



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

Case Reference : LON/00AR/OC9/2014/0047

Property : 37 Lodge Court High Street
Hornchurch Essex RM12 6QR

Applicant : Daejan Properties Ltd

Representative : Wallace LLP

Respondent : Alan Edward Foskett and Kim
Elledge

Representative : Moss and Coleman

Type of Application : Determination of Costs to be paid
under S60(1) Leasehold Reform
Housing and Urban Development
Act 1993

Tribunal Members : P M J Casey MRICS

**Date and venue of
Hearing** : 27 August 2014
10 Alfred Place, London WC1E 7LR

Date of Decision : 11 September 2014

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the applicant landlord's costs for which the respondents are liable under the provisions of S60(1) of the Leasehold Reform Housing and Urban Development Act 1993 (the Act) are as follows:

Legal fees	£2,244 plus VAT
Land Registry fees	£37
Courier fees	£53.78 including VAT
Valuers fees	£900 including VAT

- (2) The tribunal makes the determinations as set out under the various headings in this decision

The application

1. The applicant seeks a determination pursuant to S91(2) of the Act of its reasonable costs under the provisions of S60 of the Act.
2. Following the Tribunal's directions dated 30 June 2014 the applicants' solicitors, Wallace LLP, submitted a hearing bundle to enable the Tribunal to determine the application on the papers. The bundle was considered by the Tribunal on 27 August 2014. Neither the respondents nor their solicitor have communicated with the Tribunal.

Background

3. On 15 November 2012 a notice under S42 of the Act claiming a new lease was served on the applicant landlord by Nigel David Clark the then long leaseholder of 37 Lodge Court High Street Hornchurch Essex RM12 6QR. His solicitors, Moss and Coleman, advised the applicant on 12 December 2012 that the lease had been assigned to Alan Edward Foskett and Kim Elledge together with the rights and obligations of the S42 notice.
4. Wallace LLP on behalf of the applicant served the landlord's S45 Counter Notice on the assignees c/o Moss and Coleman on 28 January 2013.
5. Whilst agreement of the terms of the new lease was apparently reached on or about 2 January 2014 completion did not take place within four months of this date and hence the respondents' claim was deemed to be withdrawn on 2 May 2014.

6. No agreement on the applicant's S60 costs following the deemed withdrawal was reached and so application was made to the Tribunal on 16 June 2014.

The law

7. Section 60(1) provides that the Tenant shall be liable for the Landlord's reasonable costs of and incidental to any of the following matters:
 - (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 the new lease under Section 56;
 - (c) The grant of a new lease under that Section."

Section 60(2) however provides:

"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."

While Section 60(3) says:

"Where by virtue of any provision of this Chapter the tenant's notice ceases to have effect, or is deemed to have been withdrawn then (...) the tenant's liability under this section for the costs incurred by any person shall be a liability for costs incurred by him down to that time."

The evidence

8. In the applicant's statement of case Wallace LLP set out in some detail, in relation to the claim, the date, type and description of the work done and how long it took, the grade of fee earner involved and the hourly charge together with details of disbursements. They also seek to justify the applicant's choice of solicitor, the grade of solicitor undertaking each task and the charge rate largely by reference to the need for relevant experience when dealing with claims made under complex legislation. They also included and referred to a large number of Tribunal decisions in respect of S60 costs where they had acted and these various matters had been challenged.

9. The sums claimed in respect of Wallace's fees total £2,244 plus VAT. The bulk of these costs were incurred between 26 November 2012 when the Notice of Claim was served and 28 January 2013 when the Counter Notice was served. A further tranche of work, charged at approximately £600 excluding VAT took place between 2 December 2013 and 29 April 2014 in respect of preparing completion statements and lease engrossments. All of these sums together with Land Registry fees of £37 and courier fees (service of documents) of £44.82 plus VAT are said in the statement of case to have been reasonably incurred and are payable under the provisions of S60.
10. In respect of the valuer's fee claimed of £750 plus VAT an invoice from Strettons detailing the work carried out is included in the bundle and is argued to be in line with fees charged in London and reasonable in all the circumstances.

The decision

11. As Wallace point out in the Statement of Case there has been no response from the respondents and the sums claimed are unchallenged. In such circumstances it is not for the Tribunal to provide such a challenge based on its own views and opinions or experience of other cases. It does however have an obligation to ensure nothing is being claimed which is clearly outside the scope of S60 or that amounts are so excessive as to be patently unreasonable but on a detailed reading of the papers provided there is nothing claimed in this case which can be said to fall into either category and the sums claimed are determined to be payable in full by the respondents under the provisions of S60 of the Act.

Name: Patrick M J Casey

Date: 11 September 2011