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HM Courts & Tribunals Service

Residential Property TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

ON AN APPLICATION UNDER SECTION 48 OF THE LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993

Case Reference:	LON/00BK/OC9/2012/0018
Premises:	Flat 2, 102 Crawford Street, London, W1H 2HR
Applicant:	Mr D Balent
Representative:	In Person
Respondents:	Mr K Stefanou & Others
Representative:	Percy, Short & Cuthbert, Solicitors
Date of hearing:	N/A
Leasehold Valuation Tribunal:	Mr I Mohabir LLB (Hons) Mrs S Redmond MRICS BSc (Econ)
Date of decision:	28 March 2012

Introduction

1. This is an application made by the Applicant under section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 (as amended) ("the Act") for a determination of the premium and landlord's costs to be paid for the grant of a new lease in respect of Flat 2, 102 Crawford Street, London, W1H 2HR ("the property").

2. On 22 February 2012, the Tribunal issued Directions indicating that it may not have jurisdiction to determine the application in relation to the premium to be paid because it had been made out of time and gave directions for this issue to be determined as a preliminary issue.

3. The issue that fall to be determined in this application are:

   (a) whether the Tribunal has jurisdiction to make any determination in relation to the premium payable for the grant of a new lease under section 42 of the Act.

   (b) the reasonableness of the landlord's costs under section 60(1) of the Act.

Procedural

4. A procedural point was taken by the Respondents' solicitors regarding the filing and serving of late written submissions by Mr Morgan FRICS MCIArb on behalf of the Applicant dated 24 March 2012. It was submitted that they should be excluded on the basis that they had not been filed and served pursuant to the Tribunal's Directions.

5. The Tribunal admitted the submissions made by Mr Morgan because the Respondents had not demonstrated that they had suffered any real prejudice by Mr Morgan's submissions being served out of time. The mere fact that they were out of time did not in itself amount to any real prejudice. The submissions raised no new issues. Accordingly, they were allowed by the Tribunal.

Decision

Jurisdiction

6. The factual background of this issue was a matter of common ground and was not in any event challenged by the Applicant. On 23 May 2011, the Applicant's predecessor in title exercised the right to the grant of a new lease by serving a notice of claim on the Respondents pursuant to section 13 of the Act. The notice provided that the Respondent had to serve a counter notice by 29 July 2011.

7. By a Deed of Assignment dated 13 June 2011, the benefit of the notice of claim was assigned to the Applicant.

8. On 1 July 2011, the Respondents served a counter notice, which was acknowledged by the Applicant's legal representative by a letter dated 7 July 2012.

9. In the absence of agreement being reached by the parties, by an application dated 15 January 2012, the Applicant made this application to the Tribunal for a determination of the premium to be paid for the grant of a new lease. The application was sent by the Applicant's legal representative under cover of a letter dated 27 January 2012 and received by the Tribunal on 30 January 2012.

10. The submission made on behalf of the Respondent is that section 48(2) of the Act required the application to be made within 6 months of service of the landlords' counter notice. The relevant date was 31 December 2011 and, therefore, the application was out of time. Consequently, the Tribunal had no jurisdiction to determine the application in so far as it related to the premium for the grant of a new lease.

11. In his written submissions, Mr Morgan, on behalf of the Applicant, accepted that the application was made out of time. However, he argued that the Tribunal should accept the application out of time because the Applicant's (then) legal representatives had declined to deal with this matter further because of a lack of expertise and that, as a lay person, he had been unaware of the time limit for making the application and had not been made aware of this.

12. Section 48(2) of the Act provides:

"Any application under subsection (1) must be made not later than the end of the period of six months beginning with the date on which the counter notice,,,was given to the tenant."

13. As stated earlier, the counter notice was given by the Respondents on 1 July 2011 and the application had to be made to the Tribunal by 31 December 2011. The application was not received until 30 January 2012. It is conceded by the Applicant that the application was out of time. The six-month time limit imposed by section 48(2) is absolute. There is no discretion afforded to the Tribunal either in that section or any other provision of the Act whereby an application can be entertained outside this time limit. It follows, that the reasons advanced by Mr Morgan as to the lateness of the application are irrelevant. Consequently, the application is treated as withdrawn under section 53(1)(a) of the Act.

Respondents' Section 60 Costs

14. The total costs of £2,005.14 claimed by the Respondents arise in the following way:

Legal Costs	£430
Valuer's fees	£1,225
Disbursements	£15.95
VAT	£334.19

15. Section 60 of the Act provides:

"(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 matter, 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 the grant of a new lease under section 56;

(c) ...

(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."

Legal Costs

16. As to the legal costs, Mr Morgan agreed the hourly rate of £150 and £200 per hour respectively. He simply argued that the 22 letters written appeared to be excessive. He made no complaint in relation to any other legal costs incurred.

17. In its judgement, the number of letters written by the Applicant's solicitors did not strike the Tribunal as being excessive in such a matter and over an 8-month period of time. It would have been necessary for the Respondents' solicitors to report to their clients and enter into correspondence with the their

valuer and the Applicant and/or his legal representatives. The Tribunal concluded that these costs had been reasonably incurred within the meaning of section 60(2) of the Act and were allowed as claimed. Given that there was no other objection to any of the other legal costs, they were allowed in full in the sum of £516 including VAT.

Valuation fees

18. Two invoices were provided in respect of valuation costs incurred by LBB Chartered Surveyors on behalf of the Respondents. The first dated 22 June 2011 was for £1,039 including VAT and disbursements in relation to the 'preparation of our Valuation Report in respect of the premium payable for a lease extension in respect of the same' - £850 and disbursements including 2 x Land Registry Title Entries, travel, printing and postage etc' - £15.95

19. The second invoice is dated 25 January 2012 for £450 including VAT in respect of 'abortive costs of time spent in negotiations'

20. The Respondent indicated that the hourly rate for the valuer, J Bennett B Sc (Hons) MRICS AClarb, Director of LBB Chartered Surveyors was £270. There was no breakdown of the 3.15 hours stated spent, no indication of the terms of appointment and no description of the experience of the valuer.

21. The Applicant comments that there was no evidence of the work carried out. He had received verbal quotes for a valuation for lease extension of around £400. He had to appoint Mr Morgan to act on his behalf.

22. Mr Morgan considered that the charge out rate of £270 for the valuer was excessive. His own rate for these cases is £125 per hour, or more usually a fixed fee. Allowing for LLB's Central London base he suggested £175 per hour was appropriate. With respect to the time taken, he estimated 1 hour maximum total travel time, 10 minutes to inspect and 30 minutes to prepare a report. He concluded that £400 would be a justifiable charge.

23. The Tribunal noted that Mr Morgan made no reference to time taken receiving instructions, reading the lease and obtaining comparable evidence. Taking all these matters into account it allowed 1.5 hours for the inspection and 1 hour for all other matters. As to the rate, the Tribunal considered that £270 was on the high side and allowed £200 per hour. Disbursements of £15.95 are accepted. This gives a total of £515.95 plus VAT of £103.19 making a total of £619.14 in respect of valuation fees.

24. Under the section 60 (1) of the Act there is no entitlement for fees for negotiations and the Tribunal determines that the costs of £450 invoiced in January 2012 are not payable.

25. The total costs payable by the Applicant to the Respondents is £1,135.14 including VAT,

Dated the 28 day of March 2012

CHAIRMAN.....

Mr I Mohabir LLB (Hons)