2965

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MR/LON/00BA/OC9/2014/0138**
Property	:	**28 Grosvenor Court, London Road, Morden, Surrey SM4 5HG**
Applicant	:	**Daejan Investments Limited**
Representative	:	**Wallace LLP, solicitors**
Respondent	:	**David Rodney Kay-Kreizman**
Representative	:	**Morrisons Solicitors**
Type of application	:	**For the determination of the landlord's recoverable costs incurred in pursuance of a claim to acquire a new lease**
Date heard		**12 November 2014**
Appearances		**Matthew Hearsum, solicitor, Morrisons Solicitors, for the respondent**
	:	**The applicant's solicitors sent written representations but did not appear at the hearing**
Tribunal members		**Margaret Wilson** **Marina Krisko FRICS**
Date of determination	:	**13 November 2014**

DECISION

Introduction and background

1. This is an application by the competent landlord, Daejan Investments Limited ("the landlord"), under section 91(2)(d) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") for the determination of the recoverable costs incurred by it and the intermediate landlord, Tripomen Limited, in pursuance of the tenant's notice of claim to acquire a new lease under Chapter II of Part I of the Act. The tenant gave notice of his claim under section 42 of the Act on 10 June 2013 proposing a premium of £26,350 to be paid to the landlord and £110 to the intermediate landlord. The landlord gave a counter-notice admitting the claim and proposing a premium of £32,607 to be paid to the landlord and £13,379 to the intermediate landlord, the new lease to be on the same terms as the existing lease with such modifications as are required by section 57 of the Act. On or about 13 June 2013 the tenant's notice was deemed withdrawn because the tenant had not applied to the Tribunal within the required period.

2. By a letter dated 13 June 2014 the landlord asked the tenant to pay costs amounting to £3491.92 comprised as follows:

i. the landlord's legal fees: £1600 plus VAT;
ii. the landlord's valuation fees: £800 plus VAT;
iii. the intermediate landlord's legal fees: £400 plus VAT;
iv. Land Registry fees: £48;
v. courier fees £19.93.

3. The tenant did not agree that he was liable to pay those costs and the landlord issued the present application, indicating on the application form that it would not be content for a determination on the papers alone. Directions were duly made for an oral hearing as the landlord had requested but, without prior notice to the tenant or to the Tribunal, it did not attend the hearing, which took place on 12 November 2014 as directed. The hearing was attended by Matthew Hearsum of Morrisons Solicitors, who had represented the tenant in connection with his claim for a new lease.

4. The landlord's costs, the tenant's comments upon them and the landlord's reply to the tenant's comments are set out in a Schedule which is at page 174 of the hearing bundle.

The law

5. By section 60(1) of the Act:

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.

The issues

6. The landlord's valuation fee of £800 plus VAT and the Land Registry fees of £48 are agreed. The disputed matters will be considered in the order in which they appear on the Scott Schedule. For the purposes of the decision we have numbered each item in the Schedule sequentially.

i. the landlord's legal fees

Item i. preliminary point

This issue relates to the level and charging rates of the fee earners who carried out the work. Almost all the work was carried out by a partner in Wallace LLP at an hourly rate of £375, rising on 6 August 2013 to £395, the only exceptions being the preparation of a new lease, carried out by a partner at an hourly rate of £400, and obtaining official copy entries from the Land Registry, carried out by a paralegal at an hourly rate of £150. Mr Hearsum accepted that it was reasonable for the landlord to instruct Wallace LLP, a specialist firm in Central London which customarily acts for this landlord. He also accepted, correctly, that the landlord's recoverable costs were to be assessed on an indemnity basis, with any doubts being resolved in favour of the receiving party, the onus being on the tenant to show that it was not reasonable for the landlord to expect to pay a particular cost. He submitted, however, that if the landlord had not been in a position to pass its legal costs to another party, it would not have agreed to pay a partner for much of the work carried out in this case. He agreed that £375 per hour, rising to £395, was a reasonable hourly rate for a partner to charge, and that it was reasonable for a limited amount of the work to have been carried out by a partner charging that rate, but he submitted that much of the work (the particular items considered below) would, if the landlord had been paying for the work, have been carried out by an assistant solicitor at an hourly rate of £275. He accepted that the £150 hourly rate charged by the paralegal was reasonable.

As will appear from this decision, we accept Mr Hearsum's submission that much of the work in this straightforward case could and should have been carried out by an assistant solicitor charging at a rate of £275 per hour, which we regard as a reasonable hourly rate for work of the type required, carried out by specialist Central London solicitors.

Item 2 (£37.50)

Mr Hearsum submitted that this charge, for the provision of a copy of the initial notice to the landlord, fell outside the words of section 60(1)(a) in that it did not relate to *any investigation reasonably undertaken of the tenant's right to a new lease.* However we are satisfied that it was incidental to such investigation and falls within the section, but we accept Mr Hearsum's alternative submission that the 0.1 hours should have been carried out by an assistant solicitor at £275 per hour and we thus allow £27.50.

Item 3 (£300)

This charge, for the consideration of the initial notice by a partner, is now accepted.

Item 4 (£37.50)

The time taken was accepted but the hourly rate disputed. We accept the submission that the work (letter to client) should have been carried out by an assistant solicitor and allow £27.50.

Item 5 (£37.50)

The time taken was accepted but the hourly rate disputed. We accept the submission that the work (letter to valuer) should have been carried out by an assistant solicitor and allow £27.50.

Item 6 (£37.50)

Mr Hearsum submitted that this cost, which is in respect of the a letter requesting deduction of title, duplicated item (8), which is for the obtaining, presumably by downloading them from the Land Registry, official copy entries and the lease. We accept the time taken on item (6) but consider that it should have been done by an assistant solicitor and allow £27.50.

Item 7 (£37.50)

The time taken was accepted but the hourly rate disputed. We accept Mr Hearsum's submission that the work (email to intermediate landlord's solicitors) should have been carried out by an assistant solicitor and allow £27.50.

Item 8 (£45)

We accept that this item (obtaining official copy entries) was unnecessary given that the tenant had already been asked to deduce title and had not refused to do so and we disallow it.

Item 9 (£75)

The time taken was accepted but the hourly rate disputed. We accept the submission that the work (considering official copy entries and lease) should have been carried out by an assistant solicitor and allow £55.

Item 10 (£37.50)

The time taken was accepted but the hourly rate disputed. We accept the submission that the work (letter to valuer sending copies of lease) should have been carried out by an assistant solicitor and allow £27.50.

Item 11 (£280)

Mr Hearsum submitted that this charge, which was in respect of the drafting of a new lease, should be disallowed. He submitted that the preparation of a draft lease was premature because the Leasehold Reform (Collective Enfranchisement and Lease Renewal) Regulations 1993 (paragraph 7 of Schedule 2) provide for the preparation of a draft lease after the terms of acquisition have been agreed or determined. The landlord submitted that the time taken to draft a new form of lease was no greater than the time taken to consider the terms of the existing lease and to propose any new terms to be included in the counter-notice. However in the counter-notice (at page 81 of the hearing bundle), for which a separate charge is made, the landlord proposed only the replication of the terms of the existing lease with the modifications required by the Act. We accept Mr Hearsum's submission that the drafting of a new lease was premature and unnecessary, the required information being included in the counter-notice, and we disallow this charge.

Item 12 (£39.50)

Mr Hearsum submitted that this work, which an email to the valuer requesting a valuation report and confirming the date for the counter-notice, should have been included in the letter which is item (10) and we agree. We disallow this charge.

Item 13 (£39.50)

This item (providing the intermediate landlord with a copy of the draft counter-notice for review), Mr Hearsum submitted to be duplication of other work, but we accept that the work was necessary, although we consider that it should have been carried out by an assistant solicitor and allow £27.50.

Item 14 (£39.50)

This item is in respect of a letter providing the valuer with a copy of the headlease because, the landlord says, it had been unable to obtain a copy of the document to forward it to the valuer with his original instructions. Mr Hearsum doubted whether the letter was justified because, he suggested, the headlease could have been found earlier, and, indeed, it was later found in the landlord's archives, but on balance we allow this cost, though at the rate appropriate for an assistant solicitor, and we allow £27.50.

Item 15 (£79)

The time taken for the work (considering the valuation report) was accepted but the hourly rate disputed. We accept the submission that the work should have been carried out by an assistant solicitor and allow £55.

Item 16 (£316)

This item is for the preparation of the counter-notice. Mr Hearsum submitted that such work does not fall within the provisions of section 60(1)(a) in that it is not part of *any investigation reasonably undertaken of the tenant's right to a new lease.* We have some sympathy with the submission because the preparation of a counter-notice is clearly not *investigation.* However, we are, on balance, of the view that such work is *incidental to* such investigation because it is a fundamental part of the process of obtaining a new lease, and, if the landlord fails to serve a counter-notice, the tenant is entitled to the grant of a new lease on his own terms. We therefore allow the time taken on this item but we accept Mr Hearsum's submission that the counter-notice, which was a very straightforward document in this case, should have been drafted by an assistant solicitor and checked by a partner. We allow two units (£55) for the work which should have been done by an assistant solicitor and one unit (£39.50) for a partner's work, a total of £94.50.

Item 17 (£39.50)

Subject to his primary argument that work connected with the counter-notice does not fall within section 60(1)(a), Mr Hearsum accepted the time spent on this work (email to intermediate landlord's solicitors) but submitted that the work should have been carried out by an assistant solicitor, with which we agree. We therefore allow £27.50.

Item 18 (£39.50), item 19 (£39.50), item 20 (£39.50) and item 21 (£39.50)

The same considerations apply to each of these items, all of which relate to the counter-notice, and we allow £27.50 for each of them.

Item 22 (£19.93)

This item relates to courier fees. Mr Hearsum submitted that the use of a courier was unnecessary because ordinary post would have been sufficient. We accept that a proper record of the service of a counter-notice is required but regard the use of a courier as excessive and unreasonable in the circumstances. Special delivery at a cost of, say, £5, would have been ample, and we allow £5.

(ii) The intermediate landlord's legal fees

The intermediate landlord instructed Hammond Bale, solicitors, who charged £525 for reviewing the documents and correspondence, the work carried out by a partner at the hourly rate of £250 (letter at page 55). The landlord limited its claim in this regard to £400 (letter at page 51). The landlord submitted that the tenant had agreed to pay that fee (statement at page 72) but we do not understand that to be the position, although Mr Hearsum made no submissions relating to this item at the hearing. In a letter to Wallace LLP (at page 57) Mr Hearsum agreed the fees with the exception of those for reviewing the draft counter-notice, but we accept, for the reason previously given, that such work falls within section 60(1)(a) and allow the fees claimed (£400) in full.

(iii) Summary

The tenant must therefore pay to the landlord in respect of its legal costs the sum of £862 and disbursements of £5, in respect of the intermediate landlord's legal costs £400, and, in respect of Land Registry fees, £48, all plus VAT where appropriate.

(iv) Costs

Mr Hearsum asked for an order for costs to be made against the landlord under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. He said that the tenant would not have asked for an oral hearing and that he had been instructed to attend the hearing only because the landlord had asked for it. He said that his fee for attending the hearing was £400 plus VAT plus £10 travel expenses.

The Tribunal normally deals with disputes as to costs in enfranchisement cases on the basis of the papers alone and without an oral hearing, and it is our provisional view that it is in principle unreasonable to call for a hearing which would not otherwise be necessary and then not attend it. We are not permitted to make an order under rule 13 without giving the party against whom the order is sought an opportunity to make representations on the matter. The landlord must send any representations it wishes to make on the question to the tenant's solicitors and to the Tribunal within 14 days of receipt of this decision, and the tenant may send any answer it wishes to make to the landlord and to the Tribunal within 14 days of receipt of the landlord's representations. We will decide whether to make an order under rule 13 and, if we do, what order, on receipt of the tenant's representations or confirmation that it does not wish to make any representations.

Judge: Margaret Wilson