

Y TRIBIWNLYS EIDDO PRESWYL
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0059/02/16

In the Matter of Flat 3, Silverton, 30 Fairwater Road, Cardiff CF5 2LE

In the matter of an Application under the Leasehold Reform, Housing and Urban Development Act 1993, (“the Act”) section 91 (2)(d) and section 60(1).

TRIBUNAL Chairman: Richard Payne LLB M Phil
 Surveyor: Ruth Thomas MRICS

APPLICANT Stephen Lewis Pariser

RESPONDENT Marilyn Wheten

ORDER

The amount of reasonable costs payable by the Respondent to the Applicant in respect of the costs incidental to the lease extension notice relating to Flat 3, Silverton, 30 Fairwater Road, Cardiff CF5 2LE in accordance with section 60(1) of the Act is **£876.72 inclusive of vat and disbursements.**

REASONS

1. By an application to the tribunal dated 11th April 2016, the Applicant freeholder through his solicitors Mayo Wynne Baxter LLP, sought a determination as to the reasonable costs payable by the Respondent tenant for the lease extension of Flat 3, Silverton, 30 Fairwater Road, Cardiff CF5 2LE (“the property”) under section 60(1) of the Act.
2. Section 60 of the Act states as follows:

“ (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 subsection 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 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.

(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Where by virtue of any provision of this chapter the tenant's notice ceases to have effect, or is deemed to have been withdrawn, at any time, then (subject to subsection (4)) the tenant's liability under this section for costs incurred by any person shall be a liability for costs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 tenants notice ceases to have effect by virtue of section 47 (1) or 55 (2)."

3. The application form sought £453 plus VAT for the Applicant's solicitor's professional fees plus £6 disbursements, together with £400 plus VAT for a valuation fee for the lease extension. Therefore the total amount sought was £1029.60.
4. Neither party sought an oral hearing. The parties were content for the matter to proceed by way of written representations. Accompanying the application was a copy of the notice under section 42 of the Act signed by the Respondent dated 29 September 2015 together with a bill from the Applicant's solicitors dated 26 November 2015 evidencing the solicitors' costs of £453 plus £90.60 VAT and the £6 disbursement in respect of the office copy entry fee. There were also copies of correspondence including a copy of a letter from Mayo Wynne Baxter to the Respondent's solicitors LG Williams and Prichard dated 28 January 2016 which included a full schedule of the costs and work done by the Applicant's solicitors between 1 October 2015 and 18 January 2016.
5. The Respondent's solicitor Mr Philip Evans submitted a witness statement dated 25 April 2016. Mr Evans set out the background to the matter including that the Respondent was in the process of selling the property and the proposed buyer did not wish to proceed with the purchase unless the lease was extended. Mr Evans served the notice under section 42 of the Act under cover of a letter dated 1 October 2015. The notice was due to expire on 17 December 2015 and the Claimant's solicitors acknowledged receipt on 7 October 2015. This letter also enclosed a cheque for £600 as a deposit.
6. Mr Evans stated that by mid-October 2015 the Respondent's buyer indicated that he would not now require an extension. At this stage contracts had not been exchanged and rather than formally withdraw the notice, on 23 October Mr Evans put the Applicant's solicitors on notice that it was likely that the notice would be withdrawn in the near future and requested that they put the matter on hold. He said that this was intended to reduce their costs and "I was particularly concerned if the surveyor had been instructed and requested the Claimant's solicitors inform the surveyor so costs would not be incurred. I see from the schedule of costs provided that they did not inform the surveyor of my notice until nearly a fortnight later."
7. Mr Evans emailed the Applicant's solicitors on Monday, 23 November 2015 to indicate that he would let them know if the Respondent's notice would be withdrawn by the end of that week. He reasoned that this would still give the Applicant's solicitors 3 weeks to serve a counter notice (in the event that the notice was not withdrawn). He said that the notice was formally withdrawn at 2:15 PM on Wednesday, 25 November and Mr Evans requested details of the costs incurred and felt that the work undertaken on the file was minimal and that the claimed costs of £1029.60 seemed "grossly inflated".

8. Mr Evans further states that upon receipt of the schedule of works he noted that much work had been undertaken by a paralegal and other work had been undertaken by a newly qualified solicitor and that these were charged at the incorrect rates for the grade of fee earner involved. He submits that the appropriate rate for a newly qualified solicitor in accordance with the national guideline rates was £16.10 per unit (£161 per hour) rather than the £20.50 claimed, and for a paralegal is £11.80 per unit rather than £14, (namely £118 per hour). By letter of 22 December 2015 Mr Evans made an offer that the £600 that he had sent as a deposit could be used to settle the full amount of the Applicant's legal and surveyor's fees and he submits that any claim for costs in excess of £600 should be dismissed.
9. The Applicant's solicitor Jo Ironside submitted a statement in response dated 9 May 2016. Ms Ironside stated that she acknowledged receipt of the section 42 notice on 7 October 2015 but states that the Applicant had already instructed his valuer to undertake a valuation of the property and provided her with the figure for the premium on 9 October 2015 to be inserted into the section 45 counter notice. She states that upon receipt of the notice she spent time considering its validity and this involved analysing the notice itself and requesting further documentation from the Respondent's solicitors.
10. Ms Ironside states that the Respondent's solicitors informed her on 21 October that the Respondent was likely to withdraw the section 42 notice but this was not a formal notice of withdrawal. She accordingly advised the Applicant of the Respondent's likely withdrawal of the notice but warned the Applicant that until the section 42 notice had been formally withdrawn she still had to comply with the time limit namely that any section 45 counter notice was to be served by 17 December 2015.
11. Ms Ironside says that she wrote to the Respondent's solicitors on 10 November and 23 November 2015 requesting confirmation as to whether or not the Respondent was going to be formally withdrawing the section 42 notice. She says that in the meantime she was instructed by the Applicant to proceed as if the section 45 counter notice would be served and was instructed by the Applicant to serve that counter notice on 24 November 2015. She says that the paralegal assisting her prepared the letters to send in order to serve a section 45 counter notice and prepared a basic draft of the lease in the morning of 25 November 2015. She states that it was not until her colleague received a telephone call timed at 14.19 on 25 November 2015 from the Respondent's solicitors that her firm received confirmation that the Respondent would be withdrawing the section 42 notice which was further confirmed in writing by email later on that day.
12. Ms Ironside accepts that emails on the 19th and 20th of October and 23rd of November 2015 were undertaken by the paralegal assisting her and that work dealing with the receipt of an email on 24 November was also dealt with by the paralegal and therefore submitted that the costs sought would be £427 plus VAT rather than £453 plus VAT. She submitted that the surveyor's fee of £400 plus VAT was also recoverable and had been incurred prior to the Respondent's solicitors notifying Ms Ironside of the likely withdrawal of the Respondent's section 42 notice. The Respondent's offer of £600 to cover the Applicant's legal fees and the surveyor's valuation fee was rejected.

DECISION

13. The tribunal carefully considered all of the evidence and representations. Dealing first with the surveyors fees, we note that there was no invoice amongst our papers in support of the surveyor's fee. However Mayo Wynne Baxter's letter to LG Williams and Prichard of 28 January 2016 contained representations upon this issue. It stated that a standard lease extension valuation charge in the area local to the surveyor would be charged at £650 plus VAT and a London valuation will be charged at the far higher rate of £1250 plus VAT. The letter continued "Our client's valuer was of the opinion that this flat in Cardiff was very small and of low value and therefore it was agreed between the valuer and the landlord that the leaseholders should not have to pay [for the time] the valuer would have to spend travelling to the property to undertake a valuation and it was agreed that the valuer could undertake a desktop valuation of the reduced fee of £400 plus VAT." It further stated that the fees were calculated on the basis that the valuer had checked the leasehold title and filed plan, he examined the title for any deeds of variation that may impact upon the calculation of the premium and conducted local research as to property values, including speaking to a local estate agent to confirm the market value of the property and produce a report on that basis.
14. We are satisfied upon the evidence of Ms Ironside's witness statement that the valuer had been instructed by her client and that she had received the valuation figure on 9 October 2015 prior to receiving the first indication on 21 October 2015 that the Respondent was likely to withdraw the section 42 notice. We are further satisfied that it was reasonable to incur costs upon the valuation particularly where the service of a notice starts a time limit running. However **we determine that as a desktop valuation was undertaken and there was additional internet research and a phone call, that the reasonable surveyor's costs for this work are £350 plus VAT.**
15. With regard to the solicitors costs, we find that the Respondent's solicitors by their letter of 21 October 2015 did inform the Applicant's solicitors that the Respondent was proceeding with the sale without a lease extension and if that was the case then the section 42 notice would be withdrawn. However, as Ms Ironside points out, the fact remains that the notice was not withdrawn until 25 November 2015. Consideration of the schedule of costs claimed indicates that the work undertaken after receiving notification of the Respondent's intentions, was not significant and was entirely proper and reasonable. For example, emailing the client requesting information about the valuer's costs, obtaining updated instructions, corresponding with LG Williams and Prichard to seek clarification as to whether the notice was continuing or not on 10 November 2015 and by email of 23 November 2015, and seeking the Applicants instructions by email of the 23 November 2015. The work undertaken and time spent prior to 21st of October 2015 by the Applicant's solicitors was reasonable. However, we consider that the 3 units claimed on 25 November 2015 for preparation of letters the service of the section 45 notice in the first draft of the lease was not reasonable and we determine that only 2 units are allowable.
16. We are satisfied by Mr Evans submissions about the appropriate hourly rate and we therefore consider, adopting the national guidelines, that the appropriate rates for work undertaken by Ms Ironside is £161 per hour or £16.10 per unit and the appropriate rate

for work undertaken by the paralegal is £118.00 per hour or £11.80 per unit. Adjusting the rates and the amount of time that we have allowed, we therefore allow 16 units at £16.10 namely £257.60 and 10 units at £11.80 namely £118. This totals £375.60 to which VAT at 20% of £75.12 is added to give total solicitors costs plus VAT of £450.72.

17. Accordingly we determine that the Applicant's reasonable solicitors costs for dealing with the costs incidental to the lease extension application are £375.60 plus vat at 20% of £75.12, totals £450.72. The disbursement of £6 for the office copies is not disputed and the surveyor's fees of £350 plus vat of £70, namely **£420.00** are reasonable. The grand total payable of costs, disbursements and vat is therefore **£876.72**.

18. The tribunal determined this application on 29th of June 2016.

DATED this 27th day of July 2016



Richard Payne
CHAIRMAN