

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LONDON RENT ASSESSMENT PANEL &
LEASEHOLD VALUATION TRIBUNAL



**Residential
Property**
TRIBUNAL SERVICE

S.60 Leasehold Reform, Housing and Urban Development Act 1993

DECISION & ORDER

Case Number: CHI/45UF/OLR/2006/0012

Property: Flats 12,13,25 and 65
Abbotsbury Court
Horsham
West Sussex RH13 5PT

Applicants: Jack Wigan and Katherine Wigan

Respondents: Mortgage Investment Funds Limited [1]
Semdall Residents Association Limited (Flats 12,13,25) [2]
Roffey Management Limited (Flat 65) [3]

Application: 18 November 2005

Consideration: 11 October 2006

Decision: 16 October 2006

Tribunal: Ms J A Talbot MA (Cantab)

Summary of Decision

The Tribunal determines that the amount payable by the Applicants to the First Respondents in respect of the legal costs of new leases shall be the sum of £2,693. VAT is to be added to this figure as appropriate.

Application

1. The Applicants had made an Application to the Tribunal pursuant to Section 42 of the Leasehold Reform Housing and Urban Development Act 1993 ("The 1993 Act") to determine various matters in relation to the grant of new leases.
2. By the date of the consideration, the parties had agreed all outstanding matters except for the amount of costs payable by the Applicants to the First Respondents. Valuation costs and costs claimed on behalf of the Second Respondents were agreed.
3. Directions were issued by the Tribunal on 14 March 2006 in relation to the substantive valuation matters, amended by letter dated 20 September 2006 noting that terms had been agreed other than the matter of costs and confirming that the costs would be determined by the Tribunal on the basis of written representations.
4. Solicitors for both parties provided written submissions, dealing with a schedule comprising a computerised printout of time spent, which were duly considered by the Tribunal on 11 October 2006. Solicitors for the Applicants were Dean Wilson Laing ("DWL"). Solicitors for the First Respondents were Osler Donegan Taylor ("ODT").

Law

5. The law is to be found at Section 60 of the 1993 Act, which deals with costs incurred in connection with new leases to be paid by the tenant, and provides, insofar as is relevant:

(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 a 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) ...

(4) ...

(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.

Consideration

6. The Tribunal carefully considered the written submissions and the schedule.
7. Separate notices under Section 42 of the 1993 Act, all dated 20 October 2005, were served by DWL on behalf of the tenants of 5 flats at Abbotsbury Court: flats 12,13,24,25 and 65. The new lease of flat 24 had been completed and the costs paid. Therefore the submissions as to costs related only to the 4 remaining flats.
8. A copy of the schedule was attached to each submission, but some difficulties arose. The schedule set out the time spent, fee earner's initials and brief narrative but did not include the actual costs, either of each item, or any totals or sub-totals.
9. Work was recorded work separately for each flat, including flat 24, which according to the submissions had already been agreed and paid. The Tribunal therefore assumed that these items were not at issue.
10. Further, the 2 copies of the schedule were not identical. They were presented differently and there were different entries. For example, ODT's copy included 13 items of work on flat 12 from 24/07/2006 to 28/09/2006 which did not appear on DWL's copy.
11. From the narrative, the Tribunal presumed that these items related to work connected with the costs issues (as the entry for 01/08/2006 reads "prepare printouts and letter to DWL"). These costs are not recoverable as they relate to the LVT proceedings. It is further presumed that, as they were excluded from the printout sent to DWL, they do not form part of the total costs claimed by ODT.
12. The total amount of costs claimed by ODT was £3,604 for all 4 flats. This appeared to derive from a global total of £4,505 for 5 flats, equating to £901 per flat. The total amount of costs for all 5 flats was stated to be £4,505 (all exclusive of VAT).
13. DWL framed their objections by agreeing certain items but disagreeing with others, which they submitted should be deducted from the total. ODT responded by conceding certain deductions but defending the remainder of the costs. For the sake of simplicity the Tribunal has adopted the same approach in making its determination.
14. Various matters were agreed. The hourly charging rates for the fee earners acting in the case were agreed at £130 per hour (£13 per unit for a 10 unit hour) for a trainee solicitor and £200 per hour (£20 per unit) for a partner. The valuer's fees of £250 per flat (excluding VAT) were agreed.
15. ODT conceded that the cost of work connected with the LVT proceedings should be deducted. These costs are of course specifically excluded by Section 60(2) of the 1993 Act. ODT quantified this as 24 units at £130, but the Tribunal has identified 23 units: 22 at £130 and 1 at £200. The sum to be deducted is therefore **£306.**

16. ODT further accepted that time recorded on flat 24 from 07/09/2006 should not be charged to all 5 flats, so that 9 units at £130 should be further deducted. The sum to be deducted is **£117**.
17. DWL objected to elements of duplication of legal work across the 4 flats, arguing that the matters should have been dealt with together and that standard formats could have been used to avoid unnecessary duplication.
18. ODT argued that as separate notices relating to different flats were served, separate files were opened and treated as distinct matters. Hence the schedule was divided into work recorded in relation to each flat. Subsequently, in correspondence, ODT agreed to deal with the matters jointly where possible.
19. The Tribunal accepted that in principle it was reasonable for ODT to open separate files. Although the leases were all granted at the same time, they were tri-partite leases including different management companies represented by different solicitors, so some additional individual administrative work on each case was required.
20. ODT explained that 66 units at £130 were recorded on 02/06/2006 apportioned across the flats, though this was not immediately clear from the schedule. DWL argued that this was excessive. ODT contended that 66 units apportioned across the flats was reasonable, as the matter was complex because of the tri-party leases and ongoing correspondence about the form of the Deed.
21. The Tribunal decided that the costs charged were excessive, given that the Deeds were presumably substantially the same. Tri-partite leases are not unusual and do not present major drafting difficulties. Minor adjustments may have needed for each flat, and it would be reasonable and necessary to check each Deed individually, but this did not justify 66 units.
22. The Tribunal allowed 30 units globally for drafting and amending the Deeds. Accordingly the amount to be deducted is 36 units at £130, a sum of **£468**.
23. DWL objected to time recorded for flat 12 on 09/05/2006 and 12/05/2006 for researching Hague concerning the law. This was a total of 6 units at £130 and 1 at £200 being discussion with the supervising partner. The Tribunal followed the general principle solicitors are expected to know the relevant law and that no additional chargeable time should be allowed for research. Accordingly the amount to be deducted is **£98**.
24. DWL objected to Counsel's fees of £490 plus VAT. This sum was in addition to the time recorded costs on the schedule. ODT contended that the cost of the advice was justified because it related to the effect on the valuation of an agreement not to invoke a rent review clause. The Tribunal decided it was not reasonable for the landlord to incur this cost. A valuer should be quite capable of taking such a point into account in the valuation exercise, in discussion with the solicitor on legal points as necessary. Counsel's fees were disallowed.
25. DWL objected to time spent in dealing with solicitors acting for one of the management companies and checking various matters concerning whether ground rent payments were up to date, and extending the lease for the common parts. The Tribunal accepted that these tasks were necessary to complete the transactions, given that new leases were to be granted at a peppercorn rent, and that the amounts were reasonable. These costs were allowed.

26. Finally, ODT claimed future costs for further work relating to completion formalities estimated at £78 (6 units at £130). The Tribunal decided that this was reasonable and allowed these costs.

Determination

27. As shown in the Table below, in total the Tribunal disallowed the sum of **£989** and Counsel's fees of **£490**. Costs for future work relating to completion formalities are allowed at **£78**.

Amount claimed (excluding VAT)	Amount disallowed (see above)	Amount allowed (see above)
£3,604 ODT's costs incurred	£989	£2,615
£78 yet to be incurred	Nil	£ 78
£490 Counsel's fees	£490	Nil
Totals	£1,479	£2,693

28. The total amount payable by the Applicants to the First Respondents is therefore **£2,693**. VAT is to be added to this figure as appropriate.

Dated 16 October 2006


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Ms J A Talbot
Chairman