have received a breakdown of what work was undertaken.
10. The Respondent's Solicitor also considered that it was not reasonable for two valuers to be used, and that in any event the surveyor's fee was for a completed lease extension and that as the lease was not extended that the cost payable ought to be reduced as the valuers did not need to undertake all of the work contemplated for the extension.

11. The Respondent's solicitor also set out that in their opinion it was not necessary for Conveyancing cost to be incurred until the premium had been agreed, and the Tribunal were invited to disallow these cost in their entirety.

The Decision of the Tribunal

12. The Tribunal having considered all of the evidence before it have determined that the following cost were reasonably incurred -:

In-house investigation fees of £500. The Tribunal have determined that as these cost were agreed between the parties, this sum is payable by the Applicant, the Tribunal consider that by using the words "Investigation" The Respondent's are understood to mean any investigation reasonably undertaken of the tenant's right to a new lease. Given this it appears to the Tribunal that there was duplication of the work undertaken by the in-house team and the Respondent's solicitors.

13. The Tribunal therefore find that the cost of £500 ought to be deducted from the Solicitors fees. The sum recoverable by the Applicant shall be limited to £1419.95. for this head of solicitors fees.
14. The Tribunal consider that the fees agreed for the valuers were assessed as a percentage of the value of the property, and that it was within the contemplation of the parties that this would include the valuation and negotiation up to and including the lease extension. The Applicant has also failed to satisfy the Tribunal of the need for two valuers.
15. The Tribunal do not consider, in applying the test in section 60 (2), that the Applicant, if required to pay for the cost themselves, would have proceeded to use two valuers with out agreeing cost to cover each stage of work undertaken, so that if the lease extension did not complete only a proportion of the fee would be payable. Accordingly the Tribunal have determined that the fee should be reduced to reflect the fact that the valuers did not carry out all of the work required for a lease extension and that only one valuers fee should be allowed In the absence of any explanation from the Applicant about any unusual features of complexity in this case which would require the input of two valuers. Accordingly the Tribunal have determined that the sum of £1500 is payable

16. The Tribunal have determined that although it may have been reasonable to do early preparatory work on the lease, it was not reasonable for a draft lease to be prepared before the counter notice was served. The Tribunal have determined that at least part of the work undertaken by the conveyancing solicitor was premature; the Tribunal have accordingly determined that the fees should be reduced by 50%.
17. The Tribunal accordingly find that the following sums are payable by the Respondent.

The Tribunal accordingly find the following sum to be payable by the applicant

Investigation Charges –Applicant’s Solicitor’s cost £1419.95.

Investigation Charges- Applicant’s in-house investigation charge (agreed on 17/1/06)
£500.00.

Valuers’ fees in the sum of £1500

Conveyancing Costs-£833.67

£4253.62 plus vat.

Signed



Dated

19th May 2008