

2015

Ref LON//00AU/OC9/2010/0034

**LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT  
ASSESSMENT PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATION  
UNDER SECTION 60 OF THE LEASEHOLD REFORM, HOUSING AND  
URBAN DEVELOPMENT ACT 1993**

**Applicants**                      **Seth George Hartley**

**Respondent:**                      **(1) Joseph Friedman and Janet Friedman**  
                                                 **(2) Keniston Housing Association Limited**

**Re:**                                      **Flat 9 318 Hornsey Road London N7 7HE**

**Date of Hearing**                      **6<sup>th</sup> October 2010-**

**No parties attended the hearing**

**Members of the Leasehold Valuation Tribunal:**

**Mr P L Leighton LLB(Hons)**  
**Mr P J Casey MRICS**

**Date of Tribunal's decision:**    **6<sup>th</sup> October 2010**

## **Introduction**

- 1 By an application dated 10 August 2010 the Applicants applied to the Tribunal for a determination of the costs of the two respondents under Section 60 of the Leasehold Reform Housing and Urban Development Act 1993 ("the 1993 Act") in respect of a claim made by the Applicant for a new lease pursuant to section 42 of the Act for the property known as Flat 9 318 Hornsey Road London N7 7HE ("the flat")
- 2 All other issues between the parties were agreed so that the only matter which requires determination by the Tribunal is the issue of costs
- 3 Directions were given on 12 August 2010 when the Tribunal considered that the application was suitable for determination on the paper track. The Applicant however requested an oral hearing of the application and the matter came before the Tribunal on 6 October 2010.
- 4 Prior to the hearing the Applicant through his solicitors Messrs Bolt Burden and Co -settled the issue of the freeholders costs so that the only matter which remained were the legal costs of the Second Respondent, the intermediate leaseholder of the property. In the event neither party chose to attend the hearing and the Tribunal proceeded to determine the case on the basis of the written representations of the parties.

## **The Facts**

- 5 The Applicant holds on a sub lease dated 2 July 1999 and expiring on 20 March 2071 at a peppercorn rent from Keniston Housing Association Limited who hold on a lease from the First Respondent
- 6 By a notice dated 11 December 2009 the Applicant applied for an extended 90 year lease under the 1993 Act and proposed a payment of £16,250 to the First Respondent and £1325 to the Second Respondent
- 7 In the event the lease was granted on payment of £18,600 to Keniston and £1325 to Mr and Mrs Friedman

- 8 The schedule of costs prepared by the Second Respondent's solicitors amounted to £3300 plus VAT and the schedule of costs for the First Respondent's solicitors amounted to £1525 plus VAT. In the event the Second Respondent's costs have been settled in the sum of £2000 plus VAT following the initial offer by the Applicant in its statement of case of a figure of £1505 plus VAT. In addition the initial assessment by the Applicant in relation to the First Respondent's costs came to £790 plus VAT and has been put forward in respect of those costs.

**The Law .**

- 9 Section 60 of the Act provides as follows: -  
*“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 had been incurred by any relevant person in pursuance of the notice for the reasonable costs of and incidental to any of the following:-*  
*(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*
- 10 Apart from the above provisions no costs are payable by the tenant in seeking an extension to the lease. . Any costs claimed by the landlord, therefore must be shown to fall within one of the above heads
- 11 The application of principle in these cases has been considered by Professor Farrand in **Daejan Properties Ltd –v- Parkside 78 LON ENF 1005/03** and by Mr S Carrott in **Daejan Properties Ltd –v- Twin LON/ 00BK/2007/0026** and **Daejan Properties Ltd –v- Katz and Katz LON 00AC/OC9/2008/0004**. The principles in those cases establish that the landlord is entitled to instruct solicitors of his choice and is not required to shop around for the cheapest solicitors or those practising near to the

property in question and that the approach of the Tribunal to the costs issue is in the nature of a "broad brush" approach.

- 12 The Tribunal also had regard to the decision of **Serlby Court 29**  
**Somerset Square Addison Road London W14 LON/ENF 1254/04** in

which Lady Wilson stated

*"We agree with Mrs Israel that the work done after the date when the counter notice was served does not fall within subsections 33(a) (b) and (c). Nor, we consider does the counter notice fall within them. It is a commonly held misconception that all legal work done for the landlord up to and including the drafting of the counter notice falls within those provisions. That is not the case and the wording of the subsection is very specific"*

#### **The Tribunal's Determination**

- 13 Whilst it is clear that the solicitors for the First respondent had fewer duties to perform than those of the Second respondent it was nonetheless necessary for them to carry out certain tasks to ensure the validity of the notice served and to take appropriate steps to safeguard their client's interest
- 14 The Tribunal considers that the settlement reached with the Second Respondent appears to be fair and reasonable. It was based upon an increase in the original sum offered by about a third and the Tribunal considers that if the Applicant's latest offer of £790 were increased by about a third that would fairly represent the costs which ought to be paid to the First Respondent solicitors.
- 15 If a figure of slightly less than a third is applied it would give rise to a figure of £1000 which the Tribunal considers on a broad brush basis would be fair and reasonable to reflect the First Respondent's costs.
- 16 Accordingly the Tribunal determines the legal costs of the First Respondent in the sum of £1000 plus VAT

Chairman Peter Leighton  
Date 6 October 2010

