

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL (WALES)
LEASEHOLD VALUATION TRIBUNAL (WALES)
(LEASEHOLD REFORM, HOUSING and URBAN DEVELOPMENT ACT 1993, s.60)

Reference: LVT/0015/07/18
Property: 60 LONG OAKS COURT, SKETTY, SWANSEA SA2 0QH
Applicants: LEWIS AND EMMA HINDS
Respondent: FREEHOLD SECURITIES LIMITED
TRIBUNAL AVS Scott Chair

REASONS FOR THE DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

BACKGROUND

1. This is an application made by Lewis and Emma Hinds (the Applicants) for a determination of the reasonable costs payable to Freehold Securities Limited (the Respondent) for dealing with an extension to the lease of 60, Long Oaks Court, Sketty, SA2 0QH (the Property) under the Leasehold Reform, Housing and Urban Development Act 1993 (the Act). A notice had been served under the Act on 19 August 2016 but this had not been served on the management company. The Applicants paid the Respondent legal and other costs of £875.51 in respect of this notice. A further notice was served on 29 November 2016 and a premium was agreed by negotiation between the parties. The Respondent's solicitors, Messrs. Stevensons, prepared a new lease and the terms of this lease was determined by a Tribunal in 2017. The new lease was executed on 25 May 2017. The Applicants paid the Respondent £10,588.70 at completion, including £1,775 in respect of Messrs Stevensons' costs, VAT thereon of £355 and £390 in respect of a valuation fee.
2. After some correspondence, the Applicants applied to the Residential Property Tribunal under section 91 (2) of the Act for a determination of the reasonable costs payable under Section 60 (1) of the Act. Directions were given by a procedural chairman on 19 July 2018 for the exchange of submissions by the parties and for a determination of the matter without an oral hearing. The Respondent served its statement of case with reference to costs on 2 August 2018 and the Applicants served a Response on 21 August 2018. The Respondent served a further Response on 21 September 2018.
3. Section 60 provides that:
 - (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 this notice, for the reasonable costs of and incidental to any of the following matters, namely:-

- a. any investigation reasonably undertaken of the tenant's right to a new lease;
- b. any valuation of the tenant's flat obtained for the purpose of fixing the premium or any other amount payable by virtue of Schedule 13 in connection with the grant of a new lease under s.56;
- c. the grant of a new lease under that section;

(2) For the purpose of subsection (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 were such that he was personally liable for such costs

LEGAL COSTS INCURRED

4. These are contained in schedules attached to the Respondent's statement of case (one for costs incurred in connection with the August notice and one for costs incurred for the November notice) and are set out below.

item no	date	description	no of units
1	6.9.16	attendance on client obtaining instructions and advising	3
2	7.9.16	considering the lease and office copy entries and other relevant documents	2
3	8.9.16	notice re deposit	2
4	30.9.16	considering validity of tenant's notice	4
5	5.10.16	drafting counter notice	3
6	5.10.16	considering service on 3rd party	1
7			4
total	1.9 x £195		£370. 50

5. Ms. Haynes, a licensed conveyancer, carried out the above work. Mr. Stevenson, a solicitor, also spent 1.3 hours considering the validity of the notice. However, only £395 plus VAT and disbursements was claimed (and paid).
6. In respect of the November notice, the following legal costs were claimed.

A. Notice of Claim

item no	date	description	no of units
1	2-5.12.16	Attendances on client, obtaining instructions	5
2	6.12.16	Considering the Lease and office copy entries and other relevant documents	3
3	5.12.16 15.12.16	Notices and correspondence regarding deposit	4
4	5.1.17	Considering validity of Tenant's notice	3
5	11.1.17	Drafting counter notice	5
6	24.1.17	Considering valuation (1 unit) and discussing same with clients (1 unit) and valuer (1 unit)	4

7	3.2.17	Service on third party	1
8		Letters out to client seeking instructions/updating as to progress, letters out to Tenants' representatives	5
9	3.2.17	Checking file and reporting to client	4
Total		34 x £265	£901

B Costs incurred in connection with grant of lease

1	10.1.17	Considering terms of lease for inclusion in counter notice	2
2	25.5.17	Drafting new lease incorporating terms of counter notice	5
3	May to July 2017	Negotiating lease with Applicants' solicitors	9
4	1.2.18	Prepare engrossment and check	2
5	5.18	Attend to completion	5
6		5 letters out	5
7	25.5.18	Checking file and reporting to client	5
Total		33 x £265	£874.50

7. The legal costs in respect of the August notice were not disputed by the Applicants.
8. In the application for a determination on costs, the Applicants say that given the short time period between the notice served in August and the one served in November, it was not necessary for the Respondent's solicitors to peruse the title deeds in full. Minimal time should have been taken ensuring there had been no changes since the initial work undertaken. The Applicants could not see how costs of more than £395 could have been incurred. The Applicants assumed that the balance (£1775-£395) must have been spent on drafting the new lease, ie 12 hours and since the additional clauses sought to be introduced into the lease had been rejected by the Tribunal, then the Applicants should not be responsible for those costs.
9. The Respondent, in its statement of case, has set out the work reasonably required in relation to a notice served under the Act.
10. In its response to the Respondent's submission, the Applicants complained that no timesheets had been provided to support the time claimed to have been spent and that only one valuation fee had been incurred. This was agreed by the Respondent so that £390 is refundable to the Applicants.
11. The Applicants also asserted that while they did not dispute the fees incurred in connection with the August notice, they take issue with Mr Stevenson spending 34 units undertaking work for which Ms. Haynes had only spent 19 units. The Applicants felt that Mr. Stevenson should only have checked to see that there had been no change since the initial work was undertaken. Since a counter notice had already been prepared in relation to the August notice, that could provide the basis for the notice in response to the November notice. In addition, as Mr Stevenson was more experienced than Ms. Haynes, he should not have needed to spend more time than Ms. Haynes, even if it was necessary to repeat work already carried out.

12. The Applicants also objected to having to pay for a more experienced fee earner and did not see why Ms. Haynes could not have continued to carry out the work. A further objection was made to 6 units in total being spent by Mr. Stevenson on the valuation in January 2017, which valuation was dated September 2016 and should instead have been considered by Ms. Haynes and included in the earlier bill. The Tribunal noted no time had, in fact, been recorded in the earlier bill for considering the valuation.
13. The Applicants also objected to time spent by Mr. Stevenson in considering the terms of the lease for inclusion in the counter notice (item 1 of table B above) on the grounds this was already included in part A, item 5 (drafting counter notice). The Tribunal did not accept this. Only 7 units in total had been spent on the Counter Notice and considering the lease which appeared to be Tribunal to be reasonable.
14. Also disputed was the time spent in negotiating the lease with the Applicants' solicitors. The Applicants objected to this item on the basis terms sought to be included were rejected by the Tribunal. *Hague* (6th Edition) has noted from *Huff v Trustees of the Sloane Stanley Estate* Unreported 1997 LVT that section 60 (1) c has been construed as meaning the costs of and incidental to the drafting and execution of the new lease and will not include the costs of arguing or negotiating the claim. The Respondent in its response served in 21 September 2018 asserts that these costs are within the contemplation of s 60 (1) of the Act and that the decision of the Upper Tribunal in *Sinclair Gardens Investments (Kensington) Limited v Wisbey (2016) UKUT 0203* specifically approves the recovery of such costs. However, the Upper Tribunal simply found that having regard to the amount of units and the amount of work done, an unreasonable amount of time had not been spent on work concerning the cost of the lease. In that case, the work concerned was described as agreeing final form of lease and considering revisions thereto and only 4 units in total were claimed. Mr. Stevenson has claimed 9 units, having also claimed 2 units for considering terms of the lease for inclusion in the counter notice and drafting new lease. The tribunal considered that the work did come within the terms of s 60 (1) but found 5 units to be reasonable for negotiating the terms of the lease.
15. A further point made by the Applicants was that they should not have to pay a charging rate of £265 for a representative despite one with a charging rate of £195 being available, or having to pay for legal work which had already been carried out. The Applicants also objected to charges for correspondence with the intermediary lessee.
16. In its further response, the Respondent objected to the provision of time sheets which were privileged and in any event pointed to the schedules which gave details of what work had been carried out. The Respondent further accepted the second valuation fee would not be incurred and that a refund would be made. The reference to correspondence with the intermediate lessee was a mistake but in any event, no charge had been made for this.
17. The Respondent clarified it had been necessary for Mr. Stevenson to carry out work in relation to the November notice as Ms. Haynes had left on maternity leave. Mr. Stevenson disputed that the work done was duplicated; a different notice had to be considered and the previous notice had to be considered to avoid contradiction and advice needed to be given to the client to explain why a second notice had been served. Consideration also had to be given to the validity of the second notice and to possible terms of the lease, which had not been necessary in relation to the August notice. The Respondent also asserted that it was

entitled to instruct a solicitor of its own choosing and was not obliged to choose a cheaper solicitor.

18. The Respondent also made the point that the second valuation had to be considered in connection with the notice, even if the Applicants had no liability for the valuation fee itself.

19. The Tribunal accepted the Respondent's submissions in its response served on 21 September 2018 and that the Respondent was entitled to a solicitor of its own choosing. Mr. Stevenson's charge out rate was not unreasonable and the change of solicitor was unavoidable. Further, except for a reduction in the number of units allowed for negotiating the terms of the lease, the Tribunal found the costs claimed in schedules A2 and A3 to be reasonable and to come within s60 (1) of the Act.

20. The costs payable by the Applicants are therefore as follow

Legal costs in connection with August notice	£395
Legal costs in connection with November notice	£1696
Sub total	£2091
VAT at 20%	£418.2
Land registry costs	£15
Postage	£14.91
Total	£2539.11

21. The Respondent should refund the valuation fee (£390) and the small reduction in the legal costs (£127.20).

Signed this 15th day of October 2018



CHAIR