

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL**

Property : **14 Sherland Court (and garage)
The Dell
Radlett
Hertfordshire
WD7 8JG**

Applicant : **Martin John Buchanan**

Respondent : **Yarnscombe Investments Limited**

Case number : **CAM/26UE/OLR/2010/0017**

Date of Application : **29th March 2010**

Type of Application : **To determine the terms of acquisition
and costs of the new lease of the
properties pursuant to s48(1) and s60
Leasehold Reform, Housing, and Urban
Development Act 1993**

**Date of Hearing
(paper)** : **16th August 2010**

The Tribunal :

Mrs Joanne Oxlade	Lawyer Chairman
Miss Marina Krisko BSc (Est. Man.) BA FRICS	Valuer Member
Mr. Roland Thomas FRICS	Valuer Member

DECISION

The Tribunal determines that the costs payable by the Applicant to the Respondent in connection with the grant of a new lease of 14 Sherland Court (and garage), The Dell, Radlett, Hertfordshire, WD7 8JG are £1511.05 (including vat).

REASONS

Background

1. On 30th July 2009 Martin John Buchanan ("the Applicant") served on Yarnscombe Investments Limited ("the Respondent") a notice claiming the right to a new lease, pursuant to section 42 of the Act. On 6th October 2009 the Respondent served a counter-notice pursuant to section 45 of the Act, admitting the right to a new lease on the same terms (as to rent and the term) but disputing the premium.
2. On 29th March 2010 the Applicant filed with the Leasehold Valuation Tribunal ("LVT") an application for determination of all the terms of acquisition, as nothing was agreed.
3. Directions were made for the filing of evidence on 14th April 2010.

Outstanding Issue

4. On 9th June 2010 the parties notified the Tribunal that all matters had now been agreed, save statutory costs pursuant to section 60(1) of the Act, and invited the Tribunal to dispose of that issue by a hearing on the papers.
5. Supplementary directions were made on 23rd June and 12th July 2010 and the Tribunal indicated that unless the parties requested otherwise before 16th August 2010 the application would be considered on the papers on that date.
6. Pursuant to those directions a bundle of documents was filed, which consists of: the Respondent's statement of costs dated 4th May 2010, the Applicant's objection to costs dated 18th May 2010, the Respondent's replies to the Applicant's objections dated 1st June 2010, further observations made by the Respondent on 19th July and the Applicant on 29th July 2010. The following documents were filed: the Respondent's Solicitors time sheet, a copy of the Respondent's valuation report and valuer's invoice, and a copy of the existing lease.

Jurisdiction

7. Section 91(1) of the 1993 Act provides that the LVT shall have jurisdiction to determine the amount of costs payable.
8. Section 60 of the 1993 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 section 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 section 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 section (1) any costs incurred by an 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 be reasonably be expected to have been incurred by him if the circumstances had been such that he was personally liable for all such costs”.

9. Section 60(2) makes it clear that the method of assessment is on the basis of the indemnity principle. When considering a claim where the indemnity principle applies, doubts are generally to be resolved in favour of the receiving party.

The Claim and the Response

The Claim

10. The Respondent claims costs of £2306.31 which includes vat and disbursements. In fact there has been an error in multiplying the Solicitor’s and Valuer’s fees of £1901, which instead of £402.68, should be £332.675, making the total £2270.09.
11. The fee earner is grade C, with a charge rate of £190 per hour, and the claim is made on the basis that there were 30 letters/emails sent, 6 telephone calls, 2.6 hours work investigating the tenant’s right to a new lease, perusing and drafting, and 1.7 hours in granting the new lease including drafting and checking.

The Response

12. The Applicant agreed an appropriate hourly rate was £190 per hour, did not dispute that the time claimed was actually spent, but considered that (a) 2.6 hours to investigate the claim to a new lease was excessive, particularly as the lease was simple, registered at the Land

Registry and there were no intermediary leases, suggesting that 30 minutes was sufficient (b) 1.7 hours was excessive to draft a new lease which was a simple renewal of 7 pages, particularly as the Solicitors had approved an identical lease (save the premium and name of the parties) in respect of another flat in the building, suggesting 1 hour was sufficient (c) the amount of written and telephone correspondence was excessive, there being only 10 such by the Applicant. The Applicant considered that the time claimed included the negotiations as to price, which were not statutory costs, and so not recoverable. The Applicant did not dispute as reasonable the valuer's fee.

Respondent's justifications

13. The Respondent justifies the amount of time spent on (a) investigating title, setting out the 8 separate functions (including taking instructions, and considering the validity of the initial notice), (b) executing a new lease, which involves 5 separate functions, (including execution of the lease, which is yet to occur)(c) correspondence, which also includes communicating with the Managing Agents. The Respondent makes the point that although the Solicitors have been engaged in dealing with a completed lease extension at 10 Sherland Court - which is similar to the subject lease - nevertheless the same amount of work is necessary. They dispute that they have sought to recover costs incurred in negotiating price.


Findings of Fact

14. The first point to make is that the Respondent is not entitled to recover all the costs he has incurred in getting to the point that the lease extension is concluded, by (in this case) the execution of the new lease. He is only entitled to statutory costs, and so is not (for example) entitled to the costs incurred by him when his Solicitors negotiated the premium payable.
15. In this case we helpfully have the "time detail analysis report" ("time analysis") of the Solicitor who had conduct of this case, which shows that from 21st August 2009 to 13th July 2010 8 hours had been spent, at a cost of £1508. This sum approximates to that claimed on page 1 of the claim for costs. It is implicit from the parties notification that settlement had been achieved (by 9th June) and that time will have been spent by the Respondent's Solicitor in achieving a settlement. The Applicant has supposed that the costs of achieving settlement fall within the Respondent's claim, but the Respondent has disputed this assumption. However, the Respondent has neither asserted nor adduced evidence that the time spent on settlement has been excised from this time analysis.
16. Further, statutory costs do not cover engagement in Tribunal proceedings. Since the application was issued on 29th March 2010 the Respondent will have incurred Solicitor's costs in complying with

- Tribunal directions, but again there is no evidence (or assertion) that these costs have been edited out of the time analysis.
17. We agree with the Applicant that the level of correspondence claimed by the Respondent exceeds what would be reasonable to meet the statutory functions for which statutory costs are recoverable. We agree that the time taken to investigate the tenant's claim is excessive - notwithstanding the fact that a grade C Solicitor may well take more time than say a Grade B or A fee earner. We are inclined to agree that these extra pieces of correspondence and time spent were in respect of attempts to settle. We also find that having had conduct of the execution of an identical lease in respect of 10 Sherland Court the costs should have slightly reduced in respect of a new lease concerning 14 Sherland Court.
 18. Having considered all of the evidence filed and submissions made, and in light of our knowledge and experience as an expert Tribunal we have concluded that the (a) time taken and amount of correspondence in investigating the tenant's claim and granting a new lease, is excessive (b) time claimed must inevitably have included negotiations, which do not form statutory costs, and so are not recoverable.
 19. We find that statutory costs should be limited as follows: (a) to 20 letters/emails/phone calls @ £19 = £380, (b) 1 ½ hours investigating the tenant's right to a new lease, and the validity of the notice = £285, (c) 1 hour on granting a new lease @£190 = £190 (d) valuer's fees £400 (e) other disbursements as claimed £31 (e) vat at 17.5 % of £225.05.

Conclusion

20. We find that the costs payable by the Applicant to the Respondent in connection with the grant of a new lease of 14 Sherland Court and Garage, The Dell, Radlett, Hertfordshire, WD7 8JG are £1511.05 (including vat).

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Joanne Oxlade
Chairman
16th August 2010