

SOUTHERN RENT ASSESSMENT PANEL AND LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/00HN/OLR/2008/0100

BETWEEN:

GEORGE FREDERICK GREENING

Applicant

- and -

**RUPERT JOHN ALDINGTON EDWARDS
DOUGLAS JAMES EDWARD NEVILLE-JONES
EMMA JANE BOWDITCH
JOHN ROBERT BARRETT BOWDITCH
AND LINDA JEAN BOWDITCH
(Trustees of the Alice Ellen Cooper-Dean Charitable Foundation)**

Respondent

PREMISES: Flat 5 Thornbury
33 Marlborough Road
Westbourne
Bournemouth
Dorset
BH4 8DF ("the Premises")

TRIBUNAL: Mr D Agnew LLB, LLM (Chairman)
Mr P.D Turner-Powell FRICS

DETERMINATION DATE: 5th December 2008

Determination and Reasons

DETERMINATION

The Tribunal determines that the costs payable by the Respondent to the Applicants under Section 60 of the Leasehold Reform Housing & Urban Development Act 1993 ("the Act") in respect of a new lease of the Premises is £2654.50 plus VAT.

REASONS

1. Background

- 1.1 On 1st October 2008 the Applicant's solicitors, Messrs Lacey's, made an application to the Tribunal to determine the costs payable to the Respondent by the Applicant as lessee to the Respondents as freehold owners of the Premises pursuant to Section 60 of the Act on the grant to the Applicant of a new lease.
- 1.2 Both parties' solicitors agreed that the matter was suitable for determination on paper by the Tribunal without a hearing.
- 1.3 Directions were given on 7th October 2008 which, among other things provided that the Respondents were to send three copies of their written representation with regard to the matters in dispute between the parties and of any further documents that they may wish the Tribunal to see in connection with the matter to the Tribunal by Friday 28th November 2008.
- 1.4 The Applicant's representations in response to those of the Respondent were duly sent to the Tribunal on 25th November 2008. These representations consisted of brief points in reply. Certain concessions were made but where the Applicant sought to justify the costs claimed this was done by way of a short commentary. No copy documents were supplied to the Tribunal which would have shown precisely what was done and would have enabled the Tribunal to make a judgment as to the likely time spent in doing the work.
- 1.5 In the week prior to the determination the Tribunal office made an enquiry of the Respondents' solicitors as to whether they intended to produce copy documents in support of their claim for costs and it was suggested that the Tribunal would probably find it useful to have a copy of the old lease so that it could see what work had to be done to prepare the new lease.
- 1.6 The Respondents' solicitors' response was to send a fax to the Tribunal office dated 3rd December 2008 stating that a copy of all the relevant leases would be sent with the hard copy of the fax (which were not in fact received by the Tribunal members prior to the determination of 5th December 2008). With regard to any documentary evidence to

support their representations the fax stated that the solicitors "required clarification as to what was required". They stated that it was impractical to send their full file as this was required to complete the new lease and in any event they did not consider this appropriate in a case where the matter was being dealt with by written representations. They added that if disclosure of the file "is a specific requirement then we withdraw our agreement to the matter being dealt with by way of written representations" and they would require a full oral hearing "at which the file can be produced".

2. Determination as to whether to proceed

2.1 The Tribunal decided that the paper determination would proceed. It was not a "specific requirement" of the Tribunal that the Respondent's full file be produced. It was, however, the Respondent's claim for costs and they had to justify that claim by whatever means they considered appropriate or necessary in support of their claim. As solicitors they should know what evidence they needed to produce to support their claim. Where items claimed had been disputed it should have been evident that it would not be sufficient simply to re-state what had been done or give a slightly fuller explanation than previously. They should have appreciated, for example, that if the amount of time spent on a letter was in dispute that the Tribunal would want to see that letter and assess the time taken to produce it. It was not a case of the whole file being produced but only a copy of such part of it that was in dispute. The Respondents' solicitors had been given the opportunity to produce further documentation but had not taken it. As it was not the Tribunal's requirement that the Respondents' file be produced the Tribunal did not consider that the receiving party's agreement to a paper determination had been withdrawn and it therefore proceeded with the determination on the basis of the evidence before it.

3. The Law

3.1 Section 40(2) of the Act states that: "Where in accordance with subsection (1) the immediate landlord under the lease of a qualifying tenant of a flat is not the landlord in relation to that lease for the purposes of this Chapter, the person who for those purposes is the landlord in relation to it shall conduct on behalf of all the other landlords all

proceedings arising out of any notice given by the tenant with respect to the flat under Section 42 (whether the proceedings are for resisting or giving effect to the claim in question).

3.2 By Section 60(1) of the Act it is stated that: "(1) Where a notice is given under Section 42 then..., 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.....
- c) The grant of a new lease
....."

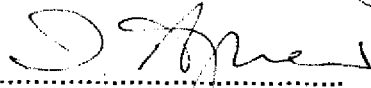
3.3 By Section 60(5) of the Act it is provided that:

"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".

4. The Determination

4.1 Many of the items originally claimed by the respondent had either been accepted by the Applicant's solicitors or had been conceded by the Respondent's solicitors, prior to the Tribunal's determination. The Tribunal therefore restricted itself to determining those matters remaining in dispute. There is attached to these reasons a schedule setting out the detail of the determination. Where the claim has been allowed this is because the Tribunal considered the claim to be reasonable as work that was likely to have been required to be done, even though the Tribunal had not seen documentation in support of the claim. Where the claim has been reduced this is where the Tribunal in the absence of documents to support the claim, has used its judgment as to the amount of time that would be reasonable to have been spent on the item. Where an item has been disallowed a reason has been given against that item in the schedule.

Dated this 1st day of January 2008 ~~2008~~ 2007



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D. Agnew LLB, LLM
Chairman

Schedule to costs claimed and allowed

Item	Amount Claimed	Agreed?	Conceded?	Allowed?
1	86.00	No	Yes	-
2	43.00	No	Yes	-
3	21.50	No	Yes	-
4	21.50	No	Yes	-
5	21.50	No	Yes	-
6	43.00	21.50	Yes	21.50
7	21.50	Yes		21.50
8	21.50	Yes		21.50
9	21.50	Yes		21.50
10	21.50	Yes		21.50
11	21.50	Yes		21.50
12	21.50	Yes		21.50
13	21.50	Yes		21.50
14	21.50	Yes		21.50
15	21.50	Yes		21.50
16	21.50	Yes		21.50
17	21.50	No	No	0- not progressing the matter
18	21.50	Yes		21.50
19	21.50	Yes		21.50
20	21.50	Yes		21.50
21, 22, 27	1015.00	No 215 accepted	In part	752.50 for claims 21, 22 & 27 Not a straightforward new lease
23	21.50	Yes		21.50
24	21.50	Yes		21.50
25	21.50	Yes		21.50
26	21.50	Yes		21.50
28	21.50	Yes		21.50
29	21.50	Yes		21.50
30	21.50	Yes		21.50
31	86.00	Yes		86.00
32	21.50	No	No	21.50
33	21.50	No	No	21.50
34	21.50	Yes		21.50
35	21.50	No	No	0 - to do with price negotiation not claimable under Sec 60
36	21.50	No	No	0 – not sufficiently justified
37	21.50	Yes		21.50
38	0			0
39	21.50	No	No	21.50
40	21.50	Yes		21.50
41	21.50	Yes		21.50
42	21.50	Yes		21.50
43	43.00	Yes		43.00
44	21.50	No	No	21.50
45-56	258.00	Yes		258.00
57	21.50	No	No	0 – not sufficiently justified
58-62	107.50	Yes		107.50

63	110.00	No	Yes	0
64	110.00	No	Yes	0
65	22.00	Yes		22.00
66	86.00	Part only	No	43.00
67	43.00	Yes		43.00
68	21.50	Yes		21.50
69	21.50	Yes		21.50
70	86.00	No	No	86.00
71	64.50	Part only	No	64.50
72	43.00	Part only	Yes	21.50
73	21.50	No	No	21.50
74	110.00	Part only	Yes	66.00
75	22.00	Yes		22.00
76	22.00	Yes		22.00
77	66.00	No	No	0 – no supporting evidence
78	44.00	No	No	44.00
79	132.00	No	In part	0 – no supporting evidence
80	22.00	Yes		22.00
81	22.00	No	No	0 – not progressing the matter
82	110.00	In part	Yes	44.00
83	22.00	No	No	0 – not sufficiently justified
84	22.00	Yes		22.00
85	22.00	Yes		22.00
86	22.00	No	Yes	-
87	132.00	In part	No	0 – not sufficiently justified
88	22.00	Yes		22.00
89	22.00	No	No	0 – not sufficiently justified
90	176.00	No	In part	0 – not sufficiently justified by evidence
91	66.00	No	Yes	-
92	22.00	Yes		22.00
93	22.00	Yes		22.00
94-97	88.00	Yes	Yes	-
98	110.00	No	No	66.00
99	22.00	Yes		22.00

Total amount allowed = £2654.50 plus VAT