

2987



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

Case Reference : **LON/00BJ/OC9/2014/0143**

Property : **70 Southcroft Road, Tooting
London SW17 9TR**

Applicants : **Anita Sangeetha Sanmuthgathsan**

Representative : **Rodgers & Burton Solicitors**

Respondents : **Ragilbury Roots Limited (formerly
Babir Investments Ltd) (1)
Graham Mark King (2)**

Representative : **Barnett Alexander Conway Ingram
LLP**

Type of Application : **Assessment of costs under section
60(1) of the Leasehold Reform
Housing and Urban Development
Act 1993**

Tribunal Members : **Judge O'Sullivan**

Date of Decision : **18 December 2014**

:

DECISION

The background

1. The Applicant is the long leaseholder of 70 Southcroft Road, Tooting, London.
2. The Respondents are the freeholder of the building and the competent landlord for the purposes of the Leasehold Reform, Housing and Urban Development Act 1992 (the "1993 Act").
3. The Applicant served a section 42 notice seeking to exercise her right to a lease extension under S48 of the 1993 Act on 24 January 2014. A Counter notice was served which admitted the right but did not agree the proposed premium. The tribunal does not have a copy of that counter notice. The premium was subsequently agreed and the lease granted.

The application

4. The Applicant has now applied for an assessment of the landlord's costs under section 60(1) of the 1993 Act.
5. Directions were made dated 23 September 2014 further to which statements of costs were provided by the Respondent and statements of case served by both parties.
6. The application was considered by way of a paper determination on 18 December 2014.
7. The costs before the tribunal were as follows:-
 - (a) The Respondent's legal costs in the sum of £1,500 plus VAT and disbursements (CHAPS transfer fee and land registry fees) making a total of £1,842; and
 - (b) The costs of the Respondent's valuer in the sum of £950 plus Vat making a total of £1,140.

The Legal costs

8. The total costs are £1,530 plus Vat.
9. The costs are itemised in a print out. The total time spent was 10 hours and 36 minutes at a total cost of £1,961 but this was rounded down to £1,500.
10. The charging rate applied throughout was £185 per hour despite the rate having increased to £220 per hour during the period.

11. By way of background the tribunal was informed that the draft lease was submitted on 12 March 2014 and agreed on 17 March 2014. The premium was agreed on 17 July 2014 and an engrossment sent for signature. On 18 July 2014 the Applicant in error then requested a draft lease for approval. It took a further 3 months to achieve completion and the Respondent submits that the delays on the tenant's part increased costs unnecessarily.

Rate

12. The rate is not challenged by the Applicant.

Time spent

13. The costs are itemised in a print out. This is criticised by the Applicant who says that it does not itemise which costs are said to be section 60 costs.
14. The total time spent was 10 hours and 36 minutes.
15. This is challenged by the Applicant who says that the case has no special features, the lease had only one minor spelling amendment and on that basis the costs are simply excessive. The Applicant suggests that the following costs are reasonable;
 - (a) £129.50 representing 42 minutes at the hourly rate of £185 is submitted to be reasonable for receipt of the initial notice and checking of title.
 - (b) £55 in respect of the service of a counter notice representing 18 minutes at the hourly rate of £185.
 - (c) £259 in respect of 1 hour and 24 minutes in respect of drafting the lease and completion and a further £148 in relation to correspondence making a total of £407.
16. The Applicant submits therefore that the total reasonable costs are £592 plus Vat which it rounds up to £600 plus Vat.
17. The Respondent says that the time spent was increased by the Applicant's failure to complete in a timely manner. It is said that the Respondent's solicitors made several calls in an effort to get the matter completed. It is submitted that the Applicant had in effect accepted the costs in the sum of £1,000 plus Vat and that the tribunal should confine its decision to the amount to be paid in excess of the sum of £1,000. The Respondent also says that time spent in these types of cases is usually between £1,250 and £2,000.

The tribunal's decision

18. The provisions of section 60 are well known to the parties and the tribunal does not propose to set the legislation out in full. However costs under that section are limited to the recovery of reasonable costs of an incidental to any of the following matters, namely:-
- i. Any investigation reasonably undertaken of the tenant's right to a new lease;
 - ii. Any valuation of the tenant's flat obtained for the purpose of fixing the premium or amount payable by virtue of Schedule 13 in connection with the grant of a new lease under section 56
 - iii. The grant of a new lease under that section.
19. Subsection 2 of section 60 provides that *"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"*.
20. The tribunal considers that in principle the landlord is not entitled to recover the costs of argument or negotiation in connection with the terms of the extended lease. However in this case as the lease was agreed with only one minor amendment any costs in this regard would likewise be minimal.
21. The tribunal considers that the rate charged by the fee earner falls within the range generally adopted by the tribunal in cases of this kind.
22. The Applicant argues generally that the time spent is excessive. The view of the tribunal having taken all the matters set out in the parties' statements into account and having regard to the breakdown provided is that the time spent appears to be excessive for what was a straightforward case. It does not consider that the increased costs were caused solely by the Applicant's apparent reluctance to complete.
23. The tribunal does not agree that the Applicant agreed to pay the sum of £1,000 in respect of the costs but rather that the parties had been negotiating over time in relation to the costs. In any event even had there been such an agreement this may well have been repudiated by the Respondent having notified the Applicant of its revised costs standing at £1,500.
24. The tribunal considers that the cost of the preparation and service of a counter notice does fall within section 60.
25. The tribunal finds itself at somewhat of a disadvantage as the Respondent has not provided a narrative of the work done and the

tribunal only has a print out of the time recorded. It is unable to identify what some items relate to, by way of example there are various separate entries for “drafting” on 2 September 2014, one of which does not have any description. There are numerous telephone calls on that same day; some of these are lengthy with no explanation provided. However doing the best it can on the information available it allows the recoverable fees as follows;

26. Fees are allowed at 6 hours at the rate of £185 per hour plus Vat.
27. Disbursements in the sum of £30 and £6 respectively are allowed.
28. It does not appear that the valuation fee is in dispute. However for the sake of clarity and completeness the tribunal allows the valuation fee in full as it considers a reasonable fee for this type of valuation.

Name: Sonya O’Sullivan

Date: 18 December 2014