



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

Case Reference : **LON/00AC/OC9/2014/0089**

Property : **Flat 9 and Garage 10, St Edwards
court, Finchley Road, London,
NW11 7NB**

Applicants : **(1) Khawaja Mohiudden Ahmed
(2) Fauzia Ahmed**

Representative : **Hooper Naylor Friend, Chartered
Surveyors**

Respondent : **Westminster Roman Catholic
Diocese Trustee**

Representative : **Winckworth Sherwood, Solicitors**

Type of Application : **Section 91 of the Leasehold
Reform, Housing and Urban
Development Act 1993**

Tribunal Member : **Judge I Mohabir**

**Date and venue of
Decision** : **1 October 2014
10 Alfred Place, London WC1E 7LR**

DECISION

Introduction

1. This is an application made by the Applicant under section 91 of the Leasehold Reform, Housing and Urban and Development Act 1993 (as amended) ("the Act") for a determination of the statutory costs payable to the Respondent under section 60 of the Act for the grant of a new lease in relation to the property known as Flat 9 and Garage 10, St Edwards court, Finchley Road, London, NW11 7NB
2. The total legal costs claimed by the Respondent are £7,728.36 including VAT and disbursements.
3. A breakdown of the Respondent's legal costs have been provided by its solicitors in a schedule of legal costs found at pages 22-23 of the hearing bundle including the level of fee earners and hourly rates claimed in respect of each of them.
4. The Applicant's points of dispute are to be found at pages 44-53 of the bundle

Relevant Statutory Provision

5. Section 60 of the Act provides:

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.

Decision

6. The Tribunal's determination took place on 1 October 2014 and was based solely on the written representations filed by the parties. The Tribunal's approach was to conduct what effectively amounts to a detailed assessment.
7. This matter relates to the Respondent's costs incurred in what can be described as a "standard" statutory lease extension with no particular complications revealed on the papers. The first impression formed about the amount of costs claimed by the Respondent in dealing with such a matter is that they are disproportionate and therefore, *prima facie*, unreasonable. It is against this background that the Tribunal makes this determination.

Fee Earner & Hourly Rate

8. Whilst this may have appeared to be a relatively straightforward matter, the Tribunal's view was that a scrutiny of the claim notice by a fee earner with the requisite knowledge and experience in what is a highly technical area of law was appropriate. Indeed, this is perhaps the reason why the first claim notice served on behalf of the Applicants was invalid. It seems that where it was appropriate to do so, work was carried out by Grade D and paralegal fee earners. Therefore, the Tribunal concluded that the grade of fee earners and hourly rates claimed by the Applicant were reasonable.
9. Having carefully considered the schedule of costs prepared by the Respondent and the points of dispute filed on behalf Applicants, the Tribunal concluded that all of the work carried out had been reasonably incurred save for the following items of cost.

Under section 60(1)(a)

10. The Tribunal accepted the Applicants' submission that the costs incurred under this section related solely to investigating the tenants' right to a new lease. It is purely legal issue. The attendances upon the Respondent's surveyors was found to be unnecessary and, therefore, unreasonably incurred. Consequently, item 3 in the sum of £250 was disallowed.
11. As to under item 4, work done on documents, the Tribunal found the attendances claimed under Schedule A to be excessive. The following

attendances were disallowed on the basis that the other attendances claimed adequately covered the work required to establish the entitlement to a new lease:

17 April 2013	24 minutes
18 April 2013	6 minutes (of 1:06 claimed)
7 and 13 May 2013	30 minutes
2 July 2013	54 minutes
5 July 2013 (both)	1 hour 6 minutes
30 July and 9 August	24 minutes

12. Accordingly, attendances totalling 3 hours and 36 minutes were allowed for the Grade A fee earner and 1 hour 54 minutes for the Grade D fee earner and, therefore costs in the sum of £2,045 plus VAT of £401.80 plus a disbursement of £36 were allowed under this diction.

Under section 60(1)(b)

13. The costs incurred under this section relate almost exclusively to the costs of obtaining a valuation of the premium to be paid for the new lease. It is difficult to image how a global figure of £1,369 is claimed by the Respondent.
14. The Tribunal concluded that none of the costs claimed by the Respondent had been reasonably incurred save for the letters totalling £61 under item 6, telephone attendances totalling £122 under item 7 and the surveyor's fees of £750 were allowed.
15. Accordingly, the sum of £933 plus Vat of £186.60 was allowed under this section as being reasonable.

Under section 60(1)(c)

16. The Tribunal found that all of the costs claimed under this section had been reasonably incurred save for the attendances claimed by the fee earners under Schedule C.
17. The Tribunal allowed a total attendance of 1 hour and 48 minutes as being reasonable for the Grade A fee earner and 2 hours. The attendances of the latter were considered to be excessive given the attendances already claimed by the Grade A fee earner.

18. Accordingly, the sum of £1,000 plus disbursements of £60.30 plus VAT of £212.06 was allowed under this section.
19. The total costs payable by the Applicants is, therefore, determined at £4,838.76 including VAT and disbursements.

Judge I Mohabir

1 October 2014