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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/00ML/OC9/2015/0006
Property	:	Flat 3, 43 Cromwell Road, Hove, East Sussex BN1 3BD
Applicant	:	Stacey Purath
Representative	:	
Respondent	:	Investsave Limited
Representative	:	Dean Wilson LLP, solicitors
Type of Application	:	New lease: landlord's costs
Tribunal Member(s)	:	Judge D. Agnew
Date and venue of hearing	:	Paper determination 2nd July 2015
Date of Decision	:	2nd July 2015

DECISION

Summary of decision

1. The Tribunal determines that the Respondent landlord's costs payable by the Applicant under section 91 of the Leasehold Reform, Housing and Urban Development Act 1993 shall be £1046 (One thousand and forty six pounds).

Background

2. On 26th March 2015 the Applicant applied to the Tribunal under section 91 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") for a determination as to the respondent landlord's reasonable costs payable by her for the acquisition of a new lease under section 41 of the Act.

3. The Tribunal issued Directions on 7th April 2015 which provided for the matter to be dealt with by way of written representations without an oral hearing unless either party objected within 28 days. No objection was received.

4. The parties duly filed and served their respective statements of case.

The Respondent's case

5. The Respondents seek the sum of £1450 plus vat by way of the landlord's costs. They have adopted a charging rate of £135 plus vat per hour for the work carried out by a trainee solicitor and £240 per hour for the other two fee earners involved with the matter. One of these fee earners is a partner who qualified in 1996 and who specialises in this type of work. The Respondent's solicitors have produced a schedule setting out the work done, by whom and the amounts charged for each item. They say that their costs totalled £1860 plus vat but they cap their fees at £1450 plus vat. They have raised invoices to their client totalling £1081.67 (copies of which have been disclosed) to the date of their statement of case but will raise a further invoice for the balance once the Tribunal's determination is received. They confirm that the costs sought from the Applicant do not exceed the costs payable by their client and are not seeking to recover any costs in respect of the Applicant's application for a costs determination.

The Applicant's case

6. The Applicant makes the following points:-
    (a) the Respondent's solicitors have produced copy invoices to their client totalling only £1081.67. They say that they will submit a further invoice once the Tribunal's determination is received but they are not entitled to seek costs of the costs determination so the Respondent should not be entitled to any more costs than those already invoiced.

(b) The Applicant's main point is that she was given a costs estimate by the Respondent's solicitors for the grant of a new lease of £600 plus vat and that they should be restricted to that amount. She says that no reasonable explanation has been given to account for the "drastic increase in costs" over and above £600 plus vat.
(c) The Applicant refers to a breakdown of costs supplied by the Respondent's solicitors on 2nd March 2015 in which the total costs of £1848 are based on a flat rate charge of £240 plus vat per hour. This breakdown does not reconcile with the breakdown produced by the Respondent's solicitors for this determination and she gives two examples.
(d) No details of the third fee earner are given but they are charged out at the partner rate. She says that it is unreasonable for two partners to be engaged on this matter.
(e) She says that greater use of the trainee solicitor for "preparation" items on the Respondent's schedule should have been made thereby reducing the cost. In general an excessive time has been recorded by a highly experienced partner for what should have been fairly straightforward tasks.
(f) She has entered her comments against the itemised entries on the Respondent's costs schedule, which the Tribunal has taken into account.
(g) She says that time has been recorded for instructing an expert and considering the expert's report but no fee has been sought for an expert's report and she is not aware of any expert's report having been sought after the issue of the tenant's Notice.

The Respondent's response

7. In response to the Applicant's point that they had quoted £600 plus vat for the lease extension, the Respondent's solicitor's response is that this figure was conditional upon the matter not becoming protracted, unnecessarily complicated or requiring additional work. They say that this was given on the basis of the matter proceeding outside the Act and that once the tenant's Notice was served, the strict requirements of the Act had to be complied with and that this necessarily increased the costs.

The Applicant's reply to the Respondent's response

8. The Applicant says that she was compelled to commence proceedings under the Act because the landlord was refusing to grant a full 90 year extension as provided for under the Act and for which the landlord's own surveyor had calculated the price. As the amount quoted in the tenant's Notice for the new lease was the same figure as produced by the landlord's own surveyor it should have been a simple task for the Respondent's solicitors to have checked the said notice and respond to it.

The relevant legal provisions

9. By section 60 of the Act:-

"(1) Where a notice is given under section 42, then, (subject to the provisions of this section) the tenant by whom it ios given shall be liable, to the extent that they have been incurredby 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

(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."

10. By section 91 (d) of the Act the leasehold valuation tribunal (now the First-tier Tribunal (Property Chamber) is given the jurisdiction to determine the amount of such costs payable by the tenant.

The determination

10. The Tribunal makes the following findings:-

(a) The charging rate of £214 per hour for an experienced partner is a reasonable charging rate. It is reasonable for a partner experienced in this type of work which is very technical and full of pitfalls to be engaged.

(b) The charging rate of £135 per hour is a reasonable charging rate for a trainee solicitor.

(c) The third fee earner is not identified by the Respondent's solicitors. There is only one item in the schedule of costs that is not ascribed either to the partner or trainee and that is for £22. This would fall within the range of charges for the Respondent's solicitors Associate solicitors. This is a reasonable charge out rate for an Associate solicitor. It is not unreasonable for someone else to be involved to such a limited extent; for

example when the partner is on holiday or not otherwise available when required.

(d) The Respondent's solicitors can only claim for costs under section 60 of the Act for a period after the tenant's notice claiming a new lease under the Act has been served: that is, after 23rd July 2014. That immediately reduces their claim to £1240 plus vat.

(e) There are only two letters to the valuer (one unit of time each) claimed after 23rd July 2014. It is not unreasonable for the Respondent's solicitors to check with the valuer as to whether his valuation has changed between the date when he sent his valuation to the Respondent's solicitors and the date of the tenant's notice (that is, the "relevant date" for the purpose of fixing the premium for the new lease) and 23rd July 2015 albeit that this was only about two months. This should, however, only have required one letter out and any letters in of a routine nature are not to be counted under the usual assessments of costs. One letter will therefore be disallowed.

(f) The estimate of £600 plus vat given by the Respondent's solicitors was given in the context of a lease extension outside the Act. This estimate was expressed to be conditional upon no extra work being required. The service of a tenant's notice is bound to create extra work because the strict requirements of the Act have to be complied with. It is reasonable therefore that some extra costs are incurred where the Act is invoked. Having said that, this was not a case where the landlord was trying to avoid having to grant an extended lease to the tenant, although it was negotiating on the basis of a shorter extension than the Act provides. It also has to be borne in mind that the tenant's offer in her Notice was in the same amount for the premium as advised to the landlord by the landlord's own surveyor. The matter was not therefore highly contentious and it is reasonable to conclude that the amount of time scrutinising the tenant's notice for possible defects should be less than if the matter were highly contentious.

(g) The Applicant does not contest the £96 claimed for the main amount of time spent by the Respondent's solicitors in checking the tenant's Notice and advising on the same. In addition there are only eleven letters claimed for: some to the client and some to the Applicant. Even if they are only one-liners the Respondent is able to claim one unit for such a letter. Overall, apart from the one letter to the valuer and notwithstanding the fact that details as to the content of the letters is not given (the letters to the client being privileged in any event) the Tribunal does not find the amount claimed for considering the Notice to be unreasonable.

(h) With regard to the conveyancing aspects of the claim the Tribunal has been given no indication as to how much change from the existing lease was required. It is difficult, therefore, for the Tribunal accurately to assess how much time was reasonably involved in the drafting of the new lease. The utilisation of a

trainee solicitor may have reduced the cost of the drafting but trainees' work always has to be carefully checked and often, in the end, the total time involved is greater than if the experienced solicitor had dealt with the matter throughout. Doing the best it can with the information it has, and using its own knowledge and experience the Tribunal considers that £750 plus vat would be a reasonable sum that a client would have to pay his own solicitor for a new lease on the assumption that it is going to be largely identical to the existing lease but with the statutory clauses inserted and the length of the term changed.

Conclusion

11. In conclusion the Tribunal determines that the costs payable by the Applicant to the Respondent under section 60(1)(a) of the Act is £396 (i.e. £382 plus £48(for the two letters on 24.7.14) less £24 (for one letter to the valuer). The costs payable under section 60(1)(c) are £750 plus vat. This makes a total payable of £1046.

Dated the 2nd July 2015.

Judge D. Agnew

Appeals

1. A person seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal.
2. An application must be in writing and must be sent or delivered to the Tribunal so that it is received within 28 days of the date that the Tribunal sends these reasons for the decision to the person seeking permission to appeal.
3. The application must –
   (a) identify the decision of the Tribunal to which it relates
   (b) state the grounds of appeal; and
   (c) state the result the party making the application is seeking.

4. If the person seeking permission to appeal sends or delivers the application to the Tribunal later than the time required in paragraph 2 above or any extension of time granted by the Tribunal –

   (a) The application must include a request for an extension of time and the reason why the application was not received in time; and
   (b) unless the Tribunal extends time for the application the Tribunal must not admit the application.