



2847

**First-tier Tribunal  
Property Chamber  
(Residential Property)**

**Case Reference** : CAM/00KF/OC9/2014/0005

**Property** : 16 Ravens Court,  
16 Alexandra Road,  
Southend-on-Sea,  
Essex SS1 1HF

**Applicant** : St. Johns Court (Southend) Ltd.

**Respondent** : Alison Simone Elman

**Date of Application** : 4<sup>th</sup> April 2014

**Type of Application** : To determine the costs of the lease  
extension of the property

**The Tribunal** : Bruce Edgington (Lawyer Chair)  
David Brown FRICS

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**DECISION**

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1. The reasonable valuation fee of the Applicant in dealing with the matters set out in section 60 of the **Leasehold Reform, Housing and Urban Development Act 1993** ("the Act") is £600.00 plus VAT and this is payable by the Respondent.

**Reasons**

2. This is an application where the only issue is whether the Applicant is entitled to a valuation fee having already agreed "Section 60 costs" in the sum of £1,956.10 following a successful application for a lease extension for the property.
3. The lease extension itself was dealt with in 2013 and early 2014 under case reference CAM/00KF/OLR/2013/0136 but before that case could come on for hearing on 5<sup>th</sup> February 2014, the parties wrote to the Tribunal stating that matters had been agreed and the case was withdrawn. One of the letters sent to the Tribunal at the time was a copy of a letter written by the Respondent's solicitors, Nathans, to the applicant's solicitors, Tolhurst Fisher LLP, dated 3<sup>rd</sup> January 2014 wherein they say "without admission we will agree your clients' Section 60 costs in the sum of £1,956.10".

4. A subsequent dispute then arose because the schedule of costs submitted by Tolhurst Fisher LLP was only in respect of the legal costs and disbursements. Nathans maintain that using the Words 'Section 60 costs' binds the Applicant to accept the figure of £1,956.10 for all costs incurred under section 60.
5. It is accepted by the parties that an Initial Notice was served and therefore section 60 of the 1993 Act is engaged. For the reasons set out below, the Applicant therefore has to pay the Respondent's reasonable costs of and incidental to:-
  - (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;*  
*(section 60(1) of the 1993 Act)*
8. It is agreed that the costs under sub-sections (a) and (c) have been dealt with which just leaves the valuation fee under (b).
9. The valuation fee claimed is that of chartered surveyors, Mike Stapleton & Co. Ltd. in the sum of £600.00 plus VAT. It is said that the actual fee, if properly time costed, would be greater than that. However as there is no representation from Nathans on the quantum of this fee and as it appears to be reasonable on the face of it, it is inferred that the amount of the fee is agreed, subject to liability. If not, the Tribunal would determine that it was reasonable.
10. Thus, as has been said, the only matter for determination is whether anything is payable over and above the amount of £1,956.10. The 'evidence' submitted by the parties' solicitors consists of some of the correspondence between them. They have agreed that this matter shall be resolved on the basis that the Tribunal considers the papers only. The solicitors' representations are limited. All Nathans have said is that the application should be struck out because the Tribunal lacks jurisdiction i.e. the section 60 costs, in total, have been agreed.
11. What is clear from a letter dated 15<sup>th</sup> May 2014 from Tolhurst Fisher LLP to Nathans is that the schedule of costs submitted by them and agreed by Nathans in the sum of £1,956.10 was for legal costs and disbursements only being "the exact amount we were seeking to recover". That does not appear to be disputed.
12. The facts found by the Tribunal are:-
  - When Tolhurst Fisher LLP referred to 'section 60 costs' they meant 'legal costs and disbursements'.
  - The agreed costs of £1,956.10 did not include the surveyor's fee.

- The invoice from Mike Stapleton & Co. Ltd. is addressed directly to the Applicant company and not to the solicitors and it should not therefore appear as a disbursement to the solicitors' bill.
- The Respondent must have known that the Applicant had appointed a surveyor to inspect the property.
- The Respondent must therefore have known that there was going to be a surveyor's fee to pay pursuant to section 60(1)(b).
- The Respondent was represented by a solicitor experienced in this work during the relevant period who must have known that there would be a valuation fee payable.

13. Clearly Tolhurst Fisher LLP were ill advised to allow the earlier application to be withdrawn without full agreement as to the costs and fees payable under section 60. They were also mistaken in stating that the 'section 60 costs' had been agreed. However, that does not mean that the reasonable and proper valuation fee of the Applicant should not be paid by the Respondent.

14. The Tribunal did consider whether there was an *estoppel* argument here but decided, on balance, that this was an innocent mistake on the part of Tolhurst Fisher LLP and that a firm of Nathans' experience should have realised this at the time. There is also an argument, to put it no higher, that 'section 60 costs' would only refer to the legal costs in any event. Surveyors do not normally refer to their fees as 'costs'.

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**Bruce Edgington**  
**Regional Judge**  
**2<sup>nd</sup> June 2014**