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

Case Reference : LON/00AC/OC9/2017/0307

Property : 36 Quadrant Close, The Burroughs,
London NW4 3BY

Applicant : Brickfield Properties Limited

Representative : Wallace LLP

Respondents : (1) Samuel Hayek
(2) Fairhold Holdings
92006) appts Limited (formerly
Action League Limited)

Representative :

Types of Application : Costs

Tribunal Members : Judge Tagliavini

**Date and venue of
Hearing (paper)** : 13 February 2018
10 Alfred Place, London WC1E 7LR

Date of Decision : 13 February 2018

DECISION

Decisions of the tribunal

The FTT allows the costs claimed by the Applicant in the sums of: £3,169.00 (plus VAT); Land Registry fess of £72.00 and courier fees of £11.28 (plus VAT).

The FTT also allows the costs of the Intermediate Landlord plus disbursements and VAT in the total sum of £1,251.60.

The application

1. This is an application made by the Applicant seeking the determination of the First-tier Tribunal (FTT) in respect of an application for costs pursuant to sections 60 and 91 of the Leasehold Reform Housing and Urban Development Act 1993 (“the Act”).

Background

2. This application concerns a Section 42 Notice previously served on behalf of the Respondent* on the Applicant. The Applicant is the head leaseholder of premises known as 21-36 Quadrant Close, The Burroughs, Hendon NW4 of which the subject property is part. The freeholder is Daejan Properties Limited. The head leaseholder’s title is subject to an underlease held by Fairhold Holdings who are the “other” landlord pursuant to section 40(4) of the Act. It is alleged by the Applicant that the Section 42 Notice has been deemed withdrawn. This is not accepted by the Respondent who has consequently applied to the Barnet County Court under claim number D01BT249 for a determination on this issue.

**All references to the Respondent are to the First Respondent. The second Respondent made no individual submissions.*

3. The Applicant contends that the work connected to the intended purchase of a new lease has been carried out by the Applicant on its own behalf, as well as on behalf of Fairhold Holdings as no independent notice of acting was notified to the parties. In its statement in support of the application for costs dated 26 January 2018, the Applicant set out the chronology of dealings which occurred from 4 May 2016 (service of Notice) to 13 July 2017 (deemed withdrawal of the Notice). Consequently, the Applicant seeks section 60 costs in the sum of £3,169.00 (plus VAT); £1,045.00 plus VAT costs of the Intermediate (“Other”) Landlord; Land Registry feed of £72.00 and courier fees of £11.28 (plus VAT). *

**VAT at 20%. Valuation fees of £1,110.00 (plus VAT) were agreed by the parties.*

The Applicant's case

4. The Applicant provided the FTT with a breakdown of the costs by fee earner, hourly rate, date/activity, time spent, the amount claimed and disbursements. The Applicant submitted that it was entitled to use its longstanding solicitors of choice rather than a "cheaper" unknown suburban firm and confirmed that the sums claimed had been billed and paid by the Applicant. The Applicant also submitted that the FTT should have regard to an earlier decision on section 60 costs concerning the same building, albeit a different flat; *LON/00AM/OC9/2016/0072*. The Applicant also sought to remind the FTT that in determining the costs payable, it should have regard to "the reasonable expectation test" i.e. what would the landlord expect to pay if it was paying the costs itself. The use of a partner was necessary due to the complexity of the work in this instant case where there were a number of leasehold interests, at a charge out rate of £450 per hour, an Assistant solicitor at £350 per hour and a Paralegal at £200 per hour.* The Applicant asserted that the work claimed for and the disbursements fell within the ambit of section 60 and should be allowed by the FTT in their entirety.

**All hourly rates subject to 20% VAT.*

The Respondent's* case

4. In written submissions dated 18 January 2018, the Respondent submitted to the FTT that it should have regard to the principles set out in *Sinclair Gardens Investments (Kensington) Limited v Wisbey* [2016] UKUT 203, namely:
- The costs of a counter-notice are incidental to the statutory list;
 - Instructing a valuer is an administrative task and should not attract additional charges;
 - A tenant should not pay more than a landlord would itself pay for equivalent work;
 - A landlord who has a significant land holding and could provide volume of work can seek a discounted fixed fee;
 - The burden is on the landlord to prove the costs are reasonable and therefore, recoverable.
5. The Respondent submitted that as the subject property is a small suburban flat it would be reasonable to expect a landlord to negotiate a fixed fee with a discount for volume of work. An hourly rate of £275.00 is more appropriate than the £465.00 per hour sought by the Applicant. As the new lease had not been completed, the costs of

drafting a new lease must be incidental to the section 60 statutory items at (a) (b) and (c). The Respondent further submitted that costs of the Intermediate Landlord should be calculated at £275 per hour for 2.7 hours with a 20% discount applied. Disbursement should be accounted for in the solicitor's hourly rate and not charged for separately. Consequently, the costs of the immediate and intermediate landlord should each amount to £594. Further, the respondent submitted that of the ££3,169.00 costs claimed only £1,750.00 appears to have been billed to the Applicant.

The Tribunal's decision and reasons

6. The FTT rejects the Respondent's argument that the Applicant should have used a "cheaper" suburban solicitor, or chosen a less experienced solicitor in its chosen firm that charges a lower hourly rate. The FTT accepts the Applicant's arguments that it is entitled to use the firm of its choice, in this case a longstanding choice of solicitor located in Central London. Of necessity, therefore, the FTT accepts that these solicitors charge Central London rates of which £450 per hour (plus VAT) is not regarded as "excessive." The tribunal notes that although the Respondent objected to the hourly rates charged, it did not object to level of fee earner working on any particular task but sought to say that in general terms, the work should have taken no longer than 2.7 hours in total. The FTT does not accept that the costs of the Intermediate Landlord and the Applicant should be identical in terms of time spent and the FTT notes there is no reference made to the instruction of a valuer on the Statement of Intermediate Landlord's Section 60 of Legal Costs.
7. The FTT accepts that in the circumstances of this application, it is reasonable for a partner to have been involved in the process, to a greater extent that might have been required, had there not been complicating features and interests to consider. The tribunal finds that this application for a new lease continued for a relatively lengthy period, thereby generating a greater level of fees that might otherwise have been necessary. The FTT also notes that the Respondent does not seek to substantively challenge the Applicant's chronology of this matter. Lastly, the FTT accepts that the disbursement costs (including courier) have been reasonably incurred as an integral part of the Respondent's seeking to extend its lease.
8. In conclusion, the FTT allows the costs claimed by the Applicant in the sums of; £3,169.00 (plus VAT); Land Registry fess of £72.00 and courier fees of £11.28 (plus VAT). The FTT also allows the costs of the Intermediate Landlord plus disbursements and VAT in the total sum of £1,251.60.

Signed: Judge Tagliavini

Dated: 13 February 2018