



FIRST-TIER TRIBUNAL PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference : CHI/00MS/OC9/2020/0005

Property : 31, 40 & 58 Kern Close, Maybush, Southampton
SO16 9RA

Applicants : William Boyle FRICS and Charles Boyle
(the Tenants)

Representative: William Boyle

Respondent: Abbey Developments Limited (the Landlord)

Representative: Perrin Myddelton Solicitors

Type of Application: Costs - Section 91(1) of the Leasehold Reform,
Housing and Urban Development Act 1993 (“the
1993 Act”)

Tribunal Member: Judge P J Barber

Date of Decision: 2 December 2020

DECISION

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Decision

- (1) The Tribunal determines in accordance with the provisions of Section 91(1) of the 1993 Act, that the total costs variously payable by the Applicants to the Respondent and arising from the 3 lease extensions, shall be £3,600.00 & VAT for the Respondents legal costs and £1,500.00 for the Respondent`s valuer`s costs.

Reasons

INTRODUCTION

1. The application received by the Tribunal was dated 27 February 2020 and was for determination of the amount of costs payable by the tenant Applicants to the Respondent landlord, by virtue of the provisions of Sections 60(1) and 91(1) of the 1993 Act, being the landlord`s costs incurred in connection with 3 new leases. Directions were issued providing for the matter to be determined by way of a paper determination, rather than by an oral hearing, unless a party objected; no such objections have been made and accordingly, the matter is being determined on the papers.
2. The Applicants have provided an electronic bundle of documents to the Tribunal which variously included copies of the application, the directions, statement of fact, completion statements, invoices, Respondent`s statement of truth, the Applicant`s response, leases and witness statements.
3. The application, by way of summary, describes how the disputed costs arose following three simultaneous lease extensions respectively for Flat Numbers 31, 40 and 58 Kern Close, Maybush, Southampton.
4. Due to Covid 19 restrictions, no inspection was carried out in respect of the Property.

THE LAW

5. Section 60(1) of the 1993 Act provides that :-

“(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 -

- 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 any other 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;*

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.

Sections 91(1) and 92(d) of the 1993 Act provide that :-

- 91(1) Any question arising in relation to any of the matters specified in subsection (2) shall in default of agreement be determined by the appropriate tribunal*

.....

91(2)(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;

WRITTEN REPRESENTATIONS

10. The electronic bundle includes a copy of the application which provides in summary that whilst the Applicants were aware of a liability to pay certain valuers and legal fees, they did not pay undue attention to the fee estimates provided, as they thought it not unusual for some landlords to exaggerate these, in the hope of deterring tenants from going ahead. The Applicants said that the landlord's solicitors Perrin Myddelton, confirmed the landlord's valuer to be Mr T J P Reeve FRICS, adding that they believed 17 of the 84 privately owned leases in the block, to have been the subject of extension and that the precedents must be well known to the landlord's valuer and lawyers. The Applicants state that the premiums paid were £7,500.00 per flat excluding the costs, adding that there are 96 flats altogether in the development which was built in the early 1990's. The Applicants submit that all three flats were originally sold on one standard lease and together comprise little more than one set of legal documents, and due diligence issues for the lawyers and valuers, to consider; in addition, they say that as a number of enfranchisements have been completed, established templates would no doubt already exist so as to require only minimal cutting and pasting. The Applicants said that no allowance had been made for the three lease extensions being simultaneous, resulting in a minimum combined workload for the landlord's valuers and lawyers, whilst their own lawyers and valuers had no previous knowledge and were working from a cold start but even so, they provided quotes to allow for work on one flat, being used for the other two. Additionally, the Applicants' lawyers had to register the new leases at the Land Registry; however, the Applicants said that their lawyers' fees were roughly half of those charged by the landlord's lawyers. The Applicants also referred to certain over charging in the landlord's completion statements which was not re-credited until 9 months after completion. The Applicants further complained that no invoices supporting the lawyer's fees had been provided and that some of the figures had been incorrect. The Applicants submitted that desktop valuations at much less cost might have been employed, rather than carrying out inspections. The Applicants stated that the fees charged respectively by the parties' lawyers and valuers were:-

	Legal	Valuers
Landlord	£3,600.00	£1,500.00
Tenants	£1,975.00	£600.00

The Applicants added that they had no long-established business relationship with their own lawyers and valuers. Consequently, the Applicants submit that the landlord's fees cannot be "reasonable", bearing in mind the disparity with the tenants' own advisors' fees and also the quality of the service provided by the landlord's advisors.

11. The electronic bundle includes, at Pages 82-86, a statement by Mr Robin Myddelton dated 22 June 2020 in which he referred to his professional

qualifications and experience, obtained as a result of working for the Respondent over the last 8 years in lease extension transactions, and with the Respondent's valuer, Mr Reeve. Mr Myddleton said that in only a very small proportion of such cases had the tenant queried the legal costs and that in every such case, the query had been raised before completion. Mr Myddleton asserted that nothing had been heard from the Applicants about the costs until nearly 7 months after completion, in November 2019, adding that in this particular development, there was a headlease to the management company, with underleases being granted for the individual flats, involving additional legal considerations such as Schedules 11 and 13 of the 1993 Act. Mr Myddleton referred to the detailed statutory provisions to be considered, particularly at Sections 42 and 48 regarding consideration of the validity of the notice, investigation of title, considering the valuation, preparation of a counter-notice and monitoring time limits. Mr Myddleton referred to his charge out rate of £282.00 & VAT per hour, adding that he would normally expect to agree a fee with tenant's solicitors of between £1,600.00 and £1,800.00 plus VAT for statutory lease extension of a single flat. Mr Myddleton said that as in this case there were 3 lease extensions, it was reasonable to allow a discount of 25%-33% of usual rates, accepting some savings as in this case, where the 3 notices were submitted in tandem, although adding that each Section 42 notice had to be considered separately and each counter notice and draft lease, separately prepared.

12. In regard to the Respondent landlord's valuer's fees, Mr Myddleton said in his witness statement that Mr Reeve usually charges £700.00 & VAT for each flat valuation, although in this case he had discounted that amount to £500.00 & VAT per flat valuation, to reflect there being 3 cases to deal with. Mr Myddleton added that as a result of a genuine oversight on his part, the fees charged at completion for the valuations were £600.00 & VAT per flat, although he said that the overpayment was promptly refunded after the Applicants requested the invoices and that Mr Reeve had fully justified his fees. Mr Myddleton reiterated that none of the fees had been challenged or queried at completion in April 2019, and were paid unconditionally. Mr Myddleton added that completion had, at the request of the tenants' solicitors, occurred slightly after the deadline date as provided for in Section 48(5) of the 1993 Act and that this had involved additional work in taking instructions and making the arrangements. Mr Myddleton suggested it would be unusual for the Tribunal to be asked to determine costs under Section 60 of the 1993 Act in circumstances where such costs had not been first challenged until 8 months after completion, and the application not made until after 13 months, and requested the Tribunal to determine whether it has jurisdiction so to do.
13. The Applicants provided their comments on Mr Myddleton's witness statement at Pages 103-106 of the bundle. In broad terms, the Applicants said that as Mr Myddleton had acted for the Respondent in similar transactions for 8 years, there would be minimum research and tremendous economies of scale, adding that the fact that the landlord had agreed the fees does not make them "reasonable". The Applicants stated that their lawyer had asked for a breakdown of fees in July 2019, September 2019 and October 2019 without any response. The Applicants also said that the Counter Notice under Section 45 of the 1993 Act had been incorrectly served, so as to include an additional incorrect person as tenant, also referring to other errors in the completion statement which the Applicants said that their lawyer had to sort out, and added that clients might balk at an hourly rate of £282.00 & VAT for work with such errors. The Applicants said they had been

advised at the outset of valuer fees of £600.00 & VAT, so that the reference to a £700.00 & VAT standard amount was surprising. The Applicants further stated the reason why they queried fees not until sometime after completion, was that they had not received the invoices until December 2019. The Applicants say they advised Mr Myddelton in December 2019 that they would be making an application to the Tribunal regarding the fees and disputed what they referred to as Mr Myddelton`s estoppel argument, connected with the delay in challenging fees. The Applicants added in respect of the overpayment of the valuer`s fees, that the refund had not been made immediately and that no offer as to the addition of interest had been made.

13. The Applicants made further comments in regard to the valuer`s fees in a separate statement dated 5 July 2020 at Pages 107-108 of the bundle, referring broadly to the experience of the respective surveyors and saying that the 3 valuations had been mirror images of one another, and questioning whether each justified identical fees and that they should have been charged at £150.00 each, as desktop valuations. The Applicants questioned the higher than market rates which they said were charged by Mr Reeve, by comparison with their own valuer`s charges. Mr Reeve responded by a witness statement dated 20 July 2020, broadly stating that he had had professional dealings with the Applicants` valuer Mr Dancer on a number of occasions, and that Mr Dancer had never suggested that Mr Reeve`s standard valuation. Mr Reeve referred to the schedule attached to his earlier witness statement and the reference therein to an hourly rate of £250.00. In regard to the Applicants` complaint that he had not inspected the flats, Mr Reeve said that he had never intended to do so and referred to the historic Valuation Date applicable under the 1993 Act.
14. In a further witness statement dated 28 July 2020 at Pages 118-123 of the bundle, Mr Myddelton broadly stated that no fixed template of lease had been used and that various amendments were proposed, some but not all being accepted, adding that no request had been made for a breakdown of fees, as opposed to copy invoices, until February 2020, and also making various comments on specific issues including qualifying the seriousness of the errors on the completion statements, and denying that the work could have been done by a secretary or clerk and otherwise.

CONSIDERATION

15. The Tribunal, have taken into account all the case papers in the bundle.
16. The issue for determination under Section 91(2)(d) of the 1993 Act, is as to the amount of any costs payable by virtue of Section 60(1) and liability to pay. Section 91(2)(d) does not contain any specific time qualification; rather it simply requires a determination of the costs “payable” and as to liability to pay. Accordingly, the Tribunal is satisfied that jurisdiction in this case arises to determine the amount payable, the date of challenge not being of direct relevance. The Tribunal is further satisfied that the Applicants have liability to pay pursuant to Section 91(2)(d).
17. The relevant legal costs payable under Section 60(1) of the 1993 Act include both the costs of investigation of the tenant`s right to a new lease and also the costs for the grant of the new lease. The landlord`s solicitor would need to consider separately, each of the Section 42 claim notices, and similarly to draft and serve each counter notice pursuant to Section 45. Mr Myddelton said that in regard to the draft leases, amendments had been made by the Applicants` solicitors and that

these needed consideration and responses, with some but not all of the amendments being eventually agreed. This would have involved exchanges of correspondence and legal discussion of the amendments as between the respective solicitors, going beyond a minimal “cutting and pasting” exercise. The legal work in these cases was dealt with at partner level; whilst it might have been carried out by a suitably qualified employed solicitor or similar, the landlord was entitled to choose to instruct Mr Myddelton given the business connection as between them established over a number of years.

18. The Tribunal notes that the usual legal charge made by Mr Myddelton for such work would be between £1,600.00 and £1,800.00 & VAT per lease transaction under Section 42, but that a discount was made in this case to reflect 3 lease applications in tandem, giving rise to a legal fee of £1,200.00 & VAT in each case. Whilst the Tribunal notes the claim by the Applicants as to a number of shortcomings in regard to the quality of service provided, it also notes that a refund of an overpayment was in due course made, and it considers that any issues regarding quality of service should primarily, be a matter as between Mr Myddelton and his client, rather than as between Mr Myddelton and the Applicants. The Tribunal does not consider the errors which have been suggested by the Applicants, to be of such unqualified consequence or magnitude as to have been of material consequence in the determination of reasonable fees payable by the Applicants.
19. Section 60(1)(b) of the 1993 Act provides for the reasonable costs of and incidental to the valuation, to be the liability of the tenant. The valuer bears a significant professional responsibility for identifying value correctly and with a potential liability in negligence as a result of any substantive errors, necessitating the valuer paying for usual professional indemnity insurance. Any variations as between the flats would need to have been considered by the valuer; the professional accountability remains the same whether the work was done by means of a desk top assessment, or a physical inspection. The Tribunal further notes that the valuer had made a discount against his usual fee rate to reflect 3 applications being made together. The alternative fee of £100.00 & VAT for each valuation suggested by the Applicants appears to be somewhat arbitrary and with no specific justification, and being less than the Applicants` own valuation fees.
20. Whilst the costs in these cases are towards the higher end of the spectrum, it cannot be assumed that those costs will be the same as or directly comparable to the Applicants` own costs which they negotiated with their own lawyer and valuer. Some discount appears to have been made by each of the Respondent`s lawyer and valuer, to reflect the fact that the 3 lease extension applications had been made in tandem. Overall, the Tribunal does not consider that legal costs of £1,200.00 & VAT, and valuer`s costs of £500.00 & VAT, per lease, are wholly disproportionate or excessive and that they are within the bounds of what may be considered reasonable, given the reference each by Mr Myddelton and Mr Reeve, to their usual standard hourly charging rates. Whilst the delay in challenging the costs is not necessarily considered fatal to the making of an application, the Tribunal nevertheless notes and takes into account that no challenge or query in respect of the costs was raised by the Applicants at the point when, or immediately before completion actually occurred. It appears that the Applicants had been broadly made aware of the estimated costs arising, from the outset but seemingly assumed that the purpose of these had been to deter applicants from proceeding.

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.