

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

**SOUTHERN RENT ASSESSMENT PANEL &  
LEASEHOLD VALUATION TRIBUNAL**

Case Numbers: CHI/00MS/OLR/2005/0016  
& CHI/00MS/OLR/2005/0015

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Dianne Mary Leighton Baldwin - “The Applicants”  
re 6 Priestwood Close, Southampton

and

Rachel Evelyn & David Kim Mitchell  
7 Priestwood Close, Southampton

and

Sidewalk Properties Limited - “The Respondents”

Decision of the Tribunal  
dated 7<sup>th</sup> October 2005

Tribunal

Mr D M NESBIT JP FRICS FCLArb

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**6 & 7 Priestwood Close, Thornhill**  
**Southampton, Hants SO18 5RN**

1. These matters were before the Tribunal following applications on behalf of the Applicants for a new lease, in accordance with Section 48, Leasehold Reform, Housing and Urban Development Act 1993 ("the Act").
2. The Applicant for 6 Priestwood Close was Dianne Mary Leighton Baldwin. The Applicants for 7 Priestwood Close were Rachel Evelyn Mitchell and David Kim Mitchell.
3. The Applicants jointly instructed DMA, Chartered Surveyors of Eastleigh, Hants; Mr Christopher Beamish MBA FRICS MIRPM acted on their behalf.
4. The Respondent freeholders for both properties were Sidewalk Properties Ltd of Euro House, 131/133 Ballards Lane, North London, whose managing agents were Estates & Management Limited of the same address.
5. The appropriate Notices of Claim under the Act were issued and both dated 7<sup>th</sup> September 2004.
6. The landlords' counter-notices were both dated 2<sup>nd</sup> November 2004. Those notices set out the landlords' counter-proposal to each proposal that was not accepted, and which included
  - 5) 'Tenant to be responsible for landlords' costs of £695.00'
7. Subsequently the Applicants applied to the Tribunal dated 13<sup>th</sup> April 2005 for matters outstanding to be determined. Directions were prepared and issued dated 28<sup>th</sup> April 2005, setting out a timetable for experts to prepare and exchange reports, with a proposed Hearing set for 12<sup>th</sup> August 2005.
8. By letter dated 20<sup>th</sup> May 2005 the Applicants' surveyor, Mr Beamish, confirmed to the Tribunal that lease terms had been agreed between the parties, but that statutory costs, payable by the Applicants, had not been agreed.

9. By letter dated 17<sup>th</sup> June 2005, the landlords' surveyor, Mr David Gillespie MSc FRICS, of Brentwood, Essex, confirmed that agreement had been reached for the lease terms, and also the amount of the landlords' legal fees. The parties, however, disputed Mr Gillespie's valuation fees.
10. Subsequently the Tribunal proposed, and all parties consented, that the only matter remaining in dispute being the amount of the landlords' surveyor's valuation fees, be determined by written representations.
11. I had previous case management involvement and was appointed to proceed to a determination. I reviewed the file, which included correspondence from both parties' surveyors.
12. I requested further information from Mr Gillespie which he provided by his letter dated 6<sup>th</sup> September 2005. I have undertaken a full review of the representations made and considered the Act.

### **The Applicants' Case**

13. Mr Beamish states that the Respondents were claiming valuation costs of £750.00 for each property. No breakdown of Mr Gillespie's fees had been provided.
14. Mr Beamish maintained that as two similar and neighbouring properties were involved, the fees proposed were excessive and unreasonable.
15. Mr Beamish referred to a recent decision of the Tribunal where that Tribunal determined a fee relating "more closely to other fees that have been put to us by both parties as being charged by valuers in these situations."
16. As the two properties were similar and neighbouring travel costs would be shared between the properties, Mr Beamish proposed a limit of £450.00 per property for the valuation fee.

### **The Respondents' Case**

17. At the Tribunal's request Mr Gillespie provided full information as to the extent of his experience in valuation for these purposes, the basis of the terms agreed with his clients, and details regarding inspections and time involvement.
18. Mr Gillespie had inspected both properties on 16<sup>th</sup> December 2004. He itemised the work undertaken and approach to the valuations. His time estimate was 4.5 hours, excluding travelling.
19. The fee arrangement with his clients was a charge of £750.00 for each lease valuation. As Mr Gillespie is not registered for VAT, no value added tax applies. Mr Gillespie had agreed a reduced hourly rate with his clients of £150.00, to include travel and expenses. He agreed that a discount would apply if more than one property was involved, but because of the travelling distance involved it had been agreed not to discount his fee of £750.00 per property.
20. During the negotiations, Mr Gillespie stated that Mr Beamish had challenged whether valuation charges were recoverable, when incurred after the valuation date.
21. Mr Gillespie stated that the timing of instructions did not make recovery impossible under Section 60 (1) of the Act, as his charges arose for valuations for the purpose of the new leases, and not for proceedings before the Tribunal.

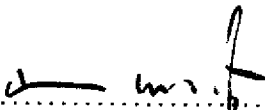
### **Consideration**

22. An individual's right to acquire a new lease is covered in Chapter 11 of the Act. Section 39 has the effect of conferring the right, exercisable subject to the Act, to acquire a new lease on payment of a premium determined in accordance with the Chapter.
23. The Act sets out Notices and procedures to be followed. For both cases following such Notices, the parties agreed terms, only the amount of valuation fees remaining in dispute.

24. Costs incurred in connection with a new lease to be paid by a tenant are covered in Section 60 (1) of the Act.
25. Where a notice is given then the tenant 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
  - (b) any valuation of the tenant's flat obtained for the purpose of fixing the premium payable by virtue of Schedule 13 in connection with the grant of a new lease.
26. Section 60 (2) states that 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.
27. Valuation costs relate to the valuation itself, not for time involved in negotiation, or for any work incurred in connection with proceedings before the Tribunal.
28. On my consideration of the Act, and the facts and representations before me, I am not persuaded that the valuation charges proposed by Mr Gillespie are appropriate or reasonable.
29. The terms agreed between Mr Gillespie and the Respondent freeholders are separate matters between themselves. Mr Gillespie is based in Essex. The properties are both in Eastleigh, Hampshire. Mr Gillespie's charges are, however, weighted as his charges include travel costs.
30. There is no evidence to indicate that there were special valuation issues arising. Both properties are of a similar nature, and in my opinion a reduction of fee would be applicable where two very similar valuations for properties in the same location were being undertaken for the same client.
31. As I have noted in Paragraph 6, the landlords Counter Notice indicated the landlords' costs would be £695.00 per property. Those costs would cover the landlords' reasonable legal costs and the valuation costs.

**Determination**

32. The reasonable costs payable by both Applicants in respect of the valuation fees shall be limited to £450.00 for each property.

Signed:.......... D M NESBIT JP FRICS FCI Arb  
A member of the Panel appointed  
by the Lord Chancellor

Date: 7<sup>th</sup> OCTOBER 2005