



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

Case Reference : CHI/00MR/OC9/2015/0011

Property : 27B ALBERT ROAD, SOUTHSEA, HAMPSHIRE
PO5 2SE

Applicant : Robert Barritt

Respondent : Martin Harland

Representative : Glanvilles LLP

Type of Application : Landlord's costs for a lease extension

Tribunal Members : Judge D. R. Whitney
B. Simms FRICS

Date of Decision : 20th July 2015

DECISION

1. This is an application by Robert Barritt (“the Applicant”) the owner of the leasehold interest in 27B Albert Road, Southsea (“the Property”). The Respondent, Martin Harland is the owner of the freehold interest in the Property. The Respondent was represented throughout this matter by Glanvilles LLP. The Applicant sought a lease extension by way of the Leasehold Reform Housing and Urban Development Act 1993. This was completed on 31st March 2015.
2. The parties have failed to reach agreement as to the costs payable by the Applicant to the Respondent in respect of the costs relating to the respondents investigation of the Notice served. Valuation costs and the costs associated with the granting of the new lease are not challenged and have been agreed. Application was made dated 27th April 2015 and directions were given dated 1st May 2015. A hearing bundle was supplied by the Applicant.
3. The tribunal has dealt with this matter on the papers before it.

THE LAW

4. The relevant law is set out in Section 60 of the Leasehold Reform Housing and Urban Development Act 1993 (“the Act”). A copy is annexed hereto marked A.

DECISION

5. The Applicant contends that no fee is payable to the Respondent in respect of solicitors costs incurred in investigating the Applicants right to a new lease. He contends that the fee paid for the granting of the lease (£700 plus VAT) is sufficient. The Applicant seem to rely upon the fact that his solicitor only charged £750 plus VAT and disbursements for the whole process and he attaches a copy of their invoice.
6. The Respondents solicitors are seeking £600 plus VAT for the costs under Section 60(1)(a) of the Act. Supposedly by error at one stage a higher sum was sought but this is the sum the Respondents solicitors are now seeking. They state the time costs are actually £967.50 plus VAT but they have capped the amount to the reduced figure.
7. The fee earner undertaking the work was a grade A fee earner whose hourly rate was £225 plus VAT. It appears that the Respondent regularly instructs this firm.
8. The tribunal had limited information available to it. The determination was on the papers supplied and as ever the tribunal adopted a broad brush approach in determining this matter.
9. The tribunal is satisfied that the Respondent is entitled to recover his costs of investigating the initial notice and the tenant’s right to claim. It is clear this is required under Section 60(1)(a) of the Act. The Applicant suggests this should simply be a review of the Applicants leasehold title. The tribunal disagrees.

10. It is accepted, given that the Act requires when the grounds are made out for a freeholder to grant a new lease, that this is a complex area of law. A freeholder is entitled to consider the Notice and determine whether the giver of such notice is entitled to claim a new lease. For that reason this tribunal accepts that it is reasonable for such work to be undertaken by a Grade A fee earner at the hourly rate claimed.
11. The Applicant relies upon the price he was charged. In this tribunal's determination this is not strictly relevant. Plainly he managed to achieve an advantageous charging rate for himself. The Respondent does not have to seek the cheapest representation, simply representation at a reasonable cost. Given it seems he regularly instructs the firm and this fee earner for work of this type the tribunal accepts it was reasonable to instruct this firm on this occasion.
12. As to the amounts the tribunal comments that if it was asked to award the total sum of the time costs it would have reduced the amount claimed. However, as the tribunal would expect from an experienced practitioner, they have already discounted the sum. The tribunal is satisfied that the sum claimed of £600 plus VAT (£720) represents a fair and proper cost for work undertaken pursuant to Section 60(1)(a) on the basis of the submissions made by both parties.
13. For the sake of clarity the tribunal notes that the sum of £850 plus VAT due under Section 60(1)(c) of the Act and any valuation fee have all previously been agreed by the Applicant.

Judge D. R Whitney

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.

ANNEX A

Section 60 Leasehold Reform Housing and Urban Development Act 1993

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)

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