



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

Case reference : CAM/00KG/OC9/2017/0001

Property : 67 Porter Close,
Grays,
RM20 4AS

Applicant : Tulsense Ltd.

Respondent : Nigel Wai Kin Ryan

Date of Application : 7th February 2017

Type of Applications : To determine the Applicant's costs of
valuation for the lease extension of the
property

The Tribunal : Bruce Edgington (lawyer chair)
David Brown FRICS

DECISION

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1. The reasonable valuation fee incurred by the Applicant payable by the Respondent is £450.00.
2. The services being paid for are provided to the Applicant and if it is able to recover VAT as an input, such VAT on the fees claimed is not recoverable from the Respondent. If it is not able to so recover, then VAT is to be added to the fees and is payable by the Respondent.

Reasons

Introduction

3. This dispute arises from the service of an Initial Notice seeking a lease extension of the property by qualifying tenant. The lease terms have been agreed as have the legal fees and the only remaining issue between the parties is the reasonableness and payability of the Applicant's valuation fee. When making its directions order on the 17th February 2017, the Tribunal said that it would be happy to determine the legal costs and valuation fee on the basis of the written evidence and submissions on or after 5th April 2017. It was made clear that either party could ask for an oral hearing. No request was made for such an oral hearing.

4. The only case put forward by the Respondent is a letter from his solicitors to the Applicant's solicitors dated 24th March 2017. After paying the agreed solicitors' charges, the letter says "*As we have already informed you, we made the payment of £900 directly to your client on 19 December 2014*".
5. The Applicant's solicitors lodged a bundle in accordance with the directions order but this did not include details of the valuer's qualifications and experience or a breakdown of the time spent. These subsequently arrived after a letter had been sent to the Applicant's solicitors.

The Law

6. It is accepted by the parties that the Initial Notice was served and therefore Section 60 of the **Leasehold Reform, Housing and Urban Development Act 1993** ("the 1993 Act") is engaged. For the reasons set out below, the Respondent therefore has to pay the Applicant's reasonable fee for and incidental to:-

(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:

(Section 60(1) of the 1993 Act)

8. What is sometimes known as the 'indemnity principle' applies i.e. the Applicant is not able to recover any more than it would have to pay its own valuer in circumstances where there was no liability on anyone else to pay (Section 60(2)).

Discussion

9. This is an unusual case in the sense that there was an attempt to reach agreement before the statutory process commenced. The Respondent's solicitors wrote to the Applicant on the 25th November 2014 asking for a lease extension but without serving a formal notice in accordance with the 1993 Act. They were then told in a letter of the 28th November that "*the property needs to be surveyed and thereafter the premium calculated. We will incur costs of £750 plus Vat, to calculate the premium associated with extending the lease. Accordingly, we shall require payment of £900 to cover those costs*".
10. By letter dated 19th December 2014, the Respondent's solicitors acknowledged receipt, enclosed a cheque for £900 and said "*we await your terms of offer for the lease extension*". Those were sent on the 19th January 2015 following receipt of a letter from Gemis Ltd. giving a view on value which was not in accordance with the 1993 Act as it said that an increasing ground rent should be paid plus a lump sum. It also said that the writer of that letter, a WC Rolfe, had inspected the property on the 16th January 2015.

11. On the 15th April 2015, a letter was sent by the Applicant's solicitors to "Wayne Rolfe, Tulsense Limited" attaching a section 42 Initial Notice which had then been served and saying "we understand you are taking your own valuation advice directly".
12. This letter then contains a rather odd comment i.e. "please be advised that there may be difficulties in recovering valuation costs unless they are incurred through a third party vehicle and charged to Tulsense (whether or not that is owned or controlled by you should not be an issue). I understand that you have discussed this with Chris. Please provide us with details of the costs charged to Tulsense for the valuation so we may seek recovery in the usual way". Following the further valuation, an invoice for £750 plus VAT dated 14th May 2015 appears from Gemis Ltd. although it is not signed.
13. It appears clear that Mr. Wayne Rolfe inspected the property again on the 5th May 2015 and produced a valuation report. In his statement to the Tribunal he says that he is 50 and has worked as a surveyor since the age of 18. He says that he trained and worked with the Wates Group whilst attending a day release RICS course although he appears to have no formal qualification. He describes himself as being an assistant surveyor (1984-1989), a surveyor and senior surveyor (1989-1996) and a 'director' from 1997 onwards.
14. Whilst the Tribunal is not entirely clear as to the relationship between the Applicant and Mr. Rolfe and the charging rate of £225 plus VAT per hour seems high for an unqualified 'surveyor' based in Cheshunt, these matters have not been raised by the Respondent. However, as Mr. Rolfe inspected the property on the 16th January 2015 for the purpose of valuing a lease extension, it was clearly unnecessary for him to inspect the property less than 4 months later even if the valuation was to be on a different basis. It was still a lease extension. He stated in his January report that the earlier inspection was not to carry out the necessary survey to ascertain a premium in response to a statutory notice but there is no explanation of the difference between that and an inspection for valuation under the 1993 Act. The Tribunal cannot envisage how the two inspections might differ. In terms of an inspection, the same basic information is needed for both.

Conclusions

15. In January 2015, Mr. Rolfe considered the lease and background information. He inspected the property and must have made notes such as dimensions, details of local facilities and values of similar properties, any prospective planning issues which could have affected value etc. He must also have made a calculation of value albeit based on an increasing ground rent.
16. All that information would have been available to him less than 4 months later and any normal commercial client who had to pay for these further services would not expect to pay for this work to be done again. Such a client would expect to pay for a quick re-appraisal of local values,

a fresh calculation based on the 1993 Act formula and the preparation of a report. That could all be done within 2 hours and the Tribunal therefore concludes that the valuation fee should be £450 plus VAT if appropriate.

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Bruce Edgington
Regional Judge
11th April 2017

ANNEX - RIGHTS OF APPEAL

- i. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
- ii. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- iii. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- iv. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.