

2792



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

Case Reference : LON/00BC/OC9/2013/0077

Property : 15 Avenue Road, Chadwell Heath,
Romford, RM6 4JF

Applicant : Tulsense Limited

Representative : SA Law

Respondents : Alan Humberstone (1)
Natalie Humberstone (2)
Roland Dex Voeux Pelly (3)
Diane Pelly (4)

Representative : Pellys Transport & Regulatory Law

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
Mr Banfield FRICS

**Date and venue of
Hearing** : 10 Alfred Place, London WC1E 7LR

Date of Decision : 5 February 2014

DECISION

Decisions of the tribunal

The tribunal determines that the total sum of £1485 plus Vat is payable pursuant to section 60(1) in respect of legal fees and 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 15 Avenue Road, Chadwell Heath, Romford Essex RM6 4JF (the "Property").
2. On or around 9 May 2011 the tenants, Alan and Natalie Humberstone, served a notice of claim on the landlord, TulseSense Limited under section 42 of the Act.
3. The Applicant responded to this notice by requesting that the Respondents provide the statutory deposit and prove title by 11 May 2011. The landlord was then provided with a copy of a transfer showing that the Respondents had transferred title in the Property to Roland Voeux Pelly and Diane Pelly on 19 May 2011. The Property was transferred with a full benefit of the section 42 notice dated 9 May 2011 and the rights and obligations arising out of it. The Applicant requested a copy of the counterpart of the TR1, on receipt it was noted that an undated copy had been provided with a certified copy of the TR1 finally being provided on 20 June 2011. The landlord says it was then satisfied of Mr and Mrs Pelly's entitlement to continue the claim.
4. A counter notice was served on 5 July 2011.
5. The Applicant says that the principal terms of acquisition were agreed as at 26 August 2011.
6. Pursuant to sections 48(3) and (5) of the Act the Applicant says that Respondents or their assignees had until 26 December 2011 to either 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, failing which pursuant to section 53(1) of the Act the Respondents' notice under section 42 was deemed withdrawn. No application was made by the Respondents or their assignees on or before 26 December 2011 and accordingly the notice under section 42 was deemed withdrawn.

Parties to the application

7. The Respondents to the application were originally Alan and Natalie Humberstone. The Property has since been transferred to Roland Dex Voeux and Diana Pelly who accept liability for any award for costs made under section 60(1) of the Act. The tribunal considers that Mr and Mrs Pelly should be joined as Respondents to the proceedings.
8. Accordingly it is ordered that pursuant to rule 10(1) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 Roland Dex Voeux Pelly and Diana Pelly shall be joined as Respondents.
9. References to any submissions made by the Respondents which follow are references to submissions made by Pellys for Mr and Mrs Pelly, Mr and Mrs Humberstone having taken no part in the proceedings.

The costs in issue

10. The Applicant has provided a schedule of the costs it says it has properly incurred under section 60(1). It is said that it has attempted to reach agreement on the costs but has not received a response from the tenants' solicitors at the date of application, namely 21 November 2013.
11. Both parties have submitted statements of case as to the costs recoverable under section 60.
12. The Respondents accept that they are liable in principle for any of the Applicant's costs which are found payable by the tribunal.

Section 48(3) of the Act

13. The Respondents argue as a preliminary point that all the terms of the acquisition had not been agreed and that as a result section 48(3) of the Act does not apply. As a result it says that the landlord is not entitled to any of its costs.
14. The Applicant says that the costs payable under section 60(1) are not one of the "terms of acquisition" within section 48(7).
15. The tribunal concluded that the landlord's entitlement to its costs under section 60(1) does not arise from section 48(7). The section 42 notice was deemed withdrawn as the tenants failed to enter into a new lease or make an application to the tribunal within the timescales specified in the Act. The landlord therefore remains entitled to its costs under section 60(1).

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

16. The legal costs total £1,342 plus Vat. However in its statement in response to the Respondents' submissions dated 13 January 2014 the Applicant confirms that it is content for its legal and valuation costs to be capped at £1750 plus Vat.
17. As a general point the Respondents say that the claim generally must be considered in the context of what they say are 4 other identical lease extensions which were being carried out at the same time. The Respondents say that there will naturally be some duplication in the drafting of the leases and the instruction of the valuer. In those four cases it is said that the combined costs of legal and valuation fees were £1325 plus Vat in each case. It is therefore submitted that the total costs should be limited to £1325 plus Vat if granted.
18. No criticism is made of the charging rates applied and the tribunal accepts that they are reasonable.
19. Three fee earners have worked on the matter, a Grade B solicitor charged at £235 plus Vat per hour, a Grade B solicitor charged at £225 plus Vat per hour and a Grade D paralegal charged at £150 per hour plus Vat.
20. The following criticisms are made;
 - (i) 42 minutes for consideration of the section 42 notice is said to be excessive and should be reduced to 12 minutes. In response the Applicant says this includes time to consider the lease, the entitlement of the tenant to seek an extension and advice on the validity of the notice.

The tribunal considers the time spent to be reasonable.

- (ii) 42 minutes claimed on 20/06/11 for corresponding with the tenant is said to be excessive and should be reduced to 12 minutes. In response it is said that this relates to the enquiries in relation to the change in identity of the tenant and is part of the reasonable investigation into the tenants' right to claim a new lease.

The tribunal accepts that the Applicant was entitled to make further enquiries to establish the tenants' right to a new claim. It considers the time spent of 42 minutes to be excessive and allows 30 minutes.

- (iii) 54 minutes claimed on 5/07/11 for drafting of a counter notice and corresponding with the applicant and tenants is said to include some element of negotiation. It is suggested that this should be limited to 12 minutes. In response the Applicant says no negotiation time is claimed.

The tribunal considers that the time spent drafting the counter notice and corresponding is excessive and allows 36 minutes.

- (iv) 2 hours and 12 minutes for reviewing existing lease and drafting new lease is said to be excessive and 1 hour is said to be reasonable.

The tribunal agrees 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.

The tribunal does not accept that there may have been duplication in relation to the legal fees.

The total time therefore allowed is 5.7 hours making a total revised figure for legal costs of £985 plus Vat.

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

- 21. The valuation costs payable are said to be in the sum of £750 plus Vat payable to Kirkby & Diamond. The description of the work is simply "*to the provision of professional services in undertaking a lease extension at the above property*". We were provided with a copy of a valuation report dated 4 July 2011. We note that no internal inspection of the Property was carried out and it appears that similar flats in the close vicinity had also been inspected.
- 22. The Respondents say that the cost is excessive on the basis that the Applicant at the same time was dealing with 4 other flats on Avenue Road and that it must therefore have had a great deal of familiarity with the property. In addition it says that the valuer engaged by the Respondents charged £400 plus Vat and a copy of the invoice is provided.
- 23. The tribunal considers that in a case where there are several similar flats some form of reduced fee would be agreed and in this instance consider a reasonable fee would be £500 plus Vat.

Costs recoverable under section 60 of the Act

24. 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

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

Legal fees in the sum of £985 plus Vat

Valuation fees in the sum of £500 plus Vat

Total payable £1485 plus Vat.

Name: S O'Sullivan

Date: 5 February 2014

