

2760.



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **CHI/19UG/OLR/2013/0090**

Property : **19, The Flats, Organford Road, Holton Heath, Poole, Dorset BH16 6JY**

Applicant : **Ms. Heather Brooks**

Representative : **Kiteleys Solicitors**

Respondent : **Pramdale Co Limited**

Representative : **Rice-Jones & Smith Solicitors**

Type of Application : **Section 91 (2)(d) of the Leasehold Reform, Housing and Urban Development Act 1993**

Tribunal Members : **Judge D. R. Whitney**

Date of Decision : **8th October 2013**

DECISION

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1. This was an application to determine the terms of the acquisition of a lease renewal under the Leasehold Reform Housing and Urban Development Act 1993. By way of letter dated 31st May 2013 the Applicants solicitors indicated that she wished to withdraw the application for a lease renewal. The application has however proceeded to determine what if any costs the Respondent is entitled to recover under Section 60 of the Leasehold Reform Housing and Urban Development Act 1993.

2. Directions were issued dated 17th June 2012 for determination as to the issues relating to costs.

THE LAW

3. The relevant law is set out in section 60 of the Leasehold Reform and Urban Development Act 1993 ("the 1993 Act"):

S.60 Costs incurred in connection with new lease to be paid by tenant.

(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 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 section 56;

(c) the grant of a new lease under that section;

but this subsection 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 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 had been such that he was personally liable for all such costs.

(3) Where by virtue of any provision of this Chapter the tenant's notice ceases to have effect, or is deemed to have been withdrawn, at any time, then (subject to subsection

(4)) the tenant's liability under this section for costs incurred by any person shall be a liability for costs incurred by him down to that time.

(4)A tenant shall not be liable for any costs under this section if the tenant's notice ceases to have effect by virtue of section 47(1) or 55(2).

(5)A tenant shall not be liable under this section for any costs which a party to any proceedings under this Chapter before a leasehold valuation tribunal incurs in connection with the proceedings.

(6)In this section "relevant person", in relation to a claim by a tenant under this Chapter, means the landlord for the purposes of this Chapter, any other landlord (as defined by section 40(4)) or any third party to the tenant's lease

DISCUSSION

4. The Respondent seeks to recover solicitor's costs of £1,260+VAT, £8 disbursements and valuation fee of £650 plus VAT. The Respondents solicitors have attached a copy of a letter of appointment dated 13th August 2012 confirming that the solicitor's costs will be charged at £225 per hour plus VAT and estimated that the costs would be in the order of £900 to £1000.
5. A Counternotice pursuant to section 45 of the 1993 Act was served "without prejudice" to the Respondents contention that the original notice was invalid. This notice was dated 10th September 2012. The Respondents solicitors were of the opinion that the Initial Notice was not valid.
6. The Applicant contends that no costs are payable to the Respondent as the notice served was invalid and the provisions of the 1993 Act do not therefore apply. Further if this argument is not accepted by the Tribunal in a letter to the Respondents solicitors dated 17th July 2013 they challenged the amount of the costs claimed as being excessive. It appears from this they would contend that one hour is a reasonable amount of time to be spent if any time is allowed. The Applicants solicitors do not appear to challenge the hourly rate charged or the quantum of the Valuers fee and disbursements if the Tribunal determines that any costs are payable.

DECISION

7. The Tribunal determines that the Respondent is entitled to recover its costs under section 60 of the 1993 Act.

8. The Applicant had served an Initial Notice and sought to argue that the same was a valid notice. The Applicant eventually conceded that the Notice was invalid by way of letter to the Tribunal dated 31st May 2013 after the Applicant had made application to the Tribunal to determine the terms of the lease renewal. The Respondents plainly instructed solicitors and surveyors to advise on the terms of the Initial Notice. The Tribunal reminds itself that this is a statutory process. In the Tribunal's determination the Respondent is entitled when receiving a Notice under the 1993 Act to instruct solicitors and recover costs as set out in section 60 of the 1993 Act.
9. As to the quantum the Tribunal finds that the disbursements of £8 and valuers fee of £650+VAT are properly payable by the Applicant to the Respondent.
10. As to the solicitors costs the Tribunal has had regard to the breakdown provided by the Respondents solicitors and the Applicants solicitors response to the same. The Tribunal is mindful of the test to be applied which is set out in section 60 (2) of the 1993 Act. In general terms the Respondent is entitled to expect his representative to undertake a thorough review of the notice. The Tribunal notes that the fee earner with conduct is said to be "a Conveyancing manager with over 30 years experience". The Tribunal notes that the estimate to the client was £900 to £1000. The Applicant contends that certain costs are not recoverable under section 60 of the 1993 Act or that the time spent considering documents, correspondence and preparing replies was too long.
11. The Tribunal looks to take a broadbrush approach to determining the amount payable. The Tribunal is mindful that there were some unusual features to the Initial Notice and matters relating to the same. The fee earner with conduct was said to be an experienced practitioner. He estimated £1000 as the upper end of the costs. The Tribunal is of the opinion that with a lease extension, even one involving a potential assignment of the benefit of a Notice, some four and a half hours of solicitors time is reasonable to review and respond to the Initial Notice. In the Tribunal's opinion solicitors costs of £1000+VAT are reasonable and this is the amount the Tribunal determines that the Applicant should pay.

12. The Tribunal determines that the Applicant should pay:

- **Solicitors fees £1000+VAT**
- **Disbursements £8**
- **Valuers fees £650+VAT**

TOTAL £1988 INCLUSIVE OF VAT

Judge D.R. Whitney