

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

SOUTHERN RENT ASSESSMENT PANEL

LEASEHOLD VALUATION TRIBUNAL



**Residential
Property**
TRIBUNAL SERVICE

Sections 60 and 91 (2) of The Leasehold Reform and Urban Development Act 1993

Application for a determination of certain of the costs of the Respondent recoverable from the Applicant

DECISION AND REASONS

Case Number: CHI /00HE/OC9/2010/0004

Property: Flat 2 Marine Court Wheal Leisure Perranporth
Cornwall TR6 0EY

Applicants : Mr and Mrs J. M. Tranter

Respondent : Mrs S. Rilstone

Tribunal Members: Cindy Alpona Rai LLB Solicitor (Chairman)
Timothy Nicholas Shobrook FRICS Chartered Surveyor
(Valuer Member)

Date of Decision: 17th August 2010

SUMMARY OF DECISION

The Tribunal determined that the maximum amount of the Respondent's balance of legal costs payable by the Applicant is £150 (which sum is payable in addition to the legal costs incurred by the Respondent which the Applicant has already paid). The reasons for its decision are set out below.

1. This application was made by the Applicants' following pursuit of a formal application under the Leasehold Reform and Urban Development Act 1993 (" the Act") as qualifying tenants of Flat 2 Marine Court Wheal Leisure Perranporth Cornwall ("the Property") to acquire a new lease of the Property. Section 91 (1) of the Act gives jurisdiction to the Leasehold Valuation Tribunal to determine any question arising in relation to any of the matters specified in subsection (2) and subsection 91(2) (d) refers to the amount of any costs payable inter alia in the case of costs to which section 60(1) applies. The Applicant seeks a determination as to whether the Respondent is entitled to recover all of the legal costs she has incurred and in particular the costs incurred when she instructed Foot Anstey, (her former solicitors).
2. Following receipt of the application, Directions were dated and issued on the 19th April 2010 ("the Directions") by John S. McAllister a procedural Chairman of the Tribunal confirming that it was proposed to determine the application without a formal hearing unless either party objected within the specified time limit set out in the Directions. Neither party subsequently objected and therefore the Tribunal has determined this application on the basis of the written evidence supplied to it with the application and following the issue of its Directions .
3. A statement has been supplied by the Applicants' solicitors Follett Stock LLP but the only information provided by Foot Anstey the Respondent's former solicitors is the two letters dated 16th April and 26th April 2010, both of which were addressed to Stephens Scown, the Respondent's current solicitors and which collectively indicated that Foot Anstey no longer act for the Respondent and would therefore take no further action in respect of this application and the three letters relating to the amounts of the Respondents costs and which are specifically referred to in paragraph 13 below.
4. The application has been made because the Applicants are unwilling to indemnify the Respondent in respect of all the legal costs of her former solicitors Foot Anstey in relation to their claim under section 42 of the Act.
5. Section 60 (1) of the Act provides that where a notice is given under section 42 of the Act (which is a notice by a qualifying tenant of a claim to exercise a right to acquire a new lease of a flat), then subject to the provisions of section 60 the tenant giving the notice 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..." . The section subsequently lists the relevant matters which include (inter alia) "any investigation reasonably undertaken of the tenant's right to a new lease" and "the grant of a new lease under that section" [of the Act]. Subsection (2) provides that:-

"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 if the circumstances had been such that he was personally liable for all such costs". It is accepted that the Respondent is a "relevant person" for the purposes of the Act.

6. From the written evidence before the Tribunal would appear that the Respondent having been approached by the Applicants, who were seeking to obtain a new lease of the Property, consulted Foot Anstey in or about May of 2009. She had not responded personally to letters sent by the Applicant but had apparently consulted Foot Anstey following receipt of a letter from Simon Dowling of Camel Homes the Applicants' valuation surveyor. ("Mr Dowling")
7. On the 18th May 2010 Foot Anstey wrote to Mr Dowling confirming that it acted for the Respondent who would agree "in principle" to the grant of a new lease, but on the basis of the formal procedure of the "Leasehold Reform Act" being followed and a valuation being obtained and the payment of both the valuation and legal fees of the Respondent being paid.
8. As there appeared to be uncertainty between the Applicants and Mr Dowling as to whether or not the Respondent would proceed informally, Mr Dowling telephoned Foot Anstey who wrote to Mr Dowling on the 19th June 2010 confirming that it was now expecting to receive a formal notice under the "Leasehold Reform Act".
9. The Applicants sent a formal notice under section 42 of the Act which was dated 11th August 2010, which referred to their having instructed Follett Stock LLP to act for them, to both Foot Anstey and the Respondent. The notice proposed that a new lease of the Property be granted on the terms specified therein.
10. Stephens Scown sent a letter to Follett Stock LLP on the 27th August 2009 confirming that it was now instructed to act for the Respondent in place of Foot Anstey. That letter stated that the Applicants would be responsible for "our client's reasonably incurred and professional fees pursuant to the 1993 Act". Subsequently and in response to a request from Follett Stock LLP an estimate of their client's valuation fees was provided. Matters progressed and the form of the new lease was agreed.
11. When the transaction was nearing completion Stephens Scown wrote to the Applicants on the 23rd December 2009 enclosing a copy of a completion statement produced at page 16 in the Applicants' bundle of evidence. That statement shows two separate figures which together comprised the Respondent's legal fees of £750 plus VAT in respect of Stephens Scown Fees and £931.50 plus VAT in respect of Foot Anstey's fees.
12. The Applicant has paid Stephens Scown fees totalling £750 plus VAT as this amount is not disputed by them. Its application relates solely to those legal fees which the Respondent incurred with Foot Anstey.
13. The Applicants' have provided the following information:
 - a. A copy of a letter from Foot Anstey to the Respondent dated 16th November 2009 confirming the amount of the outstanding fees of £1,071.22 (which is £931.50 plus VAT) dated 16th November 2009 with a copy of a statement referring to two invoices dated 26th May 2009 and 30th October 2009 respectively

- b. A copy of a letter dated 9th December 2009 from Foot Anstey to Stephens Scown confirming their initial estimate of costs was £4,600 provided in a confirmation of instructions letter sent to the Respondent on the 12th May 2009 and that the costs charged were within the estimate it had given. A copy of the time report was also enclosed which indicated the amount of the time recorded and charged by the various persons who had conduct of their file.
- c. A copy of a letter dated 10th May 2010 from Foot Anstey to Stephens Scown detailing the outstanding costs totalling the amount referred to in sub paragraph (a) above but which suggested that the "value" of the time recorded on the file amounted to £1,496 rather than the amount "billed". Further time reports appear to have been annexed to this letter and it is to these time reports found at pages 48 to 51 of the Applicants bundle that the Tribunal has referred.

14. From an examination of the time reports referred to in paragraph 13 (c) it would appear inappropriate that the Applicants should be required to contribute to any of the costs incurred by the Respondent prior to the service of the section 42 notice referred to in paragraph 9 and which was dated the 11th August 2009. Following receipt of the notice the following activities on the time sheet would appear to fall within the matters defined in section 60 (1) of the Act and referred to in paragraph 5 above:-

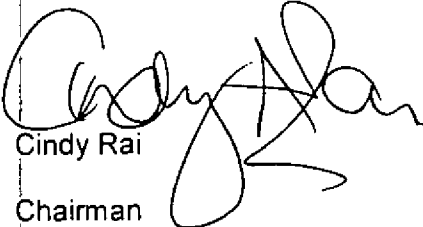
a.	12.08.2009	Considering Notice	12 minutes	£ 30.00
b.	12.08.2009	Discussion	6 minutes	£15.00
c.	13.08.2009	Diarising dates	12 minutes	£30.00*
d.	19.08.2009	Letter to Respondent	18 minutes	£45.00
e.	21.08.2009	Telephone call to Respondent	6 minutes	£15.00
f.	24.08.2009	Considering telephone call	6 minutes	£15.00
g.	25.08.2009	Telephone call out	6 minutes	£15.00

* Allow only £15

15. The only item within these dates which has been omitted is that dated the 12th August 2009 which refers to "consideration of Woodfall and leasehold advisory service". The Tribunal do not accept that any of that time spent by the Respondent's solicitors and charged to her at a rate of £150 per hour fall within the ambit of costs recoverable under section 60(1). Even if it is wrong it is suggested that it would be unreasonable for the Respondent to expect to pay her legal advisors for considering the relevant law since it must be reasonable to expect that a firm charging the hourly charge out rate quoted should have sufficient knowledge of the law and would not charge its client for legal research. Therefore that element of the costs should properly be disallowed under section 60(2) of the Act. It has already been noted that the two letters from Foot Anstey to Stephens Scown do not specifically refer to the

Act but to the Leasehold Reform Act. Any costs incurred after the 25th August 2009 cannot properly relate to the Applicants' notice since Stephens Scown had clearly been instructed by (or before) the 27th August 2009. Therefore it is inappropriate for the Applicants to be expected to pay any costs incurred by the Respondent following the date upon which she instructed Stephens Scown. Furthermore the Tribunal considers that 6 minutes and a charge of £15. is a reasonable charge for the "diarising dates" and should be substituted in place of the charge made of £30.00 which it considered to be excessive.

16. None of the costs incurred by the Respondent before the issue of the section 42 notice are recoverable from the Applicant under section 60.
17. The total amount of the costs incurred by the Respondent with Foot Anstey which are recoverable, under the Act, from the Respondent is £150.


Cindy Rai
Chairman