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**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

**LEASEHOLD REFORM HOUSING AND URBAN DEVELOPMENT ACT 1993**

**Ref: SB/LON/00AH/OLR/2009/0343**

<b><u>Property:</u></b>	24 St. James's Court St. James's Road Croydon Surrey CR0 2SF
<b><u>Applicant:</u></b>	Andrew Alexander Allen
<b><u>Respondent:</u></b>	Daejan Properties Limited
<b><u>Date of Application for a Determination of Terms of Acquisition:</u></b>	18 June 2009
<b><u>Date of Agreement as to Terms of Acquisition:</u></b>	22 January 2010
<b><u>Date of Tribunal Directions in respect of costs:</u></b>	26 January 2010
<b><u>Date of Decision:</u></b>	17 March 2010
<b><u>Tribunal:</u></b>	Mr S Shaw LLB (Hons) MCI Arb

## DECISION

### INTRODUCTION

1. This case involves a determination of the costs payable by the Applicant to the Respondent following agreement reached between the parties as to the terms of acquisition of a new lease in respect of 24 St. James's Court, St. James's Road, Croydon, Surrey CR0 2SF. An application was made to the Tribunal on 18 June 2009 for the Tribunal to determine terms of the acquisition, but in the event the parties reached agreement in this regard on 22 January 2010. The Respondent is entitled to recover certain legal and valuation costs pursuant to Section 60 of the Leasehold Reform Housing & Urban Development Act 1993. The parties have not been able to agree those costs, and as a result the Tribunal has been requested to make a determination in that regard.
2. On 26 January 2010 the Tribunal issued Directions for the parties to set out their respective cases concerning the costs dispute. Following those Directions the Respondent landlord through its solicitors (namely, Wallace LLP) submitted its detailed costs claim to the Tribunal. That claim was for £1,958.50 plus VAT for legal fees and certain other sums for disbursements. Valuer's fees were claimed in the sum of £650 and that element of the costs is not in dispute. The Applicant, through his solicitors (namely Juliet Bellis & Co) on or about 9 March 2010 submitted a response to the schedule of costs submitted on behalf of the Respondent, and in that response challenged various items so as to arrive at total recoverable fees under the Act of £1,146 (exclusive of VAT) together with some further disputes about the disbursements. As indicated, the valuation fees were agreed at £650.
3. By witness statement made by Fleur Leonie Neale dated 12 March 2010, the Respondent through its solicitors dealt with the various challenges made on behalf of the Applicant and referred to various documents and authorities to support the charges made.

4. It is proposed to deal with each of the challenges made on behalf of the Applicant in turn, and in each such case to give the Determination of the Tribunal in relation to these specific challenges.
5. The first point taken on behalf of the Applicant is that an hourly charge-out rate of £325 has been used by the Respondent's solicitors and that this rate is too high. The alternative rate suggested (for a partner) is £275 per hour.
6. So far as this challenge is concerned, the Respondent's solicitors contend that the rates charged are entirely consistent with the usual charge-out rate for solicitors in Central London. They further contend that the nature of this work is complex and specialised, and that under the Act, and the principles of reasonableness referred to in two earlier Tribunal Decisions referred to at paragraph 16 of the Respondent's witness statement, this charge-out rate is entirely reasonable.
7. The Tribunal notes that in a Decision of this Tribunal made in May 2004, a charging rate of £300 per hour at partner level was acceptable by the Tribunal and that there was no obligation to find the cheapest solicitors available for doing this type of specialised work. Section 33(2) of the 1993 Act was referred to in that earlier case (*Daejan Investments Limited -v- Parkside 78 Limited LON/ENF/1005/03*) and there are analogous provisions in Section 60(2) of the Act, to the effect that 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.
8. In the experience of the Tribunal, this area of the law is indeed complex and specialised. This hourly charge of £325 per hour is not in the experience of the Tribunal outside the range adopted by Central London firms for such work. This first challenge is therefore determined in favour of the Respondent.

12. The Applicant has challenged the charging of VAT on the basis that if the landlord is registered for VAT then this should not be included in the sum claimed by the Applicant. In fact the Respondent is a property management company and thus not registered for VAT purposes. Accordingly the sum appears properly recoverable pursuant to Section 60 of the Act and this sum is allowed.
  
13. Courier fees in the sum of £20.81 plus VAT have been claimed but challenged on the basis that it was neither reasonable nor necessary to utilise a courier. The Respondent contends that the “draconian” consequences of failure to serve a Counter Notice on time justify the use of a courier. The wholesale use of couriers in these circumstances may not always be justified, but in this particular case the claim is modest and the reasons given on behalf of the Respondent at page 9 of its witness statement seem to the Tribunal to be satisfactory, and this sum is allowed.
  
14. Finally, land registration fees have been claimed in the sum of £44, whereas the Applicant contends that title was deduced by provision of official copies and copy lease and this claim should be limited to obtaining the freehold official copies at £4. The explanation for the incurring of these fees is given at paragraph 20(h) of the Respondent’s submissions. It appears that deduction of the tenant’s title was requested on 4 November 2008 but the documents were not immediately forthcoming and, given the strict time limits for service of the Counter Notice, an application was made to the Land Registry in order that the documents could be forwarded to the Respondent’s valuer in good time; this resulted in the documents being obtained from the Land Registry on 10<sup>th</sup> and 12<sup>th</sup> November 2008, the request to the tenant not having been responded to until some three weeks later on 24 November 2008. It seems to the Tribunal that this is a reasonable explanation for the incurring of a relatively modest disbursement fee and this challenge is not sustained.

## CONCLUSION

15. For the reasons indicated above legal fees claimed in the sum of £1,950 together with VAT are allowed, as are the other disbursements in respect of courier's fees and land registration fees set out in the Respondent's schedule of costs. The costs as claimed, whilst coming at the upper end of the scale, seem to the Tribunal to be within the band of reasonableness for the purposes of the Act, and as indicated are allowed as claimed.

Legal Chairman: S. Shaw



Dated: 17 March 2010