

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL UNDER  
SECTION 60 OF THE LEASEHOLD REFORM HOUSING AND URBAN  
DEVELOPMENT ACT 1993.

Applicants

Thornbury Court Ltd  
Halliard Property Co Ltd.

Represented by Wallace LLP(Solicitors)

Respondents

Faizul Hasan Faizi  
Shamm Akhtar Faizi

Represented by Faizul Hasan Faizi

Re

Flat 1, Thornbury Court, Church Road, Isleworth  
Middlesex, TW7 4PP

Application to the Tribunal    13 September 2004

Hearing                                15 February 2005

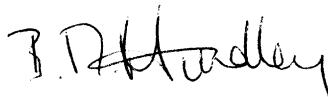
Members of the Leasehold Valuation Tribunal

Mrs B M Hindley LL.B  
Mr J C Avery BSc FRICS  
Mr T N Johnson FRICS

1. This is an application for a determination, under Section 60 of the Leasehold Reform Housing and Urban Development Act 1993, of the costs payable in connection with the service of a notice under Section 42 of the Act.
2. On 10 July 2002 the respondents served a notice under Section 42 for the purpose of obtaining a lease extension.
3. On 5 September 2002 the applicants served a counter notice denying the respondents' right to a new lease on the basis of their non compliance with the then existing residence qualification.
4. The counter notice was accompanied by a letter of the same date, inviting the respondents to substantiate their claim for the necessary period and informing them that, otherwise, proceedings would be commenced in the County Court under Section 46 of the Act.
5. On 25 March 2003, at Brentford County Court, the proceedings were adjourned because the Court had failed to serve the necessary papers on the respondents.
6. On 14 April 2003 the respondents wrote to Wallace LLP, solicitors for the applicants. They said that they were 'taking advice' on whether a new ground for resisting the claim, of which they had become aware only as a result of the court hearing, might cause them to concede.
7. On 30 June 2003 the respondents proposed vacating the hearing date, of 4 July 2003, set for the adjourned hearing, on the basis of a consent order.
8. On 1 July 2003 Wallace and Partners responded that they would agree to the suggestion on the basis of the respondents withdrawing their notice.
9. On 2 July 2003 the respondents refused to withdraw their notice because that would have meant that they would have been unable to serve another notice until a further year had elapsed.
10. On 30 January 2004 a draft consent order was submitted to the respondents by Wallace LLP. It included provision for the payment of costs in the sum of £1762 50p.
11. On 3 February 2004 the respondents refused to sign the consent order because they considered the costs to be excessive.
12. On 25 August 2004 a consent order was signed. The grounds given were that the notice had not been in accordance with the requirements of Section 42(2)(c), presumably in fact Section 42(3)(c), in that there was a failure to give separate sums for the premium to be paid for the grant of a new lease and the sum to be paid in accordance with the provisions of Schedule 13 of the Act.. The costs were to be determined.
13. On 13 September 2004 Wallace LLP applied to the Leasehold Valuation Tribunal for a determination of the costs payable under Section 60.
14. At the hearing Mr Serota read from Hague, para 32 –18. 'A tenant who serves what turns out to be an invalid notice of claim is estopped from denying liability to pay Section 60 costs at any time while he asserts that the notice is valid'. He, therefore, claimed the costs, as attached at Annex 1 to be payable.
15. Mr Serota said that the costs had been extracted from his firm's records and were not based on an automated time costs system.
16. He said that the valuer's fee of £750, charged by Mark Bayley of Moss Kaye Pemberton, was made up of 5 hours at £150 per hour and had included an inspection.

17. Mr Faizi said that he should not be liable for any costs incurred after 5 September 2002 (the date of the counter notice) with the exception of the first two items on 11 September 2002.
18. He maintained that had he known that there was another ground, apart from the residence qualification, which invalidated the notice he would have conceded his claim at that time.
19. Mr Faizi also queried three specific items, 16 and 30 (x2) August 2002, suggesting duplication or non essential work in connection with the valuation. In any event he considered £630 plus VAT to be reasonable in respect of the legal fees.
20. He also challenged the valuation fee of £750 as excessive, suggesting that £200 - £250 was adequate for what, he considered, to be two hours of work. He had come to this conclusion on the basis of his experience of a mortgage valuation of Flat 10 in the same block. He was also unconvinced that the valuation had included an inspection of the interior of Flat 1.
21. Both parties referred the Tribunal to previous Leasehold Valuation Tribunal decisions in support of their contentions.
22. Under Section 45 (2)(b) the landlord must give a counter notice which states the reasons for not admitting the validity of the notice. This the applicants did on 5 September 2002. However, on 25 March 2003, at the adjourned hearing, it became apparent that their reason for not accepting the validity of the notice had changed and was based on another ground - namely as set out at para 12 above.
23. Accordingly, the Tribunal considers that it would be just and equitable to treat the date of 25 March 2003 as the cut off point for costs arising from the service of the notice of 10 July 2002.
24. The Tribunal is not persuaded either that any of the respondents' challenges to specific costs before this date have any foundation, or that the totality of the time claimed was unreasonable, no challenge having been made to the hourly rate charged.
25. With regard to the fees of the valuer, the Tribunal was not persuaded of the validity of the comparison between a valuation under the Act and a mortgage valuation. However, they considered that £750 plus VAT was somewhat above the level usually found in such cases. Accordingly, they determine as reasonable a fee of £600 based on 4 hours charged at £150 per hour.
26. Accordingly, the Tribunal determines costs of £1995. 15p as payable by the respondents to the applicants, made up of legal costs of £1290. 15p and a valuation fee of £705, inclusive of VAT.

Chairman



Date.

18/2/05.

## Costs Schedule - 1 Thornbury Court

Date	Activity	Description	Fee earner	Hours	Rate	Amount
18 July 2002	Documents	Engaged considering section 42 Notice served	Assistant	0.7	£180.00	£126.00
18 July 2002	Documents	Engaged ordering Office Copy Entries	Assistant	0.1	£180.00	£18.00
18 July 2002	Letter	Engaged preparing letter to client	Assistant	0.1	£180.00	£18.00
18 July 2002	Letter	Engaged preparing letter to Valuer	Assistant	0.1	£180.00	£18.00
18 July 2002	Letter	Engaged preparing letter to Competent Landlord	Assistant	0.2	£180.00	£36.00
01 August 2002	Letter	Engaged preparing letter to Competent Landlord	Assistant	0.1	£180.00	£18.00
16 August 2002	Letter	Engaged preparing letter to Competent Landlord	Assistant	0.1	£180.00	£18.00
16 August 2002	Letter	Engaged preparing letter to Lessees	Assistant	0.1	£180.00	£18.00
16 August 2002	Letter	Engaged preparing letter to Valuer	Assistant	0.1	£180.00	£18.00
16 August 2002	Documents	Engaged considering office copy entries	Assistant	0.1	£180.00	£18.00
30 August 2002	Documents	Engaged considering valuation report	Partner	0.3	£180.00	£54.00
30 August 2002	Documents	Engaged preparing counter-notice	Assistant	0.8	£180.00	£144.00
30 August 2002	Documents	Engaged checking counter-notice	Partner	0.2	£180.00	£36.00
30 August 2002	Letter	Engaged preparing letter to Lessee	Assistant	0.2	£180.00	£36.00
30 August 2002	Letter	Engaged preparing letter to valuer	Assistant	0.1	£180.00	£18.00
30 August 2002	Letter	Engaged preparing letter to Competent Landlord	Assistant	0.1	£180.00	£18.00
30 August 2002	Letter	Engaged preparing letter to client	Assistant	0.1	£180.00	£18.00
11 September 2002	Letter	Engaged preparing letter to Lessee	Assistant	0.2	£180.00	£36.00
11 September 2002	Attendance	Call with Lessee	Assistant	0.3	£180.00	£54.00
11 September 2002	Attendance	Call with Royal Mail	Assistant	0.2	£180.00	£36.00
11 September 2002	Attendance	Call with Competent Landlord	Assistant	0.2	£180.00	£36.00

## Costs Schedule - 1 Thornbury Court

12 September 2002	Letter	Engaged preparing letter to client	Assistant	0.1	£180.00	£18.00
12 November 2009	Letter	Engaged preparing letter to Competent Landlord	Assistant	0.1	£180.00	£18.00
12 September 2002	Letter	Engaged preparing letter to Lessee	Assistant	0.1	£180.00	£18.00
13 September 2002	Attendance	Call with Lessee	Assistant	0.1	£180.00	£18.00
30 September 2002	Letter	Engaged preparing letter to Royal Mail	Assistant	0.1	£180.00	£18.00
16 October 2002	Letter	Engaged preparing letter to Royal Mail	Assistant	0.1	£180.00	£18.00
16 October 2002	Letter	Engaged preparing letter to Competent Landlord	Assistant	0.2	£180.00	£36.00
16 October 2002	Letter	Engaged preparing letter to Client	Assistant	0.2	£180.00	£36.00
18 October 2002	Attendance	Calls with client	Assistant	0.2	£180.00	£36.00
04 November 2002	Letter	Engaged preparing letter to Royal Mail	Assistant	0.1	£180.00	£18.00
04 November 2002	Letter	Engaged preparing letter to Swansea Land Registry	Assistant	0.1	£180.00	£18.00
14 March 2003	Letter	Engaged preparing letter to valuer	Assistant	0.1	£180.00	£18.00
20 March 2003	Documents	Engaged reviewing valuation	Assistant	0.2	£180.00	£36.00
30 June 2003	Letter	Engaged preparing letter to Lessee	Assistant	0.1	£180.00	£18.00
16 February 2004	Letter	Engaged preparing letter to Lessee	Assistant	0.1	£180.00	£18.00
<b>Total fees</b>						<b>£1,134.00</b>
<b>VAT</b>						<b>£198.45</b>
<b>Valuer's Fees</b>						<b>£750.00</b>
<b>VAT</b>						<b>£131.25</b>
<b>TOTAL</b>						<b>£2,213.70</b>