



HM Courts & Tribunals Service

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THE LEASEHOLD VALUATION TRIBUNAL

On an Application under the Leasehold Reform, Housing and Urban
Development Act 1993

LON/00BH/OC9/2013/0018

Property: 122A Orford Road, London E17 9QX

Applicant: Tony Norman Davies

Represented by: Thirsk Winton

Respondent: BPT (Bradford Property Trust) Limited

Represented by: Winckworth Sherwood

Date of Hearing: Paper Decision

Date of Decision: 19 June 2013

Members of the Tribunal: Mr Robert Latham
Mr Patrick Casey MRICS

Introduction

1. This is an application under section 91 of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act). The application is for the determination of the costs payable by the Applicant under section 60(1) of the Act.
2. The Tribunal has been provided with a Bundle of Documents.
 - (i) The Respondent's Solicitors, Winckworth Sherwood, have prepared a Detailed Statement of Costs (at p.1-4);
 - (ii) The Applicant's Solicitors, Thirsk Winton, have provided their Statement in Reply at p.5-11.

The Statutory Provisions

3. Section 60 provides, insofar as relevant for the purposes of this decision:

(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...

(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... or any third party to the tenant's lease.

The Principles

4. *Drax v Lawn Court Freehold Limited* dealt with costs under section 33 of the 1993 Act, rather than section 60, but the principles established in *Drax* have a direct bearing on costs under section 60. In summary, costs must be reasonable and have been incurred in pursuance of the section 42 notice in connection with the purposes listed in subparagraphs 60(1)(a) to (c). The nominee Applicant is also protected by section 60(2), which limits recoverable costs to those that the Respondent would be prepared to pay if he were using his own money rather than being paid by the Applicant.

5. This does, in effect, introduce what was described in *Drax* as a "(limited) test of proportionality of a kind associated with the assessment of costs on the standard basis". It is also the case, as confirmed by *Drax*, that the Respondent should only receive his costs where it has explained and substantiated them.

6. It does not follow that this is an assessment of costs on the standard basis. That is not what section 60 says, nor is *Drax* an authority for that proposition. Section 60 is self-contained.

The Tribunal's Determination

The Solicitors' Hourly Rate

7. The Respondent claims an hourly rate of £325 for a partner and £225 for an assistant solicitor. Winkworth Sherwood are based in London SE1. The Applicant refers to the Solicitor's Guideline Hourly Rate for a Solicitor based in London SE1 (see p. 11). The Grade A rate is £229-£267; Grade B is £172-£229 and Grade is C £165. The Applicant contends that the hourly rate of £325 for the partner is excessive. We agree and we reduce this to £267, the figure at the top end of the relevant scale in the Guidelines. The Applicant does not dispute the rate of £225 for the assistant solicitor.

Costs Recoverable under Section 60(1)(a)

8. Attendance on the Landlord: Four routine letters are claimed at £32.50. The rate is not disputed. The Applicant disputes why four routine letters were required relating solely to the issue of the Tenant's right to a new lease. The Applicant notes that the freeholder has a long term relationship with his solicitor. We agree that four letters is excessive and reduce this to two. Sum allowed: £65.00.

9. Attendance on Tenant and Tenant's Solicitors: The sum claimed of £195.00 is not disputed.

10. Work Done on Documents: Particulars are provided in Schedule A (p.3). The Applicant complains that the total of 1.5 hours spent on investigation the Tenant's right to a new lease is excessive. He suggests that a Grade A Fee Earner should need to spend no more than 30 minutes to establish the Tenant's right to a new lease. The Respondent claims for work spent on five separate days. We reduce the total of 1.5 hours to 1 hour, having particular regard to the claim for 1 hour on 29 August which we consider to be excessive. We allow 1 hour at £267: £267.00.

11. The disbursements of £35.00 are not disputed. We reduce the overall sum claimed from £847.50 to £562.00 to which VAT of £112.40 should be added.

Costs Recoverable under Section 60(1)(b)

12. Attendance on the Landlord: The sum claimed of £32.50 is not disputed.

13. Routine Letters Surveyor: Seven letters are claimed at £32.50 each. The Applicant disputes why more than one or two letters are required. The freeholder would normally interact directly with their appointed surveyor. We agree that no more than two letters are reasonable and we reduce this from £227.50 to £65.00.

14. Valuation Fee: £750.00. The Applicant contends that this is excessive. We disagree. We allow this sum in full.

15. The overall sum claimed is £1,010.00. We reduce this to £847.50, to which VAT of £169.50 should be added.

Costs Recoverable under Section 60(1)(b)

16. A total of £110.00 is claimed for Attendances on Landlord and £45 for Attendances on Tenant and Tenant's Solicitors. These sums are not disputed.

17. Work Done on Documents: The Grade A Fee Earner claims 6 minutes and the Grade B Fee Earner claims 2 hours 36 minutes. The Applicant contends that a total of 2 hours 42 minutes is excessive. The document utilised was a simple Deed of Surrender and Re-grant. No unusual provisions were required. It is accepted that an assistant solicitor may take more time than a partner. It is suggested that no more than 1.5 hours should be required. The breakdown of work is given in Schedule B (p.4). We agree that no more than 1.5 hours should be allowed for the Grade B Fee Earner. We allow £26.70 for the Grade A Fee Earner and £337.50 for the Grade B Fee Earner,

18. The overall sum claimed is £2,630.00. We reduce this to £1,928.70 to which VAT of £385.74 should be added.

Conclusions

19. The Tribunal has reduced the total costs claimed from £2,630.00 to £1,928.70. VAT should be added to this giving a total of £2,314.44.



Robert Latham (Chairman)

Date: 19 June 2013