RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

CASE NUMBER: LON/NL/5569/06

In the matter of 243 Orchard Grove London SE20 8BQ

Section 60 and 91 of the Leasehold Reform Housing and Urban Development Act 1993 ("the Act")

Applicant	:	Ms J L Brua & Ms A M Byrne
Respondent	:	Sinclair Gardens Investments (Kensington) Limited
Representations	:	Ms J L Brua on behalf of herself and Ms A M Byrne for the applicant P Chevalier & Co Solicitors for the Respondent
Date of Paper Determination	:	31 October 2006
Tribunal	:	Mr A A Dutton – Chair Mrs E Flint DMS FRICS IRRV Mr J M Power MSC FRICS FCIArb

REASONS

A BACKGROUND

1. This application relates to the cost payable by the Applicants under Section 60 of the Act.

2. The premium payable of £1,750.00 and the terms of the Lease have been agreed.

3. Directions were issued by this Tribunal on the 8th September 2006 and as a result we have before us a submission on behalf of the Landlord by its solicitors P Chevalier & Co, apparently dated 28th September 2006, comprising some 14 pages and with an extensive Appendix containing a number of case reports from the Leasehold Valuation Tribunal, Lands Tribunal and Court of Appeal, a copy of CPR 44 concerning costs, a copy of a pamphlet from the Zurich dated August 2004 and a letter from the Respondent to the solicitors dated 26th September 2006. The Applicants replied to the Respondents submission on the 11th October 2006 and provided a Schedule breaking down the work done, the fee claimed and their comments and proposals.

4. In addition to these papers we have before us a Statement by Stephen Goodman FRICS who carried out the valuation of the subject property. The Respondent's solicitors had filed a further submission in response to the Applicants reply which was dated 25th October 2006.

5. We noted all that was said and trust that the parties will forgive us if we do not recite the submissions in any detail.

6. The essence of the Respondents case was that the hourly rate for Mr Chevalier of £220.00 was reasonable, given his expertise; that the time spent was reasonable and that as the Applicants had to pay the Respondents costs on an indemnity basis the onus was upon the Applicant to show that the costs fell foul of the provisions of Section 60 of the Act.

7. The Applicants case was that the appropriate hourly rate should be at £170.00, that some of the work done was not recoverable under the Act and that the time spent was excessive.

B. THE LAW

The law is to be found at Section 60 of the Act which states as follows:-

"*60(1) Where a notice is given under Section 42, then (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 incidental to any of the following matters, namely –*

(a). any investigation reasonably undertaken of the tenants right to a new lease;

(b). any valuation of the tenants flat obtained for the purpose of fixing the premium and any other amount payable by virtue of Schedule 13 in connection with a grant of a new Lease under Section 56;

(c). the grant of a new Lease under that Section;

but this section shall not apply to any costs if on a sale made voluntarily a stipulation that they were to be borne by the purchaser would be void.

(2) For the purposes of sub-section (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 such costs

Sub-Sections (3) – (6) Not applicable

C. DECISION

1. We find that the hourly rate sought by Mr Chevalier is reasonable. He is an experienced solicitor in these matters. Indeed he told us that he had handled at least 700 enfranchisement/lease extensions for this Respondent. The Respondent is not obliged to "shop around" to find a cheaper legal adviser. With his experience, and we would suggest higher than average hourly rate for a Grade A

fee earner in Chessington in Surrey, comes of course an ability to deal with matters of this nature in an efficient and timely manner.

2. Section 60(2) is the governing factor as to quantum. Section 60(1) governs what can be claimed for. The two must be read together.

3. Section 60(1) limits the work that is chargeable to the tenant. It does not include the cost of arguing or negotiating the claim (see Hague page 552 at para 3218 of the Fourth Edition). In addition we find that it does not include the preparation of the counter notice. In this regard we note that the learned authors of Hague at page 157 para 6.39 state that the cost of the "notice in reply" are not recoverable. The wording in the 1967 Act is similar to that contained at Section 33 of the 1993 Act and we find equally attributable to Section 60. The preparation and service of a counter notice does not in our findings fall within provisions of Section 60(1).

4. Before we turn to the solicitors costs in detail we will settle the question of the valuation fee. We find that the sum of £350.00 plus VAT is reasonable. Mr Goodman's statement dated the 11th September 2006 sets out the time spent which we find is reasonable as is his hourly rate. The sum of £350 plus VAT is therefore allowed.

5. We now turn to the solicitors costs which were set out at paragraph 11 of the Respondents submission and referred to in the Schedule to the Applicants counter submission.

6. No computer printout or other time recording evidence was produced by the Respondent. It appears that a Notice under Section 44 was not served although one notice in pro forma appears to have been. We do not accept that the consideration of the valuation and discussion with the client falls within Section 60(1)(b) which we construe to relate solely to the valuation of the subject premises. For the reasons stated above we do not accept that the preparation of the counter notice is recoverable. In our finding the time spent attending the client, considering the Lease and the Official Copies of the title and considering the notice of claim could and should have been dealt with within one and a half hours. As to the letters the Applicant says that apart from Without Prejudice correspondence, which was presumably negotiating the claim, they only received two letters and we

therefore allow a further £44 in respect of same. This makes a total due for part A as set out in the Respondents submission of £374.00 plus VAT.

7. We turn now to Part B of the Respondents submission which is the work relating to the Lease. A copy of the Lease is in the bundle. We note that apart from the particulars, which are now a Land Registry requirement, the remainder of the Lease would appear to be a standard document. In our finding an allowance of an hour and a half would have been sufficient to have dealt with this matter and we would allow the four letters written at £88. That would make a total of £418.00 plus VAT for this part.

8. Mr Chevalier helpfully produced the CPR Part 44 - general rules about costs. At CPR 44.4(1) it states that whether the costs are assessed on a standard or indemnity basis the Court will not allow costs which have been unreasonably incurred or are unreasonable in amount. Furthermore it is noted at 44.43 where the amount of costs is to be assessed on the indemnity basis the Court will resolve any doubt which it may have as to whether costs were reasonably incurred or were reasonable in amount in favour of the receiving party, i.e. the Respondent. The Applicants are only obliged to pay those costs relating to the matters contained in section 60(1). The indemnity principal therefore is limited only to those items of costs which are recoverable under the Act. It is only if we consider that those costs are recoverable does the question of the amount and the reasonableness become a factor. Although Mr Chevalier did not appear to consider that proportionality was relevant, if we are going to stray into the fields of the Civil Procedure Rules then of course the overriding objective includes proportionality. Whilst it is true to say that cases involving little monetary value can be complicated and result in substantial costs being incurred in this case it was perhaps one of the most straightforward that could be envisaged. The premium was agreed without any particular fuss on the part of the Applicants, the Lease does not appear to have caused any difficulties and in our view appears to be in fairly standard format and of course the premium payable was £1,750.00. We have no doubt that if at the outset of this case the Respondent Landlord knew it faced a bill in excess of £2,000 when the premium was only £1750 there would have been a cap placed on the costs. It is at this point of course that Section 60(2) applies. In those circumstances we are satisfied that the sums that we have allowed reflect the provisions of Section 60.

9. In our finding therefore the total sum payable by the Applicants for solicitor's costs is £792.00 plus VAT which is £138.60 and the surveyors costs of £411.25. That totals £1,341.85.

Mr A A Dutton Chairman

15th November 2006