



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

Case Reference : **LON/OOAK/OC9/2015/0335**

Property : **23 Manor Court, London N14 6NG**

Applicant : **Brickfield Properties Limited
(landlords)**

Representative : **Wallace LLP (solicitors)**

Respondent : **Ms B. De Mesquita (leaseholder)**

Representative : **Trott & Gentry LLP (solicitors)**

Type of Application : **Application under section 91(2)(d) of
the Leasehold Reform, Housing and
Urban Development Act 1993 ('the
Act') to determine the costs payable
under section 60 of the Act**

Tribunal Members : **Professor James Driscoll (Judge) and
Mr Patrick Casey MIRCS**

**Date and venue of
Hearing** : **The tribunal considered the
application on the basis of the papers
filed without an oral hearing on 30
September 2015**

Date of Decision : **8 October, 2015**

DECISION

Summary of the decision

1. The costs of the applicants were reasonably incurred and we determine costs in the sum of £2,852.40 (which includes a valuation fee of £850, Land Registry fees of £24 and courier fees of £4.50 and VAT) are recoverable from the leaseholder. From these charges is to be deducted the sum of £1,675 which the applicant's solicitors hold as a deposit. The balance should be paid by 30 October 2015.

Introduction

2. The applicants are the head leaseholders of a block of flats which contains a flat of which the respondent is the leaseholder. She gave a notice under section 42 of the Act seeking the grant of a new lease. The applicants are the 'competent landlord' for the purposes of her claim (the freeholders are City and Country Properties Limited who are not involved with the claim). A counter-notice was given admitting the claim and it made various counter-proposals. As the parties did not agree on the terms of the new lease or the premium to be paid either could have applied to the tribunal for a determination under section 48 of the Act. As no such application was made the notice was deemed under the Act as having been withdrawn.
3. Directions were given on 5 August 2015. In accordance with regulation 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 the directions included a statement that the tribunal considered that the matter was suitable for a determination without an oral hearing. However, the parties were invited to seek a hearing if they wanted one. Neither party did so. The parties were directed to exchange statements and the applicant was required to prepare a bundle of documents.

Consideration of the application

4. On 18 September 2015 the tribunal received a bundle of documents prepared by the applicant's solicitors. The bundle included a copy of the claim and the counter-claim, the application, the directions, a schedule of costs, the applicant's submissions on costs, copies of previous decisions of this tribunal on costs and a copy of correspondence between the parties. There was no statement on costs prepared on behalf of the respondent leaseholder.

5. The tribunal considered the application on the basis of the bundle on 30 September 2015.
6. A very full explanation of the charges was given by Wallace LLP the applicant's solicitors. In the absence of any challenges to these charges we proceeded to consider the items of work that they covered and to check that they are all covered by section 60 of the Act and that they are not excessive. We have also relied on our professional knowledge and experience to inform our consideration of the fees claimed.
7. We remind ourselves that under section 60 the claimant leaseholder must pay the landlord's costs of (a) investigating the leaseholder's right to a new lease, (b) any valuation of the leaseholder's flat and (c) the grant of the new lease.
8. We accept the submission that the area of enfranchisement and new leases is a complex one and that the landlord is entitled to choose a specialist solicitor to represent its interests. The work was undertaken by a partner at Wallace LLP who charged £395 per hour rising to £420 per hour in August 2014. The partner was assisted by an assistant solicitor who charged her time at £300 per hour and by a paralegal whose charge out rate was £150. In our opinion these rates are in line with the charge out rates for solicitors working in central London.
9. The work included considering the claim notice, considering Land Registry entries, preparing a draft lease and preparing a counter-notice. The work also consisted of correspondence and emails with the leaseholder's solicitor and the applicant's valuer.
10. All of this work is justified and in the absence of any challenges to the charges we determine that this element of the charges was reasonably incurred. The disbursements claimed for Land Registry copies and a courier's charge to serve the counter-notice are also recoverable.
11. As to the valuer's fees of £850 which was based on a charging rate of £200 per hour this is also recoverable. The valuer appointed was Mr M. Green BSc MIRCS MIRPM and we consider that his charges for work that included an inspection of the subject flat and preparing the valuation report were reasonable.

James Driscoll and Patrick Casey
8 October, 2015.

Appendix

Section 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)

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.

Section 91

Jurisdiction of leasehold valuation tribunals.

(1)

Any jurisdiction expressed to be conferred on a leasehold valuation tribunal by the provisions of this Part (except section 75 or 88) shall be exercised by a rent assessment committee constituted for the purposes of this section; and any question arising in relation to any of the matters specified in subsection (2) shall, in default of agreement, be determined by such a rent assessment committee.

(2)

Those matters are—

(a)

the terms of acquisition relating to—

(i)

any interest which is to be acquired by a nominee purchaser in pursuance of Chapter I, or

(ii)

any new lease which is to be granted to a tenant in pursuance of Chapter II, including in particular any matter which needs to be determined for the purposes of any provision of Schedule 6 or 13;

(b)

the terms of any lease which is to be granted in accordance with section 36 and Schedule 9;

(c)

the amount of any payment falling to be made by virtue of section 18(2);

[F1(ca)

the amount of any compensation payable under section 37A;]

[F2(cb)

the amount of any compensation payable under section 61A;]

(d)

the amount of any costs payable by any person or persons by virtue of any provision of Chapter I or II and, in the case of costs to which section 33(1) or 60(1) applies, the liability of any person or persons by virtue of any such provision to pay any such costs; and

(e)

the apportionment between two or more persons of any amount (whether of costs or otherwise) payable by virtue of any such provision.

(3)

A rent assessment committee shall, when constituted for the purposes of this section, be known as a leasehold valuation tribunal; and in the following provisions of this section references to a leasehold valuation tribunal are (unless the context otherwise requires) references to such a committee.

(4)

Where in any proceedings before a court there falls for determination any question falling within the jurisdiction of a leasehold valuation tribunal by virtue of Chapter I or II or this section, the court—

(a)

shall by order transfer to such a tribunal so much of the proceedings as relate to the determination of that question; and

(b)

may then dispose of all or any remaining proceedings, or adjourn the disposal of all or any such proceedings pending the determination of that question by the tribunal, as it thinks fit;

and accordingly once that question has been so determined the court shall, if it is a question relating to any matter falling to be determined by the court, give effect to the determination in an order of the court.

(5)

Without prejudice to the generality of any other statutory provision—

(a)

the power to make regulations under section 74(1)(b) of the Rent Act 1977 (procedure of rent assessment committees) shall extend to prescribing the procedure to be followed consequent on a transfer under subsection (4) above; and

(b)

rules of court may prescribe the procedure to be followed in connection with such a transfer.

(6)

Any application made to a leasehold valuation tribunal under or by virtue of this Part must comply with such requirements (if any) as to the form of, or the particulars to be contained in, any such application as the Secretary of State may by regulations prescribe.

(7)

In any proceedings before a leasehold valuation tribunal which relate to any claim made under Chapter I, the interests of the participating tenants shall be represented by the nominee purchaser, and accordingly the parties to any such proceedings shall not include those tenants.

(8)

No costs which a party to any proceedings under or by virtue of this Part before a leasehold valuation tribunal incurs in connection with the proceedings shall be recoverable by order of any court (whether in consequence of a transfer under subsection (4) or otherwise).

(9)

A leasehold valuation tribunal may, when determining the property in which any interest is to be acquired in pursuance of a notice under section 13 or 42, specify in its determination property which is less extensive than that specified in that notice.

(10)

Paragraphs 1 to 3 and 7 of Schedule 22 to the Housing Act 1980 (provisions relating to leasehold valuation tribunals constituted for the purposes of Part I of the M3Leasehold Reform Act 1967) shall apply to a leasehold valuation tribunal constituted for the purposes of this section; but—

(a)

in relation to any proceedings which relate to a claim made under Chapter I of this Part of this Act, paragraph 7 of that Schedule shall apply as if the nominee purchaser were included among the persons on whom a notice is authorised to be served under that paragraph; and

(b)

in relation to any proceedings on an application for a scheme to be approved by a tribunal under section 70, paragraph 2(a) of that Schedule shall apply as if any person appearing before the tribunal in accordance with subsection (6) of that section were a party to the proceedings.

(11)

In this section—

“the nominee purchaser” and “the participating tenants” have the same meaning as in Chapter I;

“the terms of acquisition” shall be construed in accordance with section 24(8) or section 48(7), as appropriate; and the reference in subsection (10) to a leasehold valuation tribunal constituted for the purposes of Part I of the Leasehold Reform Act 1967 shall be construed in accordance with section 88(7) above.