



LRA/49/2007

LANDS TRIBUNAL ACT 1949

LEASEHOLD ENFRANCHISEMENT – costs – Leasehold Reform, Housing and Urban Development Act 1993, section 60

**IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE LEASEHOLD
VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL**

BY

MOYVALE PROPERTIES LIMITED

Appellant

(No Respondent)

**Re: Flats 1, 3, 7 and 11 Westly Court
Dartmouth Road
London
NW2 4EL**

**DECISION BY N J ROSE FRICS
ON WRITTEN REPRESENTATIONS UNDER RULE 27,
LANDS TRIBUNAL RULES 1996**

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DECISION

1. This is an appeal by Moyvale Properties Limited, the landlord of a block of flats known as Westly Court, Dartmouth Road, London, NW2 4EL, against a decision of the Leasehold Valuation Tribunal for the London Rent Assessment Panel. The decision related to an application by the lessees of Flats 1, 3, 7 and 11 Westly Court, seeking a determination of the premiums payable for lease extensions in respect of their respective premises. The LVT's amended decision, contained in a notice incorporating numerous corrections, was that the premiums payable were £14,180 (flat 1), £14,193 (flat 3), £14,443 (flat 7), and £14,364 (flat 11) and that the reasonable costs payable pursuant to section 60 of the Leasehold Reform, Housing and Urban Development Act 1993 were £240 plus VAT per flat.

2. Permission to appeal against the LVT's decision on the costs was granted by His Honour Judge Huskinson. The lessees' representative at the LVT hearing, Mr Tim O'Keeffe of Buy Your Freehold Limited, advised that his clients did not wish to be parties to the appeal, which was conducted without an oral hearing pursuant to rule 27 of the Lands Tribunal Rules 1996. Written representations on behalf of the appellant were submitted by Mr A W Baars, of Rokeby Johnson Baars LLP, solicitors. He claimed £450 plus VAT per flat in respect of the appellant's section 60(1)(a) costs (for investigating the tenants' right to a new lease); £450 plus VAT per flat in respect of its section 60(1)(b) costs (for valuing each flat in order to fix the premium payable) and £390 plus VAT per flat in respect of its section 60(1)(c) costs (for the grant of a new lease). These costs totalled £1,290 per flat.

3. In support of the appeal, Mr Baars relied on the contents of his witness statement to the LVT. This explained that he had been instructed to act for the appellant in connection with claims for extensions of the leases of eight flats, Nos. 1, 3, 4, 6, 7, 9, 10 and 11. He informed his client that his charging rate was £240 per hour and that of his assistant £150 per hour. He explained that he would deal with the majority of the work personally, because it was complex and because of the potentially serious consequences of any error.

4. Mr Baars said that he would normally expect section 60(1)(a) costs to be in the region of £750 plus VAT and disbursements per flat. He produced a breakdown of the time spent dealing with all eight flats. It showed that he had worked for a total of 15.5 hours and his assistant 1.9 hours. Based on charging rates of £240 and £150 per hour respectively, his firm's total time charge was £4,005, or approximately £500 plus VAT and disbursements in respect of each flat. The difference between this figure and the normal rate of £750 per flat was the result of dealing with multiple claims in this case. Extraordinary charges were incurred in connection with flat 6, because of the delay before the lessees of that property accepted that their application was invalid and withdrew it. In order to reflect that situation, Mr Baars said that he had charged his client £450 plus VAT and disbursements in respect of each flat other than No.6. In accordance with the indemnity principle he considered that figure to be the amount recoverable from each of the claimants in respect of section 60(1)(a) costs.

5. Turning to the section 60(1)(c) costs Mr Baars said that, at the time of dictating his statement, he had spent an additional 30 minutes drafting new leases in respect of each flat and, subject to the form of those leases being agreed, he anticipated that a further one hour of his assistant's time and 30 minutes of his own time would be incurred in completing each of the new leases in respect of flats 1, 3, 7 and 11. This would produce a further £390 plus VAT and disbursements per flat.

6. On the subject of the section 60(1)(b) costs, Mr Baars submitted a copy of his letter dated 13 June 2005 to Messrs Redferns, solicitors for the lessees of flat 6, detailing the appellant's costs incidental to the investigation of the claim in respect of that property. The costs claimed included valuation fees of £450 plus VAT.

7. Although the lessees took no part in this appeal, Mr Baars produced a copy of Mr O'Keeffe's statement to the LVT. So far as is relevant, Mr O'Keeffe said:

“The Applicant proposes £300 including VAT per flat for the section 60(a) and (c) costs (legal costs) on the basis that the freeholder's solicitors carried out their investigation into eight section 42s served at the same time, and that the terms of the surrender and regrant are identical.

The Applicant proposes £200 including VAT per flat for the section (b) costs (valuation costs) on the basis that eight flats were valued by the freeholder's valuer at the same time. The flats are similar in proportion and have identical lease lengths and similar ground rent.”

8. The LVT's decision dealt with section 60 costs as follows:-

“25. Evidence on this matter was given in the form of a witness statement and exhibit from Mr Adriaan Willem Baars dated 3/4/06, together with his oral evidence in which costs of £4,0005 (sic) (plus VAT) were sought. Mr O'Keeffe submitted that a rate of £250 per flat would be appropriate and the hourly rate of £240 per hour was in excess of the more usually permissible £230 per hour. Mr Baars stated that although Mr O'Keeffe had drafted a short form lease the respondent considered this unacceptable and a new lease had to be drafted.

26. From looking at the schedule of costs prepared by the respondent it is the Tribunal's opinion that many of the items claimed relate to flats 4, 6, 9 and 10 and not the subject flats. Consequently, the Tribunal disallows those costs from these applications together with those costs that fall outside those permitted by section 60 and the respondent must seek those costs elsewhere, if appropriate. The Tribunal, adopting a broad-brush approach and having regard to economies of scale, determines that the reasonable costs payable are £240 (plus VAT) per flat”.

9. These conclusions suggest a misunderstanding of the evidence given to the LVT. Firstly, Mr Baars did not seek reimbursement of the entire figure of £4,005 plus VAT (which related to section 60(1)(a) costs), but only £1,800 plus VAT (four flats at £450 each). In arriving at that figure, he had adjusted for the fact that four of the flats with which he had dealt were not the

subject of the application to the LVT. Secondly, the LVT did not refer to the evidence given by the parties concerning section 60(1)(b) costs and no determination was made in respect of such costs. Thirdly, the total costs awarded, £240 plus VAT per flat, were approximately half the figure which had been suggested by the lessee's representative, namely £500 including VAT.

10. In the absence of any evidence submitted to this Tribunal by the lessees, I find that the amounts claimed by Mr Baars for section 60(1)(a) and (c) costs, totalling £840 plus VAT per flat, represented reasonable costs. (I exclude disbursements in the absence of any significant evidence as to the amounts involved). Mr Baars's evidence on section 60(1)(b) costs was less persuasive. It consisted simply of a letter from his firm, stating that valuer's fees in respect of flat 6 were £450 plus VAT. No evidence in support of the reasonableness of that figure was produced. In any event, flat 6 did not form the subject of this appeal. Before the LVT, the lessees' representative proposed a fee of £200 including VAT per flat for section (b) costs. In the absence of adequate evidence to support a higher figure, I find that the reasonable costs under section 60(1)(b) are £200 including VAT for each flat.

11. There is no respondent to this appeal and I make no order as to costs.

Dated 25 January 2008

N J Rose FRICS