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**Residential  
Property**  
TRIBUNAL SERVICE

**EASTERN RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL**

**Case Reference: CAM/22UD/OLR/2010/0015**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON  
APPLICATION UNDER SECTION 60 OF THE LEASEHOLD REFORM,  
HOUSING & URBAN DEVELOPMENT ACT 1993**

Address: 12 The Gatehouse, Station Lane, Ingatestone, Essex, CM4 OBL

Applicant: Paula Darlinson

Respondent: Gatehouse Ltd

Application: 24 March 2010

Determination: 19 July 2010

Appearances: Not applicable

Members of the Tribunal

Mr I Mohabir LLB (Hons)

Mr R Brown FRICS

## DECISION

The Respondent's costs payable by the Applicant under section 60 of the Leasehold Reform, Housing and Urban Development Act 1993 (as amended) are total profit costs of £1,543.33 and VAT thereon at 17.5% of £270.08 plus disbursements of £628 and VAT thereon at 15% of £90.

### *Introduction*

1. By an application dated 24 March 2010, the Applicant applied under section 48(1) of the Leasehold Reform, Housing and Urban Development Act 1993 (as amended) ("the Act") to the Tribunal to determine the premium and terms upon which a lease extension for 12 The Gatehouse, Station Lane, Ingatestone, Essex, should be granted.
2. It seems that the parties were able to agree both the premium and terms of the lease extension. However, the parties were unable to agree the Respondent's costs to be paid by the Applicant under section 60 of the Act, which is the subject matter of this determination.
3. Pursuant to the Tribunal's Directions dated 19 April 2010, the Respondent has filed and served a breakdown of costs and the Applicant has filed and served various objections to a number of items of costs, which are dealt with below.

### *The Relevant Law*

4. Section 60 of the Act provides:

*"(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;*

*(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."*

### ***Decision***

5. The Tribunal's determination took place on 19 July 2010 and was based entirely on the documents filed by the parties regarding the issue of the Respondent's costs. There was no hearing and the Tribunal heard no oral evidence.
6. The fee earner with conduct of this matter on the behalf of the Respondent was a Mr Andrew O'Brien a Senior Solicitor with over 20 years post qualification experience (Grade A). Costs are claimed as an hourly rate of £200 with letters out and telephone calls at £20 and letters received at £10. No objection was made by the Applicant to the hourly rate. Under Part One of the Respondent's breakdown of costs, total profit costs of £1,736.66 plus a disbursement of £600 (valuation fee) and VAT thereon of £393.91 is claimed. The objections made by the Applicant are under the following headings.

### ***Part One***

#### ***Communication with Parties***

##### ***Tolhurst Fisher***

7. The Tribunal agreed with the Applicant's submission that 11 letters received were not costs incurred under section 60(1) of the Act and the sum of £110 was disallowed.
8. The Applicant had also submitted that the 20 letters written was excessive for the work involved prior to the preparation of the Deed of Surrender and at the grant of a new lease and proposed seven letters as being sufficient. However,

the number of letters written did not strike the Tribunal as being unreasonably high in a matter such as this and was allowed as claimed.

9. Accordingly, under this heading the total sum of £400 was allowed.

**Tillett Burns & Hughes, Chartered Surveyors**

10. Profit costs of £330 are claimed by the Respondent. The Applicant submitted that none of these costs are recoverable under the Act because it is for the Respondent to do deal with the surveyor directly regarding the appointment and all matters concerning the valuation.
11. The Tribunal did not accept this submission as being correct. It is perfectly reasonable for the Respondent's solicitors to deal with the appointment of a surveyor and to liaise with them regarding the evaluation. Often, legal issues in relation to the lease may affect the valuation and a lay Respondent cannot be expected deal with such matters. However, the attendance on the Respondent's surveyor was excessive given that there did not appear to be any complicating factors regarding the valuation on what was a straightforward lease extension.
12. For the reasons set out above, the Tribunal disallowed the 6 letters received from the surveyor. Of the 7 letters written and 5 telephone calls claimed, the Tribunal allowed 4 letters and 4 telephone calls. The long telephone attendance on 27 October 2009 of 15 minutes cannot be justified in the context of this matter. Of the total profit costs claimed, the sum of £160 was allowed.
13. Furthermore, it was entirely proper for the Respondent's surveyor to carry out an inspection of the property and then prepare a report and valuation of what the appropriate premium the Applicant should pay for a lease extension. In the Tribunal's expert opinion £690 (£600 plus VAT of £90 at 15%) was reasonable.

**Perusal/Preparation**

14. The Respondent's solicitor claimed a total attendance of three hours 37 minutes under this heading at a cost of £723.33. The objection made by the Applicant to the large majority of the attendances recorded was that the Respondent's solicitor should already have knowledge of the legislation and was not entitled to claim any attendance for checking and researching the provisions of the Act.
15. The Tribunal's view was that the total attendance claimed under this heading was excessive given that the Respondent's solicitor was a Senior Solicitor with over 20 years post qualification experience. The Tribunal accepted that a degree of research and checking of the Act would have been required to investigate whether the Applicant had validly exercised her entitlement to claim a lease extension and to draft and serve the counter notice. The Tribunal did not accept that further such attendances would have been required as a consequence of "various queries" raised by the Respondent and were not, in any event, recoverable under section 60(1) of the Act. The Tribunal also accepted the Applicant's admission that that the attendance of 25 minutes on 23 March 2010 for the costing of the file and drafting the schedule of costs was not recoverable under section 60(5) of the Act.
16. Accordingly, the Tribunal considered that a total attendance time of 1 hour 30 was reasonable for a solicitor with this experience and allowed the sum of £300.
17. Under Part One, total profit costs of £1,033.33 plus VAT of £180.83 and disbursements of £600 plus VAT of £90 was allowed.

***Part Two***

18. Under Part Two of the Respondent's breakdown of costs, total profit costs of £949.99 plus a disbursement of £28 (Land Registry fee) and VAT thereon of £166.25 is claimed. The Applicant made the following objections.

## ***Communication with Parties***

### **Respondent**

19. For the reasons set out above, the 3 letters received from the Respondent are disallowed. Whilst, in particular, the 10 telephone calls with the Respondent appeared to be on the high side in the context of this matter, nevertheless, the Tribunal allowed this item because it would have been necessary for the Respondent's solicitor to report to his client. There did not appear to be any duplication of this process having regard to the relatively small number of letters written to the Respondent. Therefore, the 4 letters and 10 telephone calls to the Respondent were allowed as being reasonably incurred. However, the Tribunal could see no justification for a further attendance of 30 minutes on the Respondent on 10 February 2010 and this was disallowed.
20. Therefore, of the total sum of £410 claimed under this heading, £280 was allowed.

### **Tillett Burns & Hughes, Chartered Surveyors**

21. It seems that a further attendance of £110 is claimed by the Respondent in communicating with its surveyor concerning the terms of the new lease. The Tribunal agreed with the Applicant's submission that these costs are not recoverable under section 60(1) of the Act as they are not concerned with the valuation of the premium to be paid. Accordingly, they were disallowed.

### **Preparation**

22. The Tribunal accepted the Applicant's submission that an attendance of 30 minutes on 3 August 2009 for perusing and considering papers was a duplication of work already carried out by the Respondent's solicitor under Part One. In the event that it was not, the Tribunal was of the view that it fell within the total attendance of 1 hour 30 minutes allowed for this matter under Part One.
23. The Tribunal was also of the view that an attendance of 15 minutes on 16 February 2010 for further research of the Act had not been reasonably incurred

having regard to the status and post qualification experience of the Respondent's solicitor.

24. Accordingly, a total attendance time of 45 minutes was allowed at a cost of £150.
25. Under Part Two, total profit costs of £510 plus VAT of £89.25 and disbursements of £28 was allowed.

Dated the 19 day of July 2010

CHAIRMAN.....*J. Mohabir*

Mr I Mohabir LLB (Hons)