



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : CHI/21UF/0C9/2014/0001

Property : 7 Offham Court, Surrey Road, Seaford,
East Sussex BN25 2PA

Applicant : Anna Bryant (Lessee)

Representative : In person

Respondent : Sinclair Gardens Investments
(Kensington) Ltd (Landlord)

Representative : WH Matthews & Co, solicitors

Type of Application : Leasehold Reform Housing and Urban
Development Act 1993 s.60 (Landlord's
costs)

Tribunal Member(s) : Judge Mark Loveday BA(Hons) MCI Arb

**Date and venue of
hearing** : Paper track

Date of Decision : 1 August 2014

DETERMINATION

Background

1. This matter relates to a lease extension of a flat at 7 Offham Court Surrey Road Seaford East Sussex BN25 2PA under the Leasehold Reform Housing and Urban Development Act 1993. By an application dated 26 March 2014, the lessee applied to determine a landlord's reasonable costs under s.60(1) of the Act. The Respondent landlord seeks to recover payment of £1,500 + VAT.
2. On 14 April 2014, the Tribunal directed that the application shall be dealt with on the paper track without a hearing on the basis of written submissions only. The Tribunal has the benefit of undated written submissions with attachments from the Applicant as well as a Schedule of Points of Dispute sent under cover of a letter dated 5 June 2014. It also has detailed written submissions from the Respondent's solicitors dated 7 May 2014 and further written submissions dated 4 June 2014.

The background

3. Despite nearly 100 pages of documentation presented to the Tribunal, neither party has seen fit to set out the basic facts. However, the Tribunal understands they are as follows.
4. By a lease dated 15 August 1986 the flat was demised for a term of 99 years from 25 March 1986. It appears there is an intermediate lease, but the Tribunal has been provided with little information about it. There is a letter from the Applicant's solicitors to their client dated 11 July 2013 which suggests the headlease was held by a Residents' Company and that it was unregistered. The Applicant's submissions refer to the "Offham/Rodmell Park Residents Company".
5. In or about June 2013, the Applicant engaged messrs Coole & Haddock to deal with the claim for a lease extension under Chapter 1 of Part I to the Act. The Tribunal has been provided with a copy of a signed s.42 Notice dated 24 June 2013 which proposed a premium of £4,700.
6. The Respondent retained messrs WH Matthews & Co, solicitors, whose offices are in Kingston upon Thames. The claim was dealt with by an experienced specialist enfranchisement solicitor, Mr Paul Chevalier, who worked for the firm as a consultant. Mr Chevalier has provided a summary of his time sheets, which shows that on 2 July 2013, he took instructions from the client in respect of the s.42 notice (2 units). He then gave the intermediate lessee notice of the claim (1 unit). The Respondent states that the solicitors charged their client for perusing the lease and office copies (3 units) and the headlease (2 units). They discovered that the headlease was defective in that it demised land by reference to a Plan which was omitted: see para 17.1 of submissions dated 7 May 2014. Mr Chevalier then instructed a valuer, apparently a Mr Gibbard at Parsons Son & Basley (2 units). He gave a preliminary counternotice on behalf of the Respondent and the intermediate landlord (3 units). By 3 July 2013, it appears that Coole & Haddock accepted the s.42 notice was invalid, although the actual

correspondence is missing. By 23 July 2013, Mr Chevalier records considering an "admission" from the Applicant's solicitors that the notice was "defective" (2 units). Including 2 letters, WH Matthews apparently charged its client £425 for work on the first s.42 notice at the rate of £250 per hour. There is a letter from the Respondent confirming the fee agreement dated 7 May 2014.

7. Coole & Haddock then served a further Notice of Claim, although no copy has been provided. Mr Chevalier's summary shows that between 23 July and 27 August he took instructions from the client on three occasions and advised (2 units). He gave the intermediate lessee notice of the second claim (1 unit) and reconsidered the lease, the headlease and the office copies (2 x 1 unit). The headlease problems appear to have been resolved at that stage. The solicitors then proceeded to investigate the tenant's rights to acquire a new lease (4 units) and the validity of the tenant's notice (3 units). Mr Chevalier drafted a counter-notice, presumably admitting the claim (3 units). Consideration of the valuation and discussing this with the client and valuer took a further 5 units of time. Together with 3 letters out, then solicitors charged £575 + VAT for their time. This fee is also confirmed in the Respondent's letter dated 7 May 2014.
8. In connection with the grant of the lease itself, Mr Chevalier's summary shows that between 27 August 2013 and 28 January 2014 he spent time drafting and agreeing lease terms. The only detail of this work is given at para 17.3 of the Respondent's first submissions, where it is explained that the plan to the headlease could not be located and the headlessee refused to enter into a Deed of Variation to correct this. After consideration and correspondence with the Applicant's solicitors, it was decided to proceed on the basis that the headlease had been orally varied so as to define the area of the land demised. Work was also carried out to prepare engrossments and to complete. Completion apparently took place on 12 February 2014. The price paid is unclear, but the Tribunal notes that on 12 February 2014 WH Matthews confirmed receipt of £8,259. The work carried out is not itemised, but the solicitors charged the Respondent £500 for the grant of the lease. This fee is again confirmed in the Respondent's letter dated 7 May 2014.

Submissions

9. The Applicant's case is admirably succinct. Her written submissions state that there were a number of other applications for lease extensions at Offham Court and the adjacent block at Rodmell Court. Both were owned by the Respondent. This was therefore a "routine piece of work, and one that an experienced solicitor would not need to spend a prolonged period studying, and drawing up the new lease". As far as the need to issue a new claim is concerned, Coole & Haddock told the Applicant that the second notice was only served "to avoid any arguments by Sinclair Gardens Investments (Kensington) Limited in relation to the authenticity of the first tenant's notice served": see letter 11 July 2013. The new notice involved only a "minor change" which led to "a large amount of additional charging by the Sinclair Gardens Solicitor". The Points of Dispute made no

specific objection to the costs of the first s.42 notice or the costs of the lease. However, it repeated the above general objection to the cost of the second s.42 notice.

10. The Respondent's two submissions are a legal tour de force, running to some 22 pages and 7 pages respectively exclusive of appendices. The submissions refer to more than 20 decisions of tribunals on costs, passages from the Fifth Edition of *Hague*, articles and extensive references to CPR 35 and principles of law. However, for present purposes one can summarise the contentions as follows:
1. Section 60 provides for not only the costs of investigating title and the grant of the new lease, but also costs "incidental to" those matters.
 2. It was reasonable for the Respondent to employ a senior lawyer such as Mr Chevalier who was experienced in enfranchisement matters.
 3. His charge out rate of £250 was a reasonable one.
 4. Enfranchisement claims are legally complex and require considerable work. The landlord was not required to find cheaper or the cheapest solicitors.
 5. The Respondent relied on the reasonable expectation test in s.60(2) of the Act. This was equivalent to the indemnity basis of assessment under CPR 44.3.
 6. The burden of proving that the costs incurred did not satisfy the s.60 tests lay on the Applicant. This required "clear evidence". The Applicant had come nowhere near to satisfying the objective burden of proof required to disallow indemnity costs. Such evidence was wholly lacking in this case.
 7. There was a "band of reasonable costs" for lease extensions. The respondent cited examples where tribunals had allowed it to recover costs of between £1,500 and £2,700. The sums claimed here fell well within that band.
 8. No examples had been given of duplication between the various claims. In particular, there was no basis for saying that following the withdrawal of an invalid s.42 notice, a landlord could not claim the costs of investigating title a second time (even though the invalidity of the first notice had not been decided by way of a declaration in the County Court).

Determination

11. The first s.42 notice. Under s.60(3) of the Act, a tenant is liable to pay the landlord's costs of any withdrawn application, and the general tests in s.60(1)(a) and (2) apply. The Applicant must pay the Respondent's reasonable costs of and incidental to any investigation reasonably undertaken of the tenant's right to a new lease – notwithstanding that the notice was accepted as defective.
12. The Respondent has set out its legal costs in some detail (see above). By contrast, the Applicant has not really addressed the specific costs of the first s.42 notice or made any submissions in relation to the legal costs incurred by the Respondent.
13. The Tribunal is satisfied that:

1. All the costs claimed relating to the investigation of the claim were payable by the Respondent to the solicitors. This is confirmed by the letter dated 7 May 2014.
 2. The charge out rate of £250 per hour for Mr Chevalier was a reasonable one. He is a senior enfranchisement specialist and a consultant, and his charge out rate was reasonably equivalent to a partner. The Respondent is not required to find a cheaper or the cheapest solicitor, and it was entitled to require advice from a senior person experienced in this complex area of law. No evidence has been given that this rate is excessive.
 3. The time spent was not excessive, given the complication of the headlease and the fact that the landlord objected to the validity of the notice.
 4. The Tribunal rejects any suggestion that the cost should have been lower on account of other lease extensions taking place elsewhere in this or adjacent blocks. Instructions need to be taken for every claim, title needs to be checked separately for each claim, the notices need to be checked separately for each claim and so on. There is therefore no duplication that would enable any saving to be made on the legal costs incurred in dealing with the first s.42 notice.
 5. Although the Tribunal does not accept there is any "band of reasonableness" as suggested by the Respondent, the value of the issues at stake is plainly relevant: *Dashwood v Chrisostom-Gooch* [2012] UKUT 215 (LC) paras 20 and 21. In this case, the Tribunal is satisfied that it was reasonable to incur costs of £425 plus VAT for simple (but opposed) lease extension claim involving a premium of between £5,000 and £10,000. This is equivalent to less than two hours work by Mr Chevalier.
14. The second s.42 notice. The tenant is liable to pay the landlord's costs of the second s.42 notice and the general tests in s.60(1)(a) and (2) apply. The Applicant must pay the Respondent's reasonable costs of and incidental to any investigation reasonably undertaken of the tenant's right to a new lease.
 15. The Respondent has again set out its legal costs in some detail (see above). By contrast, the Applicant has once more not really addressed the specific costs of the second s.42 notice.
 16. The main issue here is the additional costs incurred as a result of the objection to the first s.42 notice. The Applicant submits that the changes were only "minor" and that the second notice was only served "to avoid any arguments" about the validity of the first notice. The Tribunal does not agree. Although it has not been given specific details of the alleged defects in the first s.42 notice, the fact remains that the Applicant's legal advisors chose to serve a second notice (whether without prejudice to the validity of the original notice or by expressly withdrawing the first). The Respondent acted perfectly reasonably in incurring a second set of costs to consider this application. The work was a result of the decision of the Applicant and her legal advisors to serve a second notice; it was not a consequence of the Respondent threatening "arguments" about the validity of the original one.

17. Moreover, the Tribunal is satisfied there is no duplication between the work undertaken on the first and second s.42 notices. The differences between the two notices may well have been "minor", but it was plainly necessary for the solicitors to take further instructions (3 units), to notify the intermediate landlord of the new claim (1 unit) and to reconsider the lease, headlease and office copies (2 x 1 unit). Indeed, it is notable that the Respondent charged less for this work, presumably because it had already carried out equivalent investigations in relation to the first s.42 notice. The solicitors then carried out new work which had not been undertaken in relation to the first notice namely investigation of the tenant's rights (4 units), the validity of the tenant's notice (3 units) and drafting a different counter-notice (3 units), valuation considerations (5 units). None of this further work duplicated anything else done in respect of the earlier notice.
18. The Tribunal is satisfied that:
 1. All the costs claimed relating to the investigation of the second claim were payable by the Respondent to the solicitors. This is confirmed by the letter dated 7 May 2014.
 2. The charge out rate of £250 per hour for Mr Chevalier was a reasonable one: see above.
 3. The time spent was not excessive, given the existence of the headlease, the earlier notice have been given on a different basis, and the complications with the headlease plan.
 4. The Tribunal again rejects any suggestion that the cost should have been lower on account of other lease extensions taking place elsewhere in this or adjacent blocks: see above.
 5. In this case, the Tribunal is again satisfied that it was reasonable to incur legal costs of £575 plus VAT for considering a simple (but opposed) claim involving a premium of between under £5,000 and £10,000. This is equivalent to a little over two hours work by Mr Chevalier.
19. The lease terms. The tenant is liable to pay the landlord's reasonable costs of and incidental to the grant of a new lease. The general tests in s.60(1)(c) and (2) apply.
20. The Respondent has again set out its legal costs in some detail (see above). By contrast, the Applicant has once more not really addressed the specific costs of the lease.
21. The Tribunal is satisfied that:
 1. All the costs of the lease were payable by the Respondent to the solicitors. This is confirmed by the letter dated 7 May 2014;
 2. The charge out rate of £250 per hour for Mr Chevalier was a reasonable one: see above.
 3. The time spent was not excessive, given the existence of the headlease, the earlier notice have been given on a different basis, and the absence of any headlease plan. Plainly additional time was taken up dealing with that.

4. The Tribunal again rejects any suggestion that the cost should have been lower on account of other leases extensions taking place elsewhere in this or adjacent blocks. It is hard to see there is scope for saving as a result of granting several lease extensions of different flats at about the same time.
5. In this case, the Tribunal is again satisfied that it was reasonable to incur costs of £500 plus VAT for granting a lease in a simple extension claim involving a premium of between under £5,000 and £10,000. This is equivalent to two hours work by Mr Chevalier.

Conclusions

22. In short, the Tribunal determines that the costs reasonably payable by the Applicant to the Respondent are as follows:
 1. £425 plus VAT for the investigation of the tenant's right to a new lease arising from the first s.42 notice.
 2. £575 plus VAT for the investigation of the tenant's right to a new lease arising from the second s.42 notice.
 3. £500 plus VAT for the grant of the new lease.
23. This may well appear high for the grant of a lease extension for a flat in Seaford, but it includes the substantial additional costs incurred by the landlord in considering the first s.42 notice. For the reasons given above, that is not a reason for limiting the Respondent's recoverable costs.

Judge Mark Loveday
1 August 2014

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Appendix A: LEGISLATION REFERRED TO IN DECISION

60 Costs incurred in connection with new lease to be paid by tenant

(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 tenant's notice ceases to have effect by virtue of section 47(1) or 55(2).

(5) The tenant shall not be liable under this section for any costs which a party to any proceedings under this Chapter before the appropriate 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.