

Ref: LON/NL/4677/06

LEASEHOLD VALUATION TRIBUNAL
LONDON RENT ASSESSMENT PANEL

DETERMINATION

of

APPLICATION RE SECTION 60 OF THE LEASEHOLD REFORM,
HOUSING AND URBAN DEVELOPMENT ACT 1993

Premises: 49 Berkeley Close, Ruislip, Middlesex HA4 6LE

Applicant: Mrs J E Schmidt [Tenant]
Represented by: David T Stone FRICS

Respondent: Daejan Investments Limited [Landlord]
Represented by: Wallace LLP Solicitors

Hearing: 23 May 2006

Inspection N/A

Tribunal: Professor J T Farrand QC LLD FCI Arb Solicitor
Mr D Levene OBE MRICS
Mr. M Taylor JP FRICS IRRV

1. In the absence of appearances by either party or their representatives, the Tribunal, being satisfied that due notice of the Hearing had been given and at the suggestion of the Applicant's representative, proceeded to deal with the case on the basis of the written representations and supporting documentation received.
2. The originating Application, by letter dated 12 January 2006, was made under s.91(2)(d) of the 1993 Act and sought a determination as to costs payable by the Respondent within s.60 of that Act.
3. The Applicant, being the tenant of the Premises, a flat in a building, under a long lease, had served a Notice, dated 16 June 2005, claiming entitlement to a new extended lease under s.42 of the 1993 Act. The proposed premium was £34,600. The Respondent evidently served a counter-notice admitting the Applicant's entitlement to acquire a new lease but with a counter proposal as to the premium, although this was not copied to the Tribunal.
4. By letter dated 4 November 2005, the Applicant's representative wrote to the Respondent's valuers confirming an agreement which included: "Premium for a new lease to be £43,340, with tenant to pay the reasonable Section 60 landlord's legal and valuation fees." That letter concluded by advising that a valuation fee exceeding £650 would be challenged.
5. By letter dated 1 December 2005, the Respondent's representative wrote informing the applicant's representative that "our client's legal fees are £1,000 plus VAT and our client's valuer's fees are £1,500 plus VAT."
6. In the letter of application to the Tribunal, the Applicant's representative referred to valuation fees agreed in eight lease extension cases in the past three years. The highest two were fees of £650 plus VAT charged to the present Respondent by Moss Kaye Pembertons. The following submission was then made:

"The acid test for 'what is reasonable' is defined in Section 60(2), so if Daejan Investments Limited (the subject property landlord) had to pay its own valuer's fee without reimbursement from the tenant, then surely this freeholder would have instructed its usual valuers, Moss Kaye Pembertons, who charge £650 + VAT per valuation,

rather than Langley Taylor, who have charged in this case £1,500!"

7. The Applicant's representative also referred to other Tribunal decisions. These included one made in 2002 by a Tribunal from the Eastern Panel which considered what would have been a reasonable time for the solicitors concerned to have taken in preparation of the counter-notice and supplemental lease, as well as completing. After observing that "the law is straightforward", the total time allowed by that Tribunal was 3 hours and 6 minutes. The present Applicant's representative's submission was that the legal fees of £1,000 + VAT were "very unreasonable" because:

"Wallace LLP act for both Daejan Properties Ltd and Daejan Investments Ltd and many other companies controlled by the Freshwater Group, and so must be extremely familiar with the preparation of Supplemental Leases for extensions under Section 56 of the 1993 Act."

8. The Respondent's representative submitted a Statement of Case, dated 18 May 2006. This did not address the submissions made by the Applicant's representative but, after a general introduction in relation to s.60 costs, it did deal with both the valuer's fee and the legal costs.

9. As to the former, it was simply stated:

"The valuer instructed on behalf of Daejan Investments Limited was Jennifer Ellis of Langley-Taylor and a copy of the invoice rendered to Daejan Investments Limited was attached to this statement and sets out the time spent in preparing the valuation for the purposes of serving a Counter-Notice. A copy of the Valuation Report will be produced at the Tribunal hearing."

However, although the invoice indicated the services rendered it did not set out the time spent on them. Instead, it charged £1,500 (+ VAT) as "Amount of our fee as agreed" and added in parenthesis and bold type "Note: This fee is recoverable from the claimant". Also no copy of the Valuation Report was produced to the Tribunal.

10. As to the legal costs, the Respondent's Statement of Case stated:

"Wallace LLP act for Daejan Investments Limited dealing with enfranchisement claims made in accordance with the Act. The

charges in respect of the enfranchisement claims are based on time spent at the relevant fee earner's charging rate. The Partner with conduct of this matter is a Grade B fee earner and at the relevant time in connection with this application the charge out rate was £225 per hour rising to £250 per hour from July 2005."

The Statement proceeded to explain:

"Where costs for work undertaken do not fall within Section 60 of the Act Wallace LLP charges to the Landlord costs on a time basis at the same charge out rate as indicated on the attached breakdown of time spent on the claim. Accordingly Wallace LLP's charges to the Landlord are the same charge out rate as applied to the tenants to be paid in accordance with Section 60 of the Act."

A Costs Schedule was attached to the Statement which did show a breakdown of the time spent totalling 5.4 hours. It also showed partners' charging rates exceeding £225-250 per hour for some of the work carried out. The total for fees shown on the Statement was £1,529 (+ VAT). Evidently, this total included fees not recoverable under s.60 and, as indicated at para.5 above, the sum claimed is £1,000 (+ VAT). However, no breakdown was given as to how the sum claimed was arrived at.

11. No reply to the Respondent's Statement of Case has been submitted to the Tribunal by or on behalf of the Applicant.
12. The Tribunal considered the case on the basis that it was agreed that the Applicant was liable "to pay the reasonable Section 60 landlord's legal and valuation fees." Consequently, the issues were whether or not the amounts charged were reasonable. As to what is "reasonable" in this context, the statute merely provides that "any costs incurred by the ... landlord 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" (s.60(2) of the 1993 Act).
13. As to the valuation fee, the Tribunal is not satisfied that the Respondent would have agreed to pay £1,500 plus VAT irrespective of the time and work involved if that sum had not been thought recoverable from the Applicant. Further, the Tribunal has no

evidential basis upon which to regard that sum as within the range of what it would be reasonable to charge as a valuation fee in such a case as the present. Accordingly, in the light of its general knowledge and experience, the Tribunal determines that the valuation fee payable by the Applicant should be restricted to £700 + VAT.

14. As to the legal costs, the Tribunal accepts that the Respondent would have instructed its representative, Wallace LLP, to act in relation to such a lease extension and that the reasonable expectation would be that the cost of so doing would have been incurred despite there being personal liability rather than recoverability from a tenant. Nevertheless, the Tribunal considered that explanations might have been required about various items in the Schedule of Costs submitted as well as about the overall time of 4.5 hours taken by experienced solicitors for whom this work must be regarded as routine. However, the Tribunal was prepared to accept that the sum actually charged to the Applicant in respect of the Respondent's fees for employing London solicitors in connection with these enfranchisement proceedings were not outside the range of what would be a reasonable cost to incur. Accordingly, as well as consistently with its own general knowledge and experience, the Tribunal determines that the legal fees payable by the Applicant are £1,000 + VAT.
15. In the result the total of 'section 60 costs' recoverable by the Respondent from the Applicant is £1,700 (+ VAT).

CHAIRMAN

Julian Fawcett

DATE

31 May 2006