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**Residential
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**LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference LON/00BA/OC9/2012/0034

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION
UNDER Sections 60 and 91 THE LEASEHOLD REFORM HOUSING AND URBAN
DEVELOPMENT ACT 1993**

Applicant:	Jaclyn Cowley
Respondent:	Miren Limited
Premises:	Lower Maisonette, 119, Graham Road, London SW19
Application Received:	28 th March 2012
Leasehold Valuation Tribunal:	Mrs H Bowers Mr M Martynski
Date of Determination:	16 th May 2012

Decision

- 1 The total sum payable by the Applicant to the Respondent, pursuant to section 60 of the Leasehold Reform, Housing and Urban Development Act 1993 is £1,450 including VAT (legal costs of £900 including VAT and valuer's fees of £550).

BACKGROUND

1. This application under sections 60 and 91(d) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") was made by the Applicant through her solicitors RJR solicitors. The application is for the determination of the costs payable by the Applicant to the Respondent. The Respondent is represented by John May Law.

2. Attached to the application was a copy of the completion statement and this included a freeholder's administration fee of £250; the freeholder's valuer's fees of £1,200 and the freeholder's solicitor's fees of £900.

3. Directions for this matter were issued on 30th March 2012 and indicated that this case was suitable for a paper determination, unless either party requested a hearing. Neither party sought a hearing, therefore this matter has been considered on the basis of the papers submitted to the Tribunal. A bundle of documents was supplied to the Tribunal, which included the submissions from both parties.

THE LAW

4. The law relevant to the assessment of costs in this matter is contained at section 60 of the Act, the relevant parts of which say as follows:

"S. 60 (1) Where a notice is given under section 42, then (subject to the provisions of this section) 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 in connection with the grant of a new lease under section 56;*
- (c) the grant of a new lease under that section;*
but this section shall not apply to any costs if on a sale made voluntarily a stipulation that they were to be borne by the purchaser would be void.

(2) For the purpose 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.

(3) Where by virtue of any provision of this Chapter the tenant's notice ceases to have effect, or is deemed to have been withdrawn, at any time, then (subject to subsection(4)) the tenant's liability under this section for costs incurred by any person shall be a liability for costs incurred by him down to that time.

(4) A tenant shall not be liable for any costs under this section if the tenant's notice ceases to have effect by virtue of section 47(1) or 55(2).

(5) 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.

(6) In this section "relevant person", in relation to a claim by a tenant under this Chapter, means the landlord for the purposes of this Chapter, any other landlord (as defined by section 40(4)) or any third party to the tenant's lease."

SUBMISSIONS

Respondent's case:

5. In respect of legal fees the Respondent's solicitor stated that a total sum of £750 plus VAT (total £900) was being sought. The hourly, charging rate proposed by John May Law for the Respondent was £250 plus VAT. It was confirmed that the solicitor dealing with the matter was a specialist in enfranchisement work and had in excess of thirty years of experience. In respect of the time spent in relation to this matter, one and a half hours was spent in investigating the Applicant's right to a new lease and the preparation and service of the counter notice. A further one and half hours was spent in drafting the new lease and completion of the matter.

6. Regarding the valuation fees it was explained that the valuation was carried out by Mr D Stone based in Buckinghamshire. It was stated that the standard valuation fee was £550. However, in this case a fee of £1,200 was sought. The increase was justified on the basis that additional work was involved as the valuer appointed by the Tenant was based on the Isle of Wight and had limited market knowledge of the Wimbledon area.

7. In addition the Respondent is seeking interest on the unpaid fees at 8% per annum and asks that the Tribunal should award the Respondent its costs of dealing with the application for the determination of the fees on the basis that the Applicant has not responded to the level of proposed fees or sought to agree the matter.

8. No further reference is made in respect of the administration fee of £250.

Applicant's case:

9. In response the Applicant's solicitor appears to indicate that there is no disagreement about the amount of time spent in investigating the claim, service of notice, preparation of the lease and completion of the matter. However, it is proposed that the work was routine and that a more junior solicitor could have dealt

with the matter. It is proposed an appropriate charging rate should be £190 per hour and that the legal fees would therefore equate to £570.

10. Regarding the valuer's fees it is accepted that Mr Stone was experienced in dealing with such matters and as such the fees charged are excessive.

11. It is stated that in respect of the administration fees that there is no justification for this item.

12. Regarding the interest being sought, the Applicant states that there is no justification for this item.

13. In respect of the Respondent's costs in relation to the application, it is stated that the Respondent had failed to provide the Applicant with relevant information. Documentation was provided to show correspondence between the parties in this matter.

DECISION

14. Regarding the legal fees of £900 inclusive of VAT, the amount of time spent on this matter is not disputed. The only item issue is in respect of the hourly charging rate. In the opinion of the Tribunal enfranchisement and lease extension work is relatively specialised from our knowledge and experience the proposed fee of £250 per hour for this type of work is not unreasonable and as such we determine that a fee of £750 plus VAT (£900 in total) is payable.

15. In respect of the valuation fee, the explanation as to the increased fees, suggests that some of the activities undertaken by Mr Stone involved the negotiation and liaison with the tenant's valuer. The provisions of section 60 are fairly limited and state that fees are recoverable for the valuation of the tenant's flat obtained for the purpose of fixing the premium or any other amount payable. The section does not extend to any negotiation between the parties. Accordingly, the Tribunal consider that it would be appropriate to limit the valuation fees to the standard level charged by Mr Stone of £550.

16. The only explanation about the administration fee of £250 is in a letter dated 1st June 2011 sent by John May Law to RJR Solicitors. This letter states that it is a fee for the Respondent dealing with the application for a lease extension and reflects the fact that no fee is payable to a managing agent. This item is not covered under the provisions of section 60 and therefore is not recoverable from the Applicant.

17. In respect of the proposed interest charges, this is not covered by section 60 and as such this is not recoverable from the Applicant.

18. Finally the Applicant appears to be seeking costs under the provisions of paragraph 10 of schedule 12 of the Commonhold and Leasehold Reform Act 2002. The grounds that a Tribunal can award costs under this provision is fairly limited to circumstances where the Tribunal consider a party has acted "*frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings*". Whilst the parties may have not agreed this matter prior to the

Tribunal's determination, this would not be a circumstance envisaged by the provisions of schedule 12 and as such the Tribunal make no order for costs against the Applicant.

19. In total the sums determined by the Tribunal that are payable by the Applicant to the Respondent are £1,450 including VAT (legal costs of £900 including VAT and valuer's fees of £550).

A handwritten signature in black ink, appearing to read 'Helen Bowers', written in a cursive style.

Helen Bowers
Chairman

16th May 2012