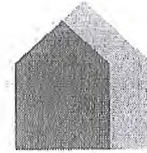


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HM Courts
& Tribunals
Service



Residential
Property
TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT
1993 Sections 60 and 91(2)(d) ("the Act")

LON/00AY/OC9/2012/0073

Property: 23 Camelford Court, New Park Road, London SW2
4LH

Applicant: Brickfield Properties Limited

Respondent: Sean Garland

Date of Application: 11th September 2012

Date of Determination: 5th November 2012

Tribunal Member: Mr A A Dutton - chair

DECISION

The tribunal determines for the reasons set out below that the sum payable by the Respondent in respect of the Applicant's costs pursuant to section 60 of the Act is £2,652.47 inclusive of VAT, valuers fee and disbursements.

REASONS

BACKGROUND

1. This matter came before the tribunal for a paper determination on 5th November 2012. The application was dated 11th September 2012, and

is for the determination of the solicitor's fees and disbursement payable to the Applicant under section 60 of the Act.

2. An initial notice was served by Mr Garland dated 18th August 2010 giving the Applicant until 30th November 2010 to respond by way of a Counter-Notice under section 45 of the Act. The Counter-Notice, dated 25th November 2010, was served on the Respondent's solicitors, RW Hemmings & Co (Hemmings) in Taunton by overnight courier and by fax.
3. Directions were issued by the Tribunal on 21st September 2012, which have been complied with. The bundle provided to the tribunal for the determination contained submissions on behalf the Applicant and the Respondent, details of the surveyor's fees, a breakdown of the costs, the draft lease, copies of previous LVT decisions and relevant correspondence.

SUBMISSIONS

4. The Applicants solicitors, Wallace LLP had prepared a schedule of their costs running from 16th September 2010 to 19th April 2012. The extensive time span was partly related to the Respondent's failure to enter into a lease, after terms of acquisition had been determined by a tribunal. The date of determination by the tribunal was 6th December 2011 when the price to be paid for the lease extension was assessed at £26,834. This failure to enter into a lease resulted in the deemed withdrawal of the application and the Respondent's liability to pay costs under section 60(3)
5. The Applicant's schedule of costs clearly sets out what has been done and is supported by a submission on costs dated 26th October 2012, which responded to the Respondent's statement dated 18th October 2012. A further letter was sent by Hemmings dated 1st November 2012 and a reply was sent to that letter by Wallace LLP by fax dated 5th November 2012. These submissions were read by the tribunal and taken into account when determining the costs and disbursements to be paid.
6. There is no dispute as to the costs payable in respect of the surveyor, Mr Robin Sharp claimed at £774.00 inclusive of VAT.
7. The Respondent asserts that the hourly charging rate for the fee earner at Wallace LLP is too high and that the work could have been done by a lower grade fee earner at a rate of £200 per hour. It is said that the time spent is excessive and that 3 ½ hours would have been sufficient, giving rise to a cost of £700 plus VAT. The disbursements are challenged. In the letter of 1st November 2012 Hemmings expand upon these points.
8. The Applicant, in the submissions, rebuts these assertions and maintains that the work done, the time spent and level of fee earner are reasonable and in accordance with the provisions of section 60(1) and (2). In the letter of 5th November 2012 WallaceLLP responds to the matters set out in the letter from Hemmings dated 1st November 2012 and provides an LVT case supporting the reasonableness of the principle of a courier fee.

THE LAW

See attached

FINDINGS

9. The first question to be determined is the hourly rate charged by Wallace LLP. The Respondent says that a fee rate of £200 is appropriate, based it would seem in part on the hourly rate of Hemmings which is £175. That firm is based in Taunton where the hourly rate will inevitably be less than that charged by a Central London practice. Wallace LLP are experts in this discipline and in the tribunal's finding a rate of £350 is reasonable and one that the Applicant would expect to pay for the expertise. It thus falls within the provisions of section 60(2). However, with that expertise should go a level of efficiency and speed.
10. The first element of time which is challenged relates to the fees incurred on 16th September 2010 associated with the consideration of the Initial Notice when one hour is claimed, together with three letters making a total claimed of £445. The next challenge relates to work undertaken on 23rd and 25th November 2010 in respect of the Counter-Notice, when a further £445 is claimed. The Respondent considers that 0.7 of an hour would be sufficient.
11. The tribunal considers that the overall time spent in relation to the consideration of the Initial Notice and the Counter-Notice to be somewhat excessive. There appears to be duplication of costs associated with the consideration of the Initial Notice and the Counter-Notice. If one hour is allowed for the consideration of the Initial Notice and there appears to be no challenge to the time spent earlier in November in considering the valuation it is considered that a further hour to prepare what is a straight forward document for a fee earner of this expertise is excessive. The suggested four units put forward by the Respondent is reasonable. The correspondence to the valuer and the client dated 25th November 2010, could have been dealt with by an assistant, rather than a partner and the fee should be reduced accordingly. It seems that the time spent in preparing and approving the draft lease is just over one hour, which the tribunal finds reasonable.
12. Accordingly, utilising the schedule prepared by Wallace LLP the tribunal approves the costs down to and including 18th November 2010 at £1,055. In so far as the work undertaken on 23rd and 25th November 2010 is concerned the costs for the email on 23rd November 2010 at £35 is allowed. The costs for the preparation of the Counter notice on 23rd and 25th November claimed at £350 is reduced to £140. The letter to the Respondent's solicitor dated 25th November 2010 is allowed at £35, but the tribunal finds that the two other letters written that day could have been dealt with by an assistant at £26 each. The general complaint as to the time spent and the level of fee earner has merit in respect of the preparation of engrossments of the lease, which could have been dealt with at assistant level with a fee of £52. This gives a

total profit cost figure of £1,559.50. The VAT at 17.5% on £1,317 is £230.47 and the VAT at 20% on £242.50 is £48.50

13. The question of disbursements is considered. The Land Registry fees for the acquisition of the copies of the register of title is recoverable at £40, it being the fee paid for the copies documents, the requesting of which is a reasonable expense, the more so as it appears the Initial Notice named the wrong landlord. As to the Courier fee whilst we noted all that was said by the tribunal in the case cited in the letter from Wallace LLP dated 5th November 2012, it is of course not binding. The headed notepaper of Hemmings shows both a fax number and an e.mail address. The notepaper does not preclude the service of documents by fax, and indeed Wallace LLP did serve by fax and courier. The tribunal finds that whilst Wallace LLP's insurers might well welcome the belt and braces approach it does not seem to the tribunal that the costs of the courier are recoverable from the Respondent and they are therefore disallowed.

14. The total costs allowed is therefore:

• Profit costs	£1,559.50
• VAT at 17.5%	230.47
• VAT at 20%	48.50
• Valuers fees (inclusive)	774.00
• Land Registry fees	<u>40.00</u>
Total	£2,652.47



Andrew Dutton - chair

5th November 2012

The Relevant Law

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.