



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

Case Reference : LON/00BK/OLR/2016/0320

Property : 21 Hatherley Court, Hatherley Grove, London
W2 5RD

Applicant : Mr Aggelos Stylianos

Representative : Mr Gary Scott (Solicitor)

Respondent : Central & Metropolitan Estates Limited

Representative : Mr Alex Rubin (Solicitor)

Type of Application : Enfranchisement

Tribunal Members : Robert Latham
Duncan Jagger MRICS

**Date and venue of
Hearing** : 21 September 2016 at
10 Alfred Place, London WC1E 7LR

Date of Decision : 23 September 2016

DECISION

The Tribunal finds that it has no jurisdiction to determine this matter, the parties having agreed costs in the sum of £3,658.07 (inclusive of VAT).

Introduction

1. On 22 July 2016, the Applicant tenant issued this application for the determination of costs pursuant to Section 91(2)(d) of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”). On 26 July, the Tribunal issued directions.
2. On 12 August, Tolhurst Fisher LLP, the Respondent landlord’s Solicitor, notified the Tribunal that it did not consider that the Tribunal had jurisdiction to determine costs pursuant to Section 60 of the Act, as the costs payable had been agreed and settled by the Applicant when the lease extension was completed on 23 June 2016. The Respondent relied on an e-mail, dated 6 June 2016, in which Philip Ross, the tenant’s Solicitors, stated that their “client will not seek to challenge your Client’s Section 60 costs which arises in the sum of £3,658.07” if the interest payable could be agreed.
3. On 22 August 2016, Philip Ross notified the Tribunal that costs had not been agreed. Their offer had been premised on interest being agreed in the sum of £1,516.23. Interest had not been agreed in this sum. The new lease had rather been completed on the basis that a sum of £1,972.39 was payable in respect of interest.
4. On 7 September, the Tribunal set the matter down for today’s jurisdiction hearing. At the hearing, the tenant was represented by Mr Gary Scott, a partner of Philip Ross. The landlord was represented by Mr Alex Rubin, a Solicitor with Tolhurst Fisher. Both parties provided written representations.

Background

5. On 23 April 2015, the tenant served his Claim to a New Lease proposing a premium of £60,000. On 10 June, the landlord served its Counter-Notice admitting the right to a new lease, but proposing a premium of £62,500. The parties agreed a premium of £62,250.
6. There were delays in completing the grant of the new lease. We were told that this was because the tenant had failed to put his Solicitor in funds for the purchase of the new lease. On 20 January 2016, the tenant issued proceedings in the County Court seeking a vesting order. This was issued to protect his position, given his inability to complete the purchase of the new lease.
7. Thereafter, the tenant was concerned about the escalating costs in the County Court. The landlord’s position was that at all material times it has been ready, willing and able to complete the matter. It had provided an engrossed Counterpart Deed of Surrender and Grant of the new lease and a completion statement calculated on 8 October 2015.

8. Philip Ross's e-mail, dated 6 June, summarised the outstanding issues in dispute:

(i) The tenant proposed to serve a Notice of Discontinuance in respect of the County Court proceedings, provided that the landlord was willing to accept costs in the sum of £250 + VAT in respect of these proceedings.

(ii) There was a dispute about what interest was payable. We were told that this involved a number of issues: (a) the rate of interest: the landlord was demanding 8%; the tenant proposed 4.5%; (b) whether the interest was to be computed on the gross sum or the sum net of the deposit that had been paid; (c) the start date for the payment of interest: the tenant proposed 24 November 2015; and (d) the end date: the tenant proposed completion on 8 June. The tenant computed the interest payable to be £1,516.23.

(iii) The e-mail concluded: "If this can be agreed, then our client will not seek to challenge your Client's Section 60 costs which arises in the sum of £3,658.07." It is common ground that "this" referred to the interest that was payable.

9. On 23 June 2016, two events occurred:

(i) The Applicant filed a Notice of Discontinuance in the County Court.

(ii) The grant of the new lease was completed. This depended upon the tenant paying the sums specified in the Completion Statement dated 21 June 2016. This included interest of £1,972.39 computed at the rate of 4.5% from 8 October 2015 to 21 June 2016. We were told that this was computed on the gross premium of £62,250, rather than the sum net of the deposit. This also included the sum of £3,658.07 in respect of Section 60 costs.

The Tribunal's Determination

10. Mr Rubin first sought to argue that there was an express agreement that the tenant would pay Section 60 Costs in the sum of £3,658.07. He relied upon the e-mail dated 6 June 2016. He asserted that the tenant made an express offer that he would pay costs in the sum of £3,658.07 if the interest payable was agreed. The landlord accepted this offer by agreeing the interest that was payable, namely that this was to be computed at the rate of 4.5% rather than 8%. Upon this acceptance, there was a concluded agreement that the tenant would pay costs in the sum of £3,658.07.

11. The Tribunal cannot accept this argument. The critical issue is the meaning that should be attached to the phrase "if this can be agreed". It is common ground that "this" refers to the interest payable. The tenant

offered to pay interest in the sum of £1,516.23. This offer was not accepted by the landlord. The landlord rather required the tenant to pay interest of £1,972.39. Thus the landlord did not accept the offer made by the tenant, and there was no concluded agreement.

12. The landlord only accepted part of the offer made by the tenant, namely that interest should be computed at the rate of 4.5%, rather than 8%. Mr Scott identified the other elements of the offer that the landlord did not accept. Thus, the landlord required interest to be payable from 8 October, rather than 24 November 2015. Secondly, the landlord required the interest to be computed on the gross premium, rather than the sum net of the deposit. Finally, interest ran until 21 June, rather than 8 June 2016. As a result of these three matters, the interest payable was £1,972.39 rather than £1,516.23. Acceptance of part of an offer is not sufficient to result in a concluded agreement. The landlord was unable to identify any counter offer which was expressly accepted by the tenant.
13. Mr Rubin secondly argued that there was an implied agreement. Completion had occurred. This had only occurred because the tenant had paid the sums specified in the Completion Statement. This included the Section 60 costs in the sum of £3,658.07.
14. Mr Scott argued that the tenant had only paid the sum specified in the completion statement because the proverbial gun had been held to the head of his client. The tenant needed to complete the grant of the new lease. Proceedings were pending in the County Court where legal costs were increasing. Interest was also increasing on a daily basis. The tenant had no option but to pay the sums demanded.
15. The Tribunal asked Mr Scott why the tenant had not expressly stated that he was only paying the sums demanded in respect of Section 60 costs under protest and without prejudice to his right to challenge the sum demanded. Mr Scott suggested that the landlord would not have completed on this basis. He referred us to an e-mail from Tolhurst Fisher dated 21 June 2016 which stated:

“I don’t propose to enter into further negotiations with you on this subject. I consider that my client has been particularly reasonable in agreeing to complete on this matter with the conditions suggested, as opposed to contesting your client’s application to the Court for a vesting order, due to a delay by your client alone”.

16. The Tribunal are satisfied that the tenant is the author of his own misfortunes. He served a statutory notice seeking a new lease. The premium and terms of the new lease were agreed. Completion could not proceed because the tenant did not have the funds available to pay the premium and statutory costs. To protect his position, he needed to issue the proceedings in the County Court seeking a vesting order. This

application was not issued because the landlord was dragging its feet; the delay was rather that of the tenant. The tenant would have been liable for the costs of both parties in the County Court proceedings. Even as late as 17 June, Philip Ross was waiting to be put in funds.

17. Against this background, the tenant was in a weak bargaining position. The landlord demanded payment of the sum of £3,658.07 in respect of its Section 60 costs. In its e-mail dated 6 June, Philip Ross did not suggest that the sum demanded was unreasonable. The tenant paid the sum demanded. There is no evidence that he did so under protest. The Tribunal is therefore satisfied that the only implication that can be drawn on the facts of this case is that the tenant agreed that the sum of £3,658.07 was payable in respect of the landlord's Section 60 costs. Given that agreement, this Tribunal no longer has jurisdiction to determine the amount of the Section 60 costs that are payable.
18. We reach this decision without regret. This Tribunal is normally a "no costs jurisdiction". The Section 60 costs which the landlord has demanded and which the tenant has paid are modest. When the costs were first demanded by the landlord, the tenant did not suggest that they were unreasonable but rather that he was willing to pay them. The costs were subsequently paid. Statute compels a landlord to grant a new lease. Any tenant asserting their statutory right to a new lease must be ready to proceed to completion without undue delay. Both parties now face increasing legal costs in this satellite litigation. The suggestion that were we to find that we did have jurisdiction, the parties would require a further oral hearing to assess the costs, merely emphasises the entrenched positions that both parties have adopted. Both parties have a duty to ensure that proceedings are conducted in a proportionate manner.

Judge Robert Latham
23 September 2016

RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will

then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.