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

**Case Reference** : **LON/OOAM/OC9/2016/0072**

**Property** : **29 Beaumont Court, Upper Clapton Road, London E5 8BG**

**Applicant** : **Mr M. Rubin (leaseholder)**

**Representatives** : **JJ Goldstein & Co (solicitors) and Ms A. Turpin (costs expert)**

**Respondents** : **Faroncell Limited (landlord)**

**Representative** : **Wallace LLP (solicitors)**

**Type of Application** : **Application under section 91(2)(d) of the Leasehold Reform, Housing and Urban Development Act 1993 ('the Act') to determine the costs payable under section 60 of the Act.**

**Tribunal Member** : **Judge James Driscoll and Mr I. Holdsworth (professional member)**

**Date of Hearing** : **18 April 2016**

**Date of Decision** : **18 April 2016**

## **DECISION**

### **Summary of the decisions**

1. It is determined that the landlord is entitled to recover the following costs which are payable by the leaseholder under section 60 of the Act. These are solicitors fees in the sum of £2,385.00 (with VAT of £477), valuer's fees of £850 (with VAT of £170), a courier's fee of £17 (with VAT of £3.40) and a Land Registry fee of £24. The total fees of £3,926.40 should be paid by 13 May 2016.

### **Introduction**

2. This is an application for a determination of costs. It is made under section 91(2)(d) of the Act. Under section 60 a claimant leaseholder is required to pay the reasonable costs incurred by the landlord in connection with a claim for a new lease. Copies of these two statutory provisions are contained in the appendix to this decision.
3. In this matter the claimant is the leaseholder of the subject premises who has exercised his right to seek a new lease under the provisions in Chapter 2, Part I of the Act. He is represented by JJ Goldstein, solicitors. The respondent is the landlord under the lease. They are represented by Wallace LLP, solicitors.
4. His claim was made in by a notice dated 23 July 2015. In response the landlords gave a counter-notice dated 29 September 2015. Their counter-notice admitted the claim but made counter-proposals on the premium and on the proposed terms of the new lease. The parties reached agreement except although they did not agree on payment of the landlord's costs under section 60 of the Act.

### **The hearing**

5. This led the leaseholder to apply to this tribunal for a determination of the recoverable costs. He did so in an application dated 17 February 2016. Directions were given on 19 February 2016. The leaseholder's solicitors notified the tribunal of their wish to have an oral hearing. This took place on 13 April 2016. At the hearing the leaseholder was represented by Ms Turpin who described herself as a free-lance costs advisor. She told us that she was

representing the leaseholder's solicitors who had concerns over the landlord's advisors charges. Mr Serota and Mr Kashem solicitors with Wallace LLP appeared to defend the costs claim. Mr Serota is the senior partner and Mr Kashem is an assistant solicitor with the firm.

6. A detailed bundle of documents was prepared on behalf of the leaseholder. This included copies of the application, the directions, the costs schedule prepared by Wallace LLP, copies of the notices, the current lease a completion statement, copies of emails and other correspondence, copies of the written submissions made by JJ Goldstein and Wallace LLP and a detailed statement of the individual costs items with comments on this by JJ Goldstein.
7. Ms Turpin opened the application by addressing the tribunal over the challenges to the costs. She told us that she did not challenge the landlord's decision to appoint Wallace LLP as their solicitors. Nor did she challenge the hourly rates in themselves. The major challenge was first to the decision to use a partner for a substantial part of the work. In her view given that the claim was not complicated an assistant could have been used for all of the work. She also suggested that the time claimed was excessive; as Wallace LLP are experienced practitioners in the field of enfranchisement and new lease claims one would have expected them to complete the work with more expedition.
8. As an example she referred to an item where a partner charged 0.7 of an hour or 42 minutes for considering the notice of claim. In her opinion this task could have been completed in about 12 minutes. (She told us this and other challenges were based on the instructions she had received). Further, the only matter that had to be checked was whether the leaseholder had held the lease for the qualifying period of two years.
9. Overall she considered that the work in representing the landlord's position should have been completed in 2.8 hours by an assistant at a charge of £924, exclusive of VAT. The valuer's fee was not challenged.
10. Ms Turpin also told us that the claim for the courier's fee should not be allowed. She told us that the counter-notice was prepared only just within the period allowed by the Act. In her view if it had been prepared earlier it could have been served by post. Such charges are in any event part of the expenses of running a practice and are already accounted for in the hourly rates that are charged. She was also instructed that obtaining Land Registry documents was unnecessary. On her analysis the total charges should have been £2,128.80 (VAT included). (The leaseholder has already paid £1,200 towards the costs).
11. She also told us that Wallace LLP had confirmed in their submissions that section 60(2) charges are only reasonable if they would have been paid

by the landlord itself as opposed to the leaseholder. In other words, landlord's section 60 costs claims should not be inflated simply because the landlord's charges would be paid by the leaseholder.

12. Mr Serota replied. He told us that his clients pay his firm for work that is not covered by section 60, such as the costs of attending the tribunal today or on other occasions. It is quite wrong, he told us, that his clients would not have paid these charges if they were not being paid by the leaseholder.
13. The practice of his firm in this type of work, which he submits is a complicated area of law and practice, is for a partner to consider each claim they are instructed in and to delegate part of the necessary work involved. The very act of delegation requires time. As to the example of over-charging given by Ms Turpin, he submits that a full consideration of a claim notice, is whether the applicant is a qualifying leaseholder and whether the notice itself is valid.
14. In relation to the service of the counter-notice, Mr Serota told us that the statutory period for this is limited. During this period the landlord's advisors have to investigate the validity of the claim, obtain relevant Land Registry copy entries, instruct a valuer, prepare the counter-notice and to prepare the draft lease. In his experience undertaking these tasks does not leave much time before the expiry of the time limit. This justifies the use of a courier the costs of which is properly chargeable, in his view, to the leaseholder under section 60. As to the suggestion that use of a courier is part of the expenses of running a practice, he would refute this. It is not part of the hourly rates charged by solicitors.

## **Our decision**

15. We remind ourselves that there is no challenge to the landlord appointing Wallace LLP as their solicitors or to the applicable hourly rates.
16. We are grateful to Ms Turpin for her submissions but we consider that she has under-estimated the tasks involved. For example, we doubt that an adequate consideration of the leaseholder's claim notice could have been completed in 12 minutes.
17. There is some substance in Ms Turpin's point that more work (or all the work) for routine claims could be undertaken by an assistant solicitor rather than by a partner. On balance, however, we consider that the policy of using a partner for the initial consideration of a claim and the delegation of some of the work to an assistant is not unreasonable. Having regard to the description of the tasks undertaken on behalf of the landlord we have concluded that although they are on the 'high side', the solicitor's costs of £2,385 are not unreasonable. Whilst it may be possible to delegate more

work to an assistant such a delegation itself takes up some partner time and also time in checking on the work that is being undertaken.

18. It should be possible to avoid the costs of using a courier but the consequences of a landlord failing to give a counter-notice within the time prescribed by statute are serious. The leaseholder can insist on the grant of the new lease on the terms, including the premium payable, proposed in his claim notice. If the landlord fails to give a valid counter-notice in time it loses the right to challenge the terms proposed in the leaseholder's claim notice.

19. We therefore conclude that the challenge to the reasonableness of the landlord's charges totalling £3,926.40 are payable by the leaseholder. The balance (£1,726.40) should be paid by the 16 May 2016.

**James Driscoll and Ian Holdsworth, 18 April 2016**

## Appendix

### Leasehold Reform, Housing and Urban Development Act 1993

#### Section 60

#### 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.

## **Section 91**

### **Jurisdiction of leasehold valuation tribunals.**

(1)

Any jurisdiction expressed to be conferred on a leasehold valuation tribunal by the provisions of this Part (except section 75 or 88) shall be exercised by a rent assessment committee constituted for the purposes of this section; and any question arising in relation to any of the matters specified in subsection (2) shall, in default of agreement, be determined by such a rent assessment committee.

(2)

Those matters are—

(a)

the terms of acquisition relating to—

(i)

any interest which is to be acquired by a nominee purchaser in pursuance of Chapter I, or

(ii)

any new lease which is to be granted to a tenant in pursuance of Chapter II, including in particular any matter which needs to be determined for the purposes of any provision of Schedule 6 or 13;

(b)

the terms of any lease which is to be granted in accordance with section 36 and Schedule 9;

(c)

the amount of any payment falling to be made by virtue of section 18(2);

[F1(ca)

the amount of any compensation payable under section 37A;]

[F2(cb)

the amount of any compensation payable under section 61A;]

(d)

the amount of any costs payable by any person or persons by virtue of any provision of Chapter I or II and, in the case of costs to which section 33(1) or 60(1) applies, the liability of any person or persons by virtue of any such provision to pay any such costs; and

(e)

the apportionment between two or more persons of any amount (whether of costs or otherwise) payable by virtue of any such provision.

(3)

A rent assessment committee shall, when constituted for the purposes of this section, be known as a leasehold valuation tribunal; and in the following provisions of this section references to a leasehold valuation tribunal are (unless the context otherwise requires) references to such a committee.

(4)

Where in any proceedings before a court there falls for determination any question falling within the jurisdiction of a leasehold valuation tribunal by virtue of Chapter I or II or this section, the court—

(a)

shall by order transfer to such a tribunal so much of the proceedings as relate to the determination of that question; and

(b)

may then dispose of all or any remaining proceedings, or adjourn the disposal of all or any such proceedings pending the determination of that question by the tribunal, as it thinks fit;

and accordingly once that question has been so determined the court shall, if it is a question relating to any matter falling to be determined by the court, give effect to the determination in an order of the court.

(5)

Without prejudice to the generality of any other statutory provision—

(a)

the power to make regulations under section 74(1)(b) of the Rent Act 1977 (procedure of rent assessment committees) shall extend to prescribing the procedure to be followed consequent on a transfer under subsection (4) above; and

(b)

rules of court may prescribe the procedure to be followed in connection with such a transfer.

(6)

Any application made to a leasehold valuation tribunal under or by virtue of this Part must comply with such requirements (if any) as to the form of, or the particulars to be contained in, any such application as the Secretary of State may by regulations prescribe.

(7)

In any proceedings before a leasehold valuation tribunal which relate to any claim made under Chapter I, the interests of the participating tenants shall be represented by the nominee purchaser, and accordingly the parties to any such proceedings shall not include those tenants.

(8)

No costs which a party to any proceedings under or by virtue of this Part before a leasehold valuation tribunal incurs in connection with the proceedings shall be recoverable by order of any court (whether in consequence of a transfer under subsection (4) or otherwise).

(9)

A leasehold valuation tribunal may, when determining the property in which any interest is to be acquired in pursuance of a notice under section 13 or 42, specify in its determination property which is less extensive than that specified in that notice.

(10)

Paragraphs 1 to 3 and 7 of Schedule 22 to the Housing Act 1980 (provisions relating to leasehold valuation tribunals constituted for the purposes of Part I of the M3 Leasehold Reform Act 1967) shall apply to a leasehold valuation tribunal constituted for the purposes of this section; but—

(a)

in relation to any proceedings which relate to a claim made under Chapter I of this Part of this Act, paragraph 7 of that Schedule shall apply as if the nominee purchaser were included among the persons on whom a notice is authorised to be served under that paragraph; and

(b)

in relation to any proceedings on an application for a scheme to be approved by a tribunal under section 70, paragraph 2(a) of that Schedule shall apply as if any person appearing before the tribunal in accordance with subsection (6) of that section were a party to the proceedings.

(11)

In this section—



“the nominee purchaser” and “the participating tenants” have the same meaning as in Chapter I;

“the terms of acquisition” shall be construed in accordance with section 24(8) or section 48(7), as appropriate;  
and the reference in subsection (10) to a leasehold valuation tribunal constituted for the purposes of Part I of the Leasehold Reform Act 1967 shall be construed in accordance with section 88(7) above.