

MIDLAND RENT ASSESSMENT PANEL

Ref:- BIR/00CN/OLR/2009/0062

Leasehold Reform Act 1967**DECISION of LEASEHOLD VALUATION TRIBUNAL****On Application under Section 91(2)(d) of the Leasehold Reform Housing & Urban Development Act 1993 for the determination of the reasonable costs payable under section 60(1) of that Act**

Applicant: **Personal Representatives of Lily White**

Respondent: **Castle Vale Community Housing Association**

Re: Flat 1, 109 Stornoway Road, Castle Vale, Birmingham  
B35 6NJ

Date of Tenants Notice: 1<sup>st</sup> October 2008

Application dated: 11<sup>th</sup> May 2009

Heard at: The Tribunal's Offices in Birmingham

On: 13<sup>th</sup> July 2009

**APPEARANCES:**

For the Tenant: Mr. Michael D. Cannon FRICS IRRV

For the Landlord: No attendance  
Written Submissions from Anthony Collins, solicitors

**MEMBERS OF THE LEASEHOLD VALUATION Tribunal:**

Dr A. J. VERDUYN (Chairman)  
Mr A.P.J. SHEMITT FRICS

Date of Tribunals decision: 24<sup>th</sup> July 2009

**DETERMINATION**

**Conveyancing costs of £525, to which Value Added Tax can be added plus reasonable disbursements, under Section 60(1) of the Leasehold Reform Housing & Urban Development Act 1993, shall be payable.**

## REASONS FOR THE TRIBUNAL'S DECISION

1. On 11<sup>th</sup> May 2009 Lawrence & Wightman, Chartered Surveyors, for the Personal Representatives of Lily White (the 'Applicants') made an application under Section 91(2)(d) of the Leasehold Reform Housing & Urban Development Act 1993 (the "1993 Act") for the determination of the Landlord's reasonable costs payable under section 60(1) of the Act. The Respondent is the relevant landlord. The parties have agreed all other matters relating to the Applicant's extension of her leasehold interest under the 1993 Act.
2. The relevant provisions of the 1993 Act are as follows:

"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) ...;
- (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.

...

(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."

91.— Jurisdiction of leasehold valuation tribunals.

- (1) Any question arising in relation to any of the matters specified in subsection (2) shall, in default of agreement, be determined by a leasehold valuation tribunal.
- (2) Those matters are—

...

(d) the amount of any costs payable by any person or persons by virtue of any provision of Chapter I or II and, in the case of costs to which section 33(1) or 60(1) applies, the liability of any person or persons by virtue of any such provision to pay any such costs; ...”

- 3: A hearing was arranged for 13<sup>th</sup> July 2009, but only the representative of the Applicant attended. The Tribunal considered correspondence from Anthony Collins Solicitors, who represent the Respondent, and heard from Mr Cannon FRICS IRRV for the Applicant.
4. The Respondent’s submissions were contained in a letter dated 10<sup>th</sup> July 2009. The following contentions were made:
  - (i) The Tribunal had no jurisdiction, because services had not yet been rendered and costs not yet incurred;
  - (ii) In correspondence before the application, an undertaking was sought from the Applicants in respect of costs estimated at £850 plus VAT: “At no time did we expressly state to Mr Cannon that our estimated costs were our actual costs.” They considered it reasonable to seek an undertaking to meet the maximum costs that would be charged to the tenant applicant;
  - (iii) “[Anthony Collins Solicitors] are a national practice acting on behalf of a large number of landlords in respect of leasehold enfranchisement matters. We believe our fees to be reasonable and it is fair to provide an estimate of maximum costs from the outset, with the ability to reduce our fees on conclusion of the matter.”
5. Mr Cannon produced a report in which he noted that the leasehold extension was to cost £7,200 and was, accordingly, “a relatively low value case”. At least one extension has been granted out of this freehold in the past, and, given the size of the estate, it is likely that several other similar leases have been extended. It is accordingly a straightforward matter. In Mr Cannon’s considerable experience in the Birmingham area legal costs vary between £350 and £550 plus VAT and

disbursements. He considers a Grade B fee earner or junior solicitor would be sufficient to do the work, hence £150 per hour plus VAT (assuming charges were the same as for the Applicant's solicitor). He would suggest 1.5 hours for considering the Notice and Counter Notice and 2 hours for conveyancing, suggesting a maximum of £525 plus VAT. He pointed also to the case of 70E Avon Court, Solihull, where £475 plus VAT was allowed and 32 Trafalgar Court, Oldbury, where 4 hours of chargeable time was allowed.

6. At the hearing, Mr Cannon accepted that Anthony Collins Solicitors were specialists in the relevant area of housing law, and may charge more accordingly, but he contended that this meant that the work may be more speedily done.
7. The Tribunal considers that the submissions as to jurisdiction by the solicitors to the Respondent are wrong. Other than the "indemnity principle" (i.e. that a party cannot recover more than it is liable to pay), the question of the amount of actual costs is not the issue, the issue is the amount of the reasonable costs within Section 60. Whilst a Leasehold Valuation Tribunal does not have the power to determine its jurisdiction conclusively to bind the parties (only a court can do that), it can and should decide its jurisdiction solely for the purposes of deciding whether to proceed or not with an application. The Leasehold Valuation Tribunal takes into account that an assessment of what is reasonable for a particular piece or set of pieces of work (the consideration of the Notice and Counter Notice and conveyancing) can be done prospectively. Consequently, it does find that it has jurisdiction in these terms and will decide the application accordingly.
8. Anthony Collins solicitors have confirmed by the content of their correspondence that the maximum sum it will charge is £850 plus VAT. The solicitors have also accepted that they may not charge this amount, so the maximum sum under the indemnity principle may be lower. Having considered the nature of the work to be undertaken, the likely time to be taken on the work, and the expertise of the Respondent's solicitors, the Tribunal finds that a reasonable costs in this case are £525 plus Value Added Tax and disbursements.

**DETERMINATION**

9. The Tribunal determine that reasonable costs of £525, to which Value Added Tax can be added plus reasonable disbursements, shall be payable by the Applicant to the Respondent under Section 60(1) of the 1993 Act.

Signed

A. J. Verduyn

Dr. A. J. Verduyn – Chairman Dated 27 JUL 2009