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

Case Reference : LON/00AN/OC9/2016/0255

Property : Flat 93 Talgarth Mansions,
Talgarth Road, London W14 9DF

Applicant : Leonardo Monzon

Representative : Morrisons Solicitors

Respondent : Brickfield Properties Limited

Representative : Wallace LLP Solicitors

Type of Application : Section 60 Leasehold Reform.
Housing and Urban Development
Act 1993 – determination of costs
payable

Tribunal Member : Judge John Hewitt

Date of Decision : 25 November 2016

DECISION

Decisions of the tribunal

1. The tribunal determines that:
 - 1.1 The costs payable by the applicant to the respondent in respect of the First Notice amount to £3,606.12 (see paragraph 21 below); and
 - 1.2 The costs payable by the applicant to the respondent in respect of the Second Notice amount to £2,131.80 (see paragraph 25 below).
2. The reasons for my decisions are set out below.

NB Later reference in this Decision to a number in square brackets ([]) is a reference to the page number of the hearing file provided to us for use at the hearing.

Procedural background

3. The applicant is a long lessee and qualifying tenant of the subject property. The respondent is the competent landlord for the purposes of section 40 of the Act.
4. On or about 30 July 2015 the applicant served on the respondent a notice pursuant to section 42 of the Act purporting to exercise the right to a new lease (the First Notice) [47].
5. On 27 October 2015 the respondent served a counter-notice. That was served without prejudice to the assertion that the notice was an invalid notice for the reasons given.
6. Later on 27 October 2015 the applicant served on the respondent a further notice pursuant to section 42 of the Act purporting to exercise the right to a new lease (the Second Notice) [90]. In the covering letter the applicant's solicitors accepted that the First Notice was an invalid notice.

The respondent served a counter-notice [93] admitting that on the relevant date the applicant had the right to a new lease.

Terms of acquisition could not be agreed and on 17 October 2016 those terms in dispute were determined by a tribunal (Case Reference LON/00AN/OLR/2016/0690) (the Terms Application).

Evidently completion of the new lease has not yet taken place.

7. On 15 June 2016 the tribunal received from the applicant an application pursuant to section 60 of the Act. Attached to the application form was a copy of the Second Notice. No reference was made to the First Notice.

8. Standard directions were issued on 27 September 2016 [13]. The parties were notified that the tribunal proposed to determine the application on the papers and without an oral hearing unless either party requested an oral hearing. The tribunal has not received such a request.
9. Pursuant to directions the tribunal has been provided with a bundle which contains:
- | | |
|---|------|
| Application form | [1] |
| Respondent's schedule of costs claimed | [17] |
| Applicant's submissions (undated) | [25] |
| Applicant's further submissions (undated) | [28] |
| Respondent's submissions | [30] |

The issues

The costs claimed

10. The respondent has submitted two costs schedules:

	The First Notice:	The Second Notice
Legal costs	£1,705.00	£1,868.00
Valuer's fees	£1,228.60	-
Land Registry fees	£ 24.00	£ 30.00
Courier fees	£ 51.50	£ 51.50
VAT	<u>£ 597.02</u>	<u>£ 383.90</u>
Total	£3,606.12	£2,333.40

In both cases the legal costs are based on charge-out rates of:

£450 per hour for a senior partner;
£330 and £350 per hour for an assistant and
£200 per hour for a paralegal.

11. The applicant has taken two jurisdictional points with regard the costs claimed in respect of the First Notice. The first point is that the application only relates to the Second Notice. The First Notice is not before the tribunal and the tribunal does not have jurisdiction to determine any costs associated with it. The second point is that the First Notice was an invalid notice and the giving of an invalid notice does not trigger an entitlement to costs.

Without prejudice to those submissions, the applicant has made detailed submissions on the quantum of the costs claimed.

12. The respondent submits that the tribunal should exercise its jurisdiction to determine the costs claimed on both notices. The two schedules relate to the same property, the same parties and the same solicitors were involved.

13. I reject the applicant's submission that the giving of an invalid notice does not trigger an entitlement to costs. Section 60 expressly states:

"Where a notice is given under section 42 the tenant by whom it is given shall be liable ... for the reasonable costs of and incidental to ..."

There is no express limitation that the section is limited to valid notices only. Whilst an invalid notice may be no effect the tenant has still given a notice. The landlord has had to deal with it. The landlord has served a counter-notice, albeit without prejudice to the contention that the notice was an invalid notice.

14. I hold that the respondent is entitled to its statutory costs arising in connection with the First Notice.

15. I am reinforced in this conclusion by the reference in *Hague: Leasehold Enfranchisement* paragraph 28:31 where, in connection with mirror costs provisions as regards collective enfranchisement the authors say:

"It is considered that where a purported initial notice is served which turns out to be invalid, the nominee purchaser and participating tenants are estopped from denying that s.33 costs are payable at any time while they assert it is a valid notice."

Footnote 222 cites the authorities relied on for that proposition.

16. I find that the applicant served the First Notice holding out that it was a valid notice. That notice was not withdrawn until 27 October 2015. I find that the respondent is entitled to recover section 60 costs reasonably and properly incurred until 27 October 2015 when the First Notice was withdrawn.

17. I have found that the respondent is entitled to its section 60 costs in relation to the First Notice. The respondent is thus entitled to make an application for those costs. It has done so by way of a claim within the application issued by the applicant. The applicant has made detailed submissions on the quantum of the costs claimed and the respondent has made detailed submissions in reply. Not all of the costs claimed are now in dispute. For example, the valuer's fees are now agreed. The charge-out rate of £450 is no longer challenged, although some of the time claimed for remains in issue.

18. All of the relevant materials and arguments are before me to enable me to make a determination of the costs payable.

In these circumstances, I hold that it is proportionate and in accordance with the overriding objective that I should make such a determination.

Costs associated with the First Notice

19. As mentioned the valuer's fees are no longer challenged. The charge-out rate of £450 for a partner is no longer challenged but the applicant still submits that some of the time claimed for is excessive for such an experienced partner and also submits that if the respondent had been paying for the work directly it would have requested it be carried out by someone more junior with a lower charge-out rate.
20. I have gone through the schedule of costs claimed, considered the tasks carried out and the amount of time claimed for.

Apart from one small task all of the work was carried out by a partner.

The materials before me are not perfect. I have to do the best I can with them. In essence the time claimed for has been certified by the senior partner who carried out the work. That does not of itself mean that the time was reasonable within the meaning of section 60(2) but it is a factor to which I must give weight. Drawing on my experience as a former property litigation partner working in this sector I cannot say that the time claimed for is obviously unreasonable. I find it be within the parameters to be expected for this type of case where the client is a substantial property company.

21. I therefore allow the costs as claimed for in respect of the First Notice and determine that the amount payable by the applicant to the respondent is £3,606.12.

Costs associated with the Second Notice

22. To some extent what I have said above applies here also. However, I note that here more of the work has been carried out by an assistant at a charge-out rate of £330 and a paralegal at a rate of £200.
23. Whilst I accept that the Second Notice was given some three months after the First Notice and some details needed to be re-checked, some of the learning from the First Notice would have remained with the partner doing the work and thus it would or should have been less time consuming. I have in mind 1.1 hours claimed for considering the notice and preparing the counter-notice. I also have doubts about the 0.1 hours claimed for writing to the valuer when no further valuation fees are claimed, and 0.2 hours claimed for a partner considering updated official copies of the register. Where I have doubts, I have to defer and give the benefit of them to the paying party.
24. The schedule includes time for the completion of the transaction which is estimated. I understand the time estimate is not in dispute. I note that this work has been attributed to an assistant at the rate of £350. This seems to me to be excessive.
25. Again, I can but take a broad view. In doing so I assess the legal costs at £1,700, and thus determine the costs payable in respect of the Second Notice as follows:

Legal costs	£1,700.00
Land Registry fees	£ 30.00
Courier fees	£ 51.50
VAT	<u>£ 350.30</u>
Total	£2,131.80

Judge John Hewitt
25 November 2016