

2542



**HM Courts
& Tribunals
Service**



**Residential
Property
TRIBUNAL SERVICE**

LONDON RENT ASSESSMENT PANEL

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER
[SECTIONS 91 and 60 OF THE LEASHOLD REFROM, HOUSING AND URBAN
DEVELOPMENTS ACT 1993**

Case Reference:	LON/00AW/OC9?2012/0054
Premises:	Flat 1, 64 Onslow Gardens London SW7 3QB
Applicant(s):	Javelot Inc
Representative:	John May Law
Respondent(s):	Enfranchisement Investments Limited
Representative:	TWM solicitors
Leasehold Valuation Tribunal:	Dr Helen Carr
Date of decision:	7 th August 2012

Decisions of the Tribunal

- (1) The Tribunal determines that the sum of £1,135.00 plus VAT of £227 is payable by the Applicant/ in respect of legal costs.
- (2) The Tribunal determines that the sum of £975 plus VAT is payable by the Applicant/ in respect of surveyors fees.
- (3) The Tribunal determines that the sum of £40 is payable in respect of Land Registry disbursements

The Background

The application

1. The Applicant seeks a determination pursuant to s.91 of the Leasehold Reform, Housing and Urban Development Act 1993 as to the amount of costs payable by the Applicant in accordance with s.60 of the Act
2. Both parties expressed their willingness for the matter to be determined without a hearing and the matter was therefore considered on the basis of the documents provided by the parties.
3. The current application arises out of an earlier application for a lease extension which was agreed but subsequently not completed.
4. Costs under s.60 of the Act have been disputed by the Applicant in this application and the matter therefore referred to the Tribunal for determination.
5. The amounts disputed are:
 - a. Legal fees of £1,135.00 plus VAT of £227
 - b. Disbursement of £40 for Land Registry fees
 - c. Valuation fee of £1,500 plus VAT
6. In respect of the legal fees the Applicant disputes
 - (a) The hourly charging rate of £275 on the basis that this is too high an hourly rate for work carried out in a provincial city. The Applicant offers £225 per hour
 - (b) The time spent on 11th May 2012. The Applicant argues that the time was excessive in part because the Respondent's solicitors should have been familiar with the collective enfranchisement of the building which was completed in May 2007. The Applicant considers 1 hour's work to be reasonable
 - (c) Time spent in relation to the assignment of the Lease on 25th May 2012 after the service of the counter-notice on the basis that this did not form part of the investigation of the validity of the claim and no fees are payable by the Applicant in relation to this
7. In respect of the disbursement the Applicant disputes that it was necessary to obtain documentation from the Land Registry
8. In respect of the Valuation fees the Applicant disputes

(a) The hourly rate of £200 on the basis that the surveyor is comparatively junior
The Applicant offers £125 per hour

(b) The time spent travelling to inspect the property, the time spent inspecting the property and reviewing the documents together with the consideration of 'other valuation elements'. The Applicant offers 4 hours 30 minutes plus 30 minutes for the partner reviewing the transaction

9. The Respondent argues in connection with the legal fees and the Land Registry disbursement

(a) that the charging rate of £275 per hour is a reasonable fee for a Grade A fee earner of thirty five years post qualification experience based in Surrey

(b) that Mr Pursley is the solicitor normally engaged by Enfranchisement Investments Limited to represent it in connection with any statutory claims

(c) the size of the prospective premium payable justified the respondent in engaging a senior solicitor to advise it

(d) that the time spent on 11th May was reasonable because of the number of documents comprising the title, the substantial size of the prospective premium and the late receipt of the instructions,

(e) the disbursement was necessary because of the late receipt of the instructions and the necessity to advise the Respondent on the claim and title documentation at short notice

(f) the Respondent's solicitors were not familiar with the enfranchisement structure from May 2007 as alleged by the Applicant as they did not act for Enfranchisement Investments Limited at the time. The Respondent's solicitors further argue that five year have passed and familiarity or otherwise is not relevant to need for a solicitor to examine the documentation carefully.

(g) that costs incurred by the examination of documents associated with an assignment of the section 42 Notice of Claim and supporting documentation is incidental to any investigation of the tenant's right to a new lease in accordance with section 60 even where that documentation has only been revealed following service of the counter notice and that the costs incurred are within the ambit of section 60

10. The Respondent has not responded to the Applicant's submissions in connection with the valuation fees

The law

11. Section 60 of the Leasehold Reform, Housing and Urban Development Act 1993 provides as follows:

(1) Where a notice is given under section 42, the (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 incidentally 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 purpose 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

The Tribunal's decision in connection with the legal fees and disbursement

12. The Tribunal determines that the amount payable in respect of [legal fees and disbursements is £1,135 plus VAT and disbursement of £40 for Land Registry fee.

Reasons for the Tribunal's decision

13. The Landlord is entitled to instruct solicitors of its own choice. The Tribunal considers that the charging rate of the Respondent's solicitor's falls within the reasonable band of charging rates particularly considering the size of the prospective premium

14. The Tribunal accepts that the time charged for on 11th May 2012 was reasonable considering the number of documents involved, the late receipt of instructions and the size of the prospective premium. The Tribunal does not accept that the collective enfranchisement in 2007 is relevant to the amount of time spent in May 2012.

15. The Tribunal accepts the Respondent's argument that it was necessary to obtain Land Registry documentation because of the late receipt of instructions.

16. The Tribunal accepts the Respondent's submission that the examination of documents associated with the assignment of the section 42 notice of claim is incidental to the investigation reasonably undertaken of the tenant's right to a new lease in accordance with section 60 even though the documentation was only revealed following service of the counter notice

The Tribunal's decision in connection with the valuation fees

17. The Tribunal determines that 7 hours are payable at £125 per hour plus 30 minutes at £200 per hour. This makes a total charge of £975 plus VAT.

The reasons for the Tribunal's decision

18. The Tribunal agrees with the Applicant that a charging rate of £200 per hour is not appropriate for a relatively junior and unqualified surveyor. It accepts the Applicant's proposal of £125 per hour. It accepts however that the inspection and travelling time were appropriate in this instance, particularly having regard to the status of the fee earner. Therefore seven hours of work were carried out by the surveyor at £125 per hour. The Applicant agrees that 30 minutes work by a partner charging £200 per hour is appropriate.

Chairman:

John Caw
[name]

Date:

7 | 8 | 2012