

IN THE RENT ASSESSMENT PANEL
FOR THE LEASEHOLD VALUATION TRIBUNAL
LEASEHOLD REFORM HOUSING AND URBAN DEVELOPMENT ACT 1993,
SECTIONS 48 & 60

LON/OOAC/OC9/2008/0038

Premises: 3 Tudor Mansion, 87 Church Road, London NW4 4DT

Applicant/landlord: Daejan Properties Limited

Represented by: Wallace LLP

Respondent/tenants: Mr. C E McCormack

Represented by: Newman Law

Tribunal: Ms. LM Tagliavini, LLM, DipLaw, BA Hons
Mr. J Avery, BSc, FRICS

Hearing date: 19th August 2008

Date of decision: 19th August 2008

1. This is an application by the Applicant landlord pursuant to section 60 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act"), seeking a determination of the costs payable by the Respondent tenant arising out of an application for the grant of a new lease pursuant to the provisions of the Act. It was agreed by the parties that this matter should be dealt with by way of a consideration of the papers and without an oral hearing. Accordingly, written submissions were received dated 15/08/08 on behalf of the Applicant and 08/08/08 and 16/08/08 on behalf of the Respondent respectively.
2. It was submitted by the Applicant that costs in the sum of £1250 (plus VAT of £222.95) and disbursements of £22.00 together with valuer's fees of £750.00 (plus VAT of £131.25) are payable by the Respondent. The Respondent asserted that costs of £160 plus VAT are reasonably payable.

3. By a Notice of Claim dated 27/3/08 the Respondent sought to exercise his right to the grant of a new lease. This notice was signed by the Respondent's solicitor and not by the tenant himself thereby rendering the Notice invalid. On or about 9/6/08 the Applicant served a Counter Notice without prejudice to a letter of the same date notifying the Respondent of the invalid Notice and requesting that it be withdrawn before proceedings were issued in the County Court. By a letter dated 11/6/08 the Respondent withdrew the invalid Notice. In submissions on behalf of the Respondent it was said it is accepted that the landlord is entitled to his reasonable costs relating to the work following the service of an invalid Notice. However, as the defect was obvious the Applicant's representative undertook work that was wholly unnecessary and that the majority of the costs claimed should be disallowed.
4. It was also submitted on behalf of the Respondent that the hourly rate of £300 is too high and the time spent on considering the claim and drafting a short form of Counter Notice, excessive. Time spent drafting a new lease should be disallowed as that work arose before the drafting of the Counter Notice and in any event was carried out by a different Partner than the one who had earlier dealt with the matter.
5. In the written submissions of Ms. S Bone on behalf of the Applicant it was said that the hourly rate charged by a partner at £300 per hour is a reasonable rate for a Central London firm together with a trainee at £120 per hour. Preparation of a draft lease by Partner in the conveyancing department at a charge out rate of £350 per hour was also a reasonable expense.
6. Ms. Bone submitted that there was no requirement to alert the tenant of the invalidity of the Notice and given the short time a landlord has to respond to a Notice of Claim the work claimed for would have had to be carried out in any event. It was said that the volume of lease extension applications dealt with by the Applicant's solicitors on behalf of the Applicant has necessitated the creation of a procedure upon receipt of a Notice of Claim which involves (i) inquiries into the tenant's right to make a claim; (ii) obtaining a valuation and (iii) seeking instructions as to premium to be proposed in the Counter Notice and whether any defects are to be waived. It was submitted that it is reasonable to consider the terms of the existing lease and the terms to be contained in the Counter Notice and which may take longer than preparing a new lease and therefore the latter costs are reasonable. A chronology of the correspondence passing between the Applicant and its representatives was also set out in Ms. Bone's statement.
7. In considering this application the Tribunal has regard to the provisions of section 60 of the Act and the requirement that the tenant is liable

"to the extent 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..."

and

".....any costs incurred by a relevant 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. The Tribunal notes that there is no requirement on the landlord to notify the tenant of a defective Notice and must within the time period allowed serve a Counter Notice or lose the right to make a challenge to the tenant's claim. However, as a matter of course the Tribunal would not expect any client to reasonably expect or want to incur solicitors' fees for work carried out on his behalf he knows he is not going to want to rely upon or be of use to him. In this case the Tribunal is not persuaded that had the Applicant reasonably expected to pay the costs incurred, authorisation would have been given for the racking up of fees on draft leases when the Notice of Claim was clearly invalid and the invalidity was not to be waived. Further, although the Applicant has a procedure which it adopts on receipt of a Notice of Claim, this should be sufficiently flexible to cater for unexpected events and not applied routinely and in a blanket fashion without individual consideration of each Notice of Claim received.
9. The failure of the Applicant to be notified or instruct his representations of its intention not to waive the invalidity until almost the last moment within the two month time period permitted in which to serve the Counter Notice, could in the Tribunal's view be considered unreasonable in the context of maintaining professional relations between solicitors, although it is accepted there is no requirement for early notification of defects in Notices to be given. Although the Tribunal finds the hourly rate of £300 charged for the work to be at the top end of the range of what can be considered reasonable, it finds that the reasonable costs which a landlord would expect to pay, were he expecting to pay the costs himself and which are payable by the Respondent are the following:

- (i) Considering notice.....£ 90.00
- (ii) Letter to Lessee.....£ 30.00
- (iii) Letter to Client.....£ 30.00
- (iv) Obtaining documents..... £ 24.00
- (v) Letter to valuer.....£ 30.00
- (vi) Letter to Lessee's solicitors....£ 30.00
- (vii) Letter to Lessee.....£ 20.00
- (viii) Reviewing valuation report....£ 60.00
- (ix) Preparation of Counter Notice £150.00

Valuation fees.....£750

Total: £1,214 plus VAT of £212.45

Add £22.00 disbursements.

Chairman.....

M. Taghian

Dated:.....

19/07/05