

2884



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

Case Reference : **LON/00BB/OC9/2013/0073**

Property : **Ground Floor Flat, 79 New City Road, Plaistow, London E13 9LN**

Applicant : **Donald Benton Eccere UK Ltd**

Representative :

Respondent : **Sinclair Garden Investments (Kensington) Limited**

Representative : **WH Matthews & Co**

Type of Application : **Determination of the landlord's recoverable costs on an application under section 91 of the Leasehold Reform, Housing and Urban Development Act 1993**

Tribunal Members : **Judge O'Sullivan**

Date of Decision : **28 February 2014**

DECISION

Decisions of the tribunal

The tribunal determines that pursuant to section 60(1) the total sum of £1250 plus Vat is payable in respect of legal fees and £500 plus Vat is payable in respect of valuation costs.

Introduction and background

1. This is an application under section 91(2)(d) of the Leasehold, Reform, Housing and Urban Development Act 1993 (the "Act") to determine the amount of the landlord's recoverable costs in connection with a claim under section 42 of the Act to exercise the right to a new lease of a flat known as ground floor flat, 79 New City Road, Plaistow, London E13 9LN (the "Property").
2. On or around 7 September 2011 the tenant, Eccere UK Limited, served a notice of claim on the landlord, Sinclair Garden Investments (Kensington) Limited under section 42 of the Act.
3. The landlord responded to this notice by requesting that the Applicant prove title. Payment of the statutory deposit was requested on 20 September 2011.
4. A counter notice was served on 20 October 2011 without prejudice to an alleged invalidity in the Notice of Claim. It was alleged that in breach of section 99(5) the Notice of Claim was not signed by the Company in accordance with section 44 of the Companies Act 2006.
5. The Respondent landlord says that the principal terms of acquisition were agreed as at 13 September 2011.
6. A further notice of claim was served dated 21 November 2011.
7. Pursuant to sections 48(3) of the Act the Respondent landlord says that Applicant failed to complete the new lease or make an application to the Court for an order for the performance or discharge of any obligations arising out of the section 42 notice within the time period and failing which pursuant to section 53(1) of the Act the Applicant's notice under section 42 was deemed withdrawn. As a result the landlord says that the section 60 costs are now payable.

The costs in issue

8. The landlord has provided a schedule of the costs it says it has properly incurred under section 60(1).

9. Both parties have submitted statements of case as to the costs recoverable under section 60.
10. The Applicant accepts that it is liable in principle for any of the Respondent's costs which are found payable by the tribunal.

Legal fees recoverable under section 60(1) (a) and (c)

11. The legal costs claimed are as follows;

First Notice of Claim £1125 plus Vat

Second Notice of Claim £400 plus Vat

Costs in connection with grant of lease £475 plus Vat
12. Paul Chevalier is said to have the conduct of the response to the notice of claim and the grant of a new lease.
13. A charge out rate of £250 per hour has been adopted which is submitted to be reasonable.
14. The landlord has prepared a statement setting out in some detail the steps it goes through on receipt of a notice, it is said that the legal services are complex in nature.
15. The tenant says that the charge out rate is excessive and suggests an hourly rate in the range of £200/£215.
16. In addition the tenant argues that it is unreasonable for this fee to be charged for all of the work carried out when a more junior member of staff could have carried out some of the work at a lower rate.
17. The tribunal considers that the charging rate is within a reasonable range for work of this type. However it expects that a senior fee earner such as Mr Chevalier should be more efficient in the use of his time than that of a junior.
18. No specific criticisms are made of the time spent on each aspect of the matter.
19. As far as the First Notice of Claim is concerned the tribunal considers the time spent to be excessive. In this particular case it appears to us that the notice was clearly invalid and should have appeared so to an experienced advisor such as Mr Chevalier. Accordingly the time spent on instructing the valuer, preliminary notices and considering the

validity of the notice of claim should all be reduced by 50%. The time spent for researching questions is disallowed, time spent in legal research is not allowable. The time spent in discussing the valuation is excessive and should be reduced to 2.5 units. Correspondence is allowed. The tribunal accordingly considers the total sum of £700 plus Vat to be reasonable.

20. As far as the Second Notice of Claim is concerned again the time spent researching questions is disallowed. The time spent attending and advising the client appears excessive given the history of this matter and 2 units are allowed in this regard. Time spent reconsidering the lease and drafting the counter notice is allowed as is the correspondence. Accordingly a total sum of £250 plus Vat is considered reasonable.
21. As far as the drafting of the lease is concerned a total of £475 plus Vat is claimed for considering the terms of the new lease, drafting the lease, considering amendments, preparing engrossments and completion statement. The tribunal considers that the time spent on the drafting of the new lease is excessive. It is our view that the drafting of a new lease on basically the same terms as the existing lease should take no more than one hour. Accordingly the sum of £300 is allowed in respect of the grant of the lease.

Valuation fees recoverable under section 60(1)(b)

22. The valuation costs payable are said to be in the sum of £700 plus Vat payable to G P Holden FRICS. He provided a statement dated 6 December 2013 which itemised the work done.
23. This included reading the relevant documents, a straightforward inspection of the flat, visiting agents, preparing a valuation and reporting back to the client. Following the service of the second notice the evidence was reviewed and a further valuation provided. Charges relating to the first notice were £550 and to the second £150 plus Vat making a total of £700 plus Vat.
24. We were not provided with copies of the valuation reports. We do not know whether an internal inspection of the Property was carried out.
25. The Applicant says that the cost is excessive on the basis that the Respondent could have used a local valuer with expertise of the market, it also relies on its own valuation costs in the sum of £500 plus Vat.
26. The tribunal considers that this was a straightforward valuation, we do not have copies of the reports and have no evidence to suggest

otherwise. Accordingly we consider a reasonable fee would be £500 plus Vat.

Costs recoverable under section 60 of the Act

27. The relevant statutory provisions include the following:

(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 the landlord 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) for the grant of a new lease [under section 56]

By section 60(5):

A tenant shall not be liable under this section for any costs which a party to any proceedings under [Chapter II] before a leasehold valuation tribunal incurs in connection with the proceedings.

Determination

28. We concluded therefore that the amount payable is as follows;

Legal fees in the sum of £1250 plus Vat

Valuation fees in the sum of £500 plus Vat

Total payable £1750 plus Vat.

Name: S O'Sullivan

Date: 28 February 2014