



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

Case Reference : LON/00AK/OC9/2015/0283

Property : 8 Pymmes Close, Palmers Green,
London, N13 4NJ

Applicant : Halliard Property Co Ltd

Representative : Wallace LLP, Solicitors

Respondents : (1) Derek John January
(2) Rozita January

Representative : Curwens LLP, 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** : 9 September 2015
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 Respondents under section 60 of the Act for the grant of a new lease in relation to the property known as 8 Pymmes Close, Palmers Green, London, N13 4NJ.
2. The total legal costs claimed by the Respondent are £3,100.08 including VAT and disbursements. However, in its further submissions dated 14 August 2015, the Applicant has agreed to limit its legal costs to the lower figure of £1,620, being £1,350 plus VAT of £270.
3. A breakdown of the Applicant's legal costs have been provided by its solicitors found at page 35 of the hearing bundle including the level of fee earners and hourly rates claimed in respect of each of them.
4. The Respondents' points of dispute are to be found at pages 135-140 of the bundle. Each of the specific items of cost challenged are dealt with in turn below.

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 9 September 2015 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. It took place against a background of a purported deemed withdrawal when the Respondents' solicitors failed to make an application to the Property Chamber within the time limit prescribed by section 46 of the Act. I understand that it is not accepted by the Respondents solicitors that the terms of the draft lease remained in dispute and this collateral issue may be the subject of other litigation.

Fee Earner & Hourly Rate

8. Whilst this may have appeared to be a relatively straightforward matter, the Tribunal's view was that this is a highly technical area of law mainly conducted by firms of solicitors with the requisite knowledge and experience, of which the Applicant's solicitors are one. It appears that Wallace has a long standing retainer with the Applicant to undertake many transactions of this kind. Naturally, the Applicant instructed Wallace in this matter.
9. Having regard to the technical nature of the work and the location of the firm, the Tribunal considered the use of a Grade A and other fee earners was appropriate and the relevant hourly rates reasonable.
10. Save for the items of work challenged below, the other items of work claimed by the Applicant as set out in the breakdown of costs are agreed by the Respondents.

Items Challenged

28 May 2014 – Letter to client

11. This letter was a letter to the Applicant by Wallace to confirm instructions to act in this matter, that the valuer has also been instructed and to request a copy of the current lease.
12. This work does not fall within the provisions of section 60 (1)(a)-(c) and the sum of £39.50 is disallowed.

28 May 2014 – Letter to valuer

13. This work does fall within section 60 (1)(b) and the sum of £39.50 is allowed.

28 May 2014 – Letter to Respondents' solicitor

14. This letter related solely the payment of the statutory deposit and for the leasehold tile to be deduced.
15. This work does not fall within the provisions of section 60 (1)(a)-(c) and the sum of £39.50 is disallowed.

24 July 2014 – Preparing draft lease

16. The Tribunal accepted the Applicant's evidence that Wallace prepared the draft lease. This is normally a task performed by the landlord's solicitors, as it is granting the new lease and would almost necessarily include a consideration of any amendments that need to be included in the new lease. Indeed, the copy of the draft lease in the papers appears to have been prepared and engrossed by Wallace. The attendance of 42 minutes was considered to be reasonable.
17. This work does fall within section 60 (1)(c) and the sum of £287 is allowed.

28 August 2014 – Considering proposed amendments to draft lease

18. No other time is claimed by the Applicant's solicitors in relation to proposed amendments to the draft lease. As this is the only attendance claimed in this regard, the Tribunal did not consider 24 minutes to be unreasonable.
19. This work does fall within section 60 (1)(c) and the sum of £120 is allowed.
20. The net legal costs allowed by the Tribunal as being payable by the Respondents is £1,454.50.

VAT

21. The Tribunal accepted the Applicant's evidence that it is registered for VAT for the reasons set out at paragraph 24 of its further submissions dated 14 August 2014.
22. Accordingly, VAT of £290.90 is payable on the net legal costs figure above making a total Vat inclusive figure of £1,745.40. However, as stated earlier, the Applicant has agreed to limit its legal costs to the VAT inclusive figure of £1,620.

Valuation Fees

23. It is beyond doubt that, by an e-mail dated 3 February 2015, the Respondents agreed the Applicant's valuation fees in the sum of £997.40 plus VAT. By reason of this agreement, this sum is payable and it is not open to the Respondents to now challenge this figure nor does the Tribunal retain any jurisdiction to make any determination in relation to this item. The issue of Vat has already been dealt with above.

Courier Fees

24. This disbursement relates to the service of the counter notice by the use of a courier. The counter notice had to be served no later than 5 August 2014. Service took place on 30 July 2015.
25. Whilst the service of the counter notice is a very important step in the transaction, the Tribunal did not consider that the cost of a courier was reasonably incurred. There was sufficient time from when service actually took place until expiry of the time limit for service of the counter notice for Wallace to attempt service by some other mean such as Special and/or Recorded Delivery.
26. Accordingly, the disbursement of £41 including VAT is disallowed.

Land Registry Fees

27. The Tribunal accepted the Applicant's evidence that obtaining office copy entries of the freehold, leasehold interests and a copy of the underlease was a proper and necessary step to take as part of the investigation of title generally.
28. The Tribunal concluded that this disbursement was reasonably incurred and the sum of £21 was allowed.
29. In conclusion, the Tribunal determined that the grand total of the Applicant's costs payable by the Respondents is £2,963.28.

Judge I Mohabir

9 September 2015