



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

Case Reference : BIR/OOCR/OLR/2014/0128

Properties : 17 Broome Court, Tenterfields, Halesowen, West Midlands,
B63 3LH.

Applicant : Mr Alan Porter

Representative : Mr A.W. Brunt FRICS

Respondent : Executors to the Estates of B. & B.R. Englander

Representative : Messrs Rice-Jones & Smiths, Solicitors

Type of Application : Determination of the landlord's reasonable costs to grant
a lease renewal under s.91(2)(d) of The Leasehold Reform
Housing & Urban Development Act 1993

Tribunal Members : I.D. Humphries B.Sc.(Est.Man.) FRICS
Judge D.R. Salter LL.B.

Determination : By written representations

Date of Decision : **- 6 FEB 2015**

DECISION

Introduction

- 1 This application is made under section 91(2)(d) of The Leasehold Reform Housing & Urban Development Act 1993 ('the Act') to determine the amount of the landlord's legal costs and surveyor's fees payable by the Lessee to the Lessor in connection with the grant of an extended lease.

The Law

- 2 The items for which costs can be claimed are listed in Section 60 of the Act:

'(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.

...

(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.'

- 3 By section 91(2)(d), any dispute as to the amount of such costs is to be determined by a leasehold valuation tribunal, a jurisdiction transferred to the First-tier Tribunal of the Property Chamber.

Issues In Dispute

- 4
 - 1 The landlord's legal fees.
 - 2 The landlord's surveyor's fees.

Legal Fee

5 Applicant's Submission

Mr Brunt for the Applicant submitted that a reasonable time input for legal fees would be 34 units of 6 minutes each, i.e. 3.4 hours of chargeable time, at £185.00 per hour, totalling £629.00 professional fees plus £9.00 for disbursements.

6 Respondent's Submission

The Respondents claimed between 53 and 58 units for time spent on various aspects of the instruction detailed in a schedule, charged at £225.00 per hour totalling between £1,192.50 and £1,305.00, plus £9.00 for disbursements.

7 Tribunal Determination

The Tribunal accepts that a reasonable hourly charge for work conducted by an unqualified individual with 37 years' conveyancing experience in London would be £225.00 per hour.

In respect of the time input, the Tribunal has considered each head of claim and determines the reasonable amount based on submitted costs as follows. Each unit represents 6 minutes.

Detail listed in Respondent's Schedule	Decision units
Receipt of Notice and preliminary review of the same.	2
Obtaining details of date Notice received from client and considering Act to see if it included deemed service provisions and deciding it did not. Advising client that in view of the Notice not having been served to allow sufficient time to reply (2 months) then the Notice may be invalid.	7
Writing to the Tenant's representative asking them to deduce title and also inviting them to consider the withdrawal of the Section 42 Notice on the grounds it was invalid.	2
Telephone conversation with the Tenant's representative regarding service of the Notice.	2
Taking instructions and writing to the Tenant's representative that the Notice could be accepted provided Title was deduced and the Tenant had been the owner for at least 2 years.	0
Receiving Title and investigation of the same and reporting to client that the Tenant's claim was to be accepted as valid.	2
Review of existing lease for purpose of being able to draft new lease.	3
Drafting lease and submitting same to the Tenant's Solicitors for their approval.	5
Chasing email requesting return of the draft lease.	1
Review emailed reply advising the Solicitors are without instruction in the lease approval.	1
Estimated time to agree lease with the tenant's Solicitors - difficult to calculate as no input from the tenant's Solicitors	10
Estimated time to complete lease once form agreed	4
Total Units	39

- 8 39 units at £225/hour totals £877.50 for the professional legal fee plus the agreed £9.00 for disbursements.

Surveyor's Fee

9 Applicants' Submission

Mr Brunt was aware that the landlord's Surveyor had inspected the property after the date of referral to the Tribunal (and by implication this was not a fee recoverable from the Applicant), but was unaware of any inspection having been made in May 2014 as claimed by the Respondent. In view of this, he submitted that a reasonable fee would be £300.

10 Respondent's Submission

The Respondent claimed that a Surveyor had been instructed who had carried out general enquiries in the Halesowen area in May 2014 which was a recoverable cost. The fee claimed was £750.00.

11 Tribunal Determination

The Tribunal has considered the Schedule of time spent on the valuation submitted by the Respondent's Surveyors Messrs May & Philpot and determines the reasonable costs as set out below. The schedule shows Respondent's descriptions in italics with the Tribunal's determination in the right hand column. Each unit represents 6 minutes.

Detail listed in Respondent's Schedule	Decision units
<i>Receiving and confirming client's instructions</i> Confirmed by the Tribunal as reasonable.	2
<i>Read lease</i> The Account claimed that it had taken 9 units (54 minutes) to read the lease which the Tribunal finds excessive for a qualified Surveyor in this specialist field. A reasonable time input would have been 3 units (18 minutes).	3
<i>Inspect area and take site notes (excluding travel time)</i> It is common ground that the Surveyor had been instructed but the Applicant disputes that general enquiries had been made in the Halesowen area before an application had been made to the Tribunal. On the balance of probabilities, the Tribunal finds that general enquiries had been made although the property had not been inspected prior to the Tribunal referral and in fact the Respondent had not claimed that such an inspection had been made. The Surveyor's Account claimed 7 units (42 minutes) to inspect the area which the Tribunal finds should have taken no longer than 5 units (30 minutes).	5
<i>Obtain and analyse comparable evidence</i> Confirmed by the Tribunal as reasonable.	5
<i>Consider evidence on Capitalisation rates, deferment rates and relativity rates</i> Confirmed by the Tribunal as reasonable.	4
<i>Consider possibility of development potential</i> The Account claimed 2 units but to allow this would be double counting as 2 units were also claimed to consider the planning history.	0
<i>Consider planning applications and history</i> Confirmed by the Tribunal as reasonable.	2
<i>Undertake calculations for Lease extension</i> Confirmed by the Tribunal as reasonable.	5
<i>Prepare initial report</i> Confirmed by the Tribunal as reasonable.	7

<i>Consider draft and prepare final report for client</i> The Tribunal makes no allowance as to do so would be double counting for report preparation.	0
Total Units	33

- 12 In total, the Tribunal finds a reasonable time input to be 33 units (3.3 hours) and a reasonable hourly rate to be £150.00/hour, i.e. £495.00.

VAT

- 13 The Applicants are required to pay the Respondent's reasonable costs. If the Respondent is VAT registered and able to re-claim VAT on fees paid to its solicitor and surveyor from HMRC as an input, it has suffered no loss and the Applicants are not required to pay VAT.

If however the Respondent is not VAT registered and, therefore, unable to reclaim VAT on fees as an input for VAT purposes, the Applicant is required to pay the VAT incurred on fees paid by the Respondent.

Summary

- 14 The Tribunal determines the landlord's reasonable legal fee at £877.50 plus £9.00 disbursements and the Surveyor's fee at £495.00.

Application to the Upper Tribunal

- 15 If either party is dissatisfied with this decision an application may be made to this Tribunal for permission to appeal to the Upper Tribunal, Property Chamber (Residential Property). Any such application must be received within 28 days after the decision and accompanying reasons have been sent to the parties (Rule 52 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

I.D. Humphries B.Sc.(Est.Man.) FRICS
Chairman

Date **- 6 FEB 2015**