Ref: LON/NL/4219/05

LEASEHOLD VALUATION TRIBUNAL

LONDON RENT ASSESSMENT PANEL

DETERMINATION

of

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

Premises:	**Flat 94 Greenway Close, London N11**
Applicant:	Sinclair Gardens Investments (Kensington) Ltd
Represented by:	Messrs P Chevalier & Co Solicitors
Respondent:	Ms Deborah Marie Smith
Represented by:	Messrs Jennings Son & Ash Solicitors
Meeting:	21 November 2005
Inspection	N/A
Tribunal:	Professor J T Farrand QC LLD FCIArb Solicitor Mr J R Humphrys FRICS

1. At the suggestion of the Applicant's representatives and without objection from the Respondent's representatives, the case was dealt with without a Hearing on the basis of written representations.
2. The originating Application, dated 6 September 2005, treated as made under s.91(2)(d) of the 1993 Act, sought a determination as to costs payable by the Respondent within s.60 of that Act.
3. The Respondent is the tenant of the Premises, a flat in a building, under a long lease granted in 1986 which had been assigned to her, apparently on or about the beginning of March 2005 (the Tribunal has not seen a copy of this assignment). Her predecessor/assignor had served a Notice, dated 10 February 2005, claiming entitlement to an extended lease under s.42 of the 1993 Act. By Deed, also dated 10 February 2005, he had purported to assign the benefit of that Notice to the Respondent.
4. By letter, dated 11 March 2005, the Applicant's representatives wrote to the Respondent's representatives stating: "The assignment of the Notice of Claim is not effective because it took place prior to the assignment of the lease". Authority for this statement, which has not been disputed, was indicated (a case decided in relation to the Leasehold Reform Act 1967) although s.43(3) of the 1993 Act was not cited, as it might have been, in support.
5. Then the Applicant's representatives served a Counter-Notice, dated 8 April 2005, under s.45 of the 1993 Act stating that the landlord, the Applicant, did not admit any entitlement to an extended lease at the date of the Notice for specified reasons. These reasons were partly because of alleged defects in the Notice but also because of the matter stated in the letter referred to in the previous paragraph. Service was upon the Respondent's representatives expressly "without prejudice to the validity of the Notice of Claim and its service upon our clients."
6. By letter, dated 6 June 2005, the Respondent's representatives withdrew the Notice of Claim.
7. By letter, dated 14 June 2005, the Applicant's representatives sought payment by the Respondent of their client's costs, pursuant to s.60(6) [*sic*] as follows:

   a) Attendances on client obtaining

instructions and advising (30 mins).

b) Considering Notice of Claim and researching questions which need to be confirmed (45 mins)

c) Drafting 2 preliminary Notices (15 mins)

d) Instructing Valuer and considering valuation with client (45 mins)

e) Drafting Counter Notice. (30 mins)

f) Considering and advising as to assignment of Notice of Claim (30 mins)

g) Consider Notice of withdrawal (15 mins)

h) 15 Letters Out

i)	4 telephone attendances	1080.00
	VAT	189.00
	Disbursements	
	Valuer	634.50
		£1903.60

8. By letter, dated 1 September 2005, the Respondent's representatives asserted that the claim for costs could not be substantiated. They stated: "You will appreciate that from the outset you have maintained that the Notice of Claim is invalid and in these circumstances it is clearly inappropriate to incur costs."

9. The position argued on behalf of the Applicant was that the Respondent's liability for costs continued until withdrawal of the Notice and a detailed account was given of what its representatives regarded as "necessary" on their part following service of a Notice of Claim. It was stated that the representatives' charging rate was £200 per hour plus VAT and submitted that this was reasonable. Much reference was made in submissions to instructing the Valuer and considering "the initial Valuation report".

10. The Respondent's representatives have not disputed their client's liability for reasonable costs or challenged the Applicant's representatives' own charging rate. They have, however, submitted that "all fees claimed in respect of the instruction of the valuation and the valuation fee itself are not reasonable or justifiable in the circumstances of this particular case." The relevant circumstances

were stated to be that the Notice of Claim was deemed invalid and a valuation was not required for the Counter-Notice.

11. The Tribunal has not seen the Valuer's Report or even Invoice although these were referred to by the Applicant's representatives. However, the case has been determined on the assumption that these could put in evidence if called for by the Tribunal. They are not, in fact, material since the Tribunal accepts the submission made by the Respondent's representatives.

12. The Applicant is certainly entitled to recover "reasonable costs" incurred because of the Notice of Claim, expressly including "any valuation of the tenant's flat for the purpose of fixing the premium" etc (see s.60(1)(b) of the 1993 Act). As to what is "reasonable" in this context, it is merely provided that "any costs incurred by the reversioner or any other relevant 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 was personally liable for all such costs" (s.33(2) of the 1993 Act).

13. It is quite clear from the legislation that, where a counter-notice does not admit the tenant's claim, there is no obligation or necessity to address the tenant's proposals or to make counter–proposals as to premium or otherwise (cp s.45(3) which only applies where the claim is admitted). Indeed, the Applicant's Counter-Notice did not advert to any premium. If the tenant succeeds in establishing entitlement, the landlord will be required to give a further counter-notice in which proposals may be dealt with and made (s.46(4)(b)). It is also, incidentally, now established that the validity and efficacy of a counter-notice do not depend on the premium counter-proposed being realistic as opposed simply to one initiating negotiations (see *9 Cornwall Crescent v London Ltd v Kensington & Chelsea BC* [2005] EWCA Civ 324). It follows, in the opinion of the Tribunal, that a landlord, such as the Applicant, should not reasonably expect to incur any valuation costs at counter-notice stage, particularly when entitlement is not being admitted, if bearing them himself. This being so, such costs cannot properly be passed on to tenants, such as the Respondent.

14. In the light of the above observations, the Tribunal considers that the sum of £634.50 attributed to Valuer must be disallowed as an unreasonably incurred cost. In addition, item d) 'Instructing Valuer and considering valuation with client (45 mins)' calls for a deduction of £176.25 (ie ¾ x (£200 + VAT)). The total reduction in costs is £810.75. The Tribunal, therefore, determines that the Respondent is liable for the Applicant's costs in the sum of **£1,092.85**.

CHAIRMAN

DATE 29th **November 2005**