



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL
PROPERTY)

Case reference : LON/00AQ/OLR/2015/0499
LON/00AQ/OC9/2015/0126

Property : First floor flat, 57 Sherwood Road
Harrow HA2 8AW

Applicant : Ms M Gonsalves

Representative : Ms C.Tuplin, Pro-leagle

Respondent : Mr L Rigby and Ms P G Rigby

Representative : Mr C Kennedy, J.E. Kennedy & Co
solicitors

Type of application : Applications to determine certain terms
of a flat lease renewal under section 48(1)
of the Leasehold Reform Housing and
Urban Development Act 1993 ("the Act")
and for costs under section 60 of the Act.

Tribunal member(s) : Judge Pittaway
Mrs S Redmond MRICS

**Date and venue of
Determination** : **Determination without an oral
hearing in accordance with
Regulation 31 The Tribunal
Procedure (First-tier Tribunal)
(Property Chamber) Rules 2013**
22 July 2015 at 10 Alfred Place, London
WC1E 7LR

Date of decision : 23 July 2015

DECISION

Decisions of the tribunal

1. The tribunal determines that the registration notice fee in the new lease should be fixed at £40 inclusive of VAT.
2. The tribunal determines that the amount of legal costs payable by the applicant is £750.00 exclusive of VAT with disbursements of £12.

Background

1. By an application dated 27 February 2015 the applicant seeks a determination pursuant to section 48(1) of the Leasehold Reform Housing and Urban Development Act 1993 (as amended) (the “Act”) as to certain of the terms of the proposed extended lease of her lease of first floor flat, 57 Sherwood Road, South Harrow, Middex HA2 8AW.
2. The application also referred to an application under section 91(2)(d) to determine the landlord’s recoverable costs under section 60 of the Act.
3. The Tribunal issued a consent order and directions on 10 June 2015. The consent order noted that the terms of the extended lease were agreed except for the respondent’s proposal to increase the notice of registration fee from £10 “to such fee as may then be applicable not less than £40 plus VAT” which was not agreed by the applicant.

The directions required the provision of a draft lease identifying the amendments proposed and counter-proposed. They also required the respondent to provide a schedule of costs sufficient for summary assessment and the applicant to provide a statement of case in relation thereto. The directions entitled the respondent to provide a response to the applicant’s statement of case.

The Tribunal further indicated that they considered the matter suitable for determination on paper; that is without an oral hearing or inspection, unless any party requested an oral hearing. No oral hearing was requested.

4. In making its determination the tribunal had before it the bundle of documents provided in accordance with the instructions, which included the statements of case and respondent’s response referred to above. They had regard to those submissions made by the parties and the cases referred to and copied in the bundles.
5. The relevant legal provisions are set out in the Appendix to this decision.

Evidence

Notice Registration Fee

1. The applicant submitted that
 - 1.1. the change to the registration fee could not be considered a defect that might be remedied under s57(6)(a) of the Act as the respondent had not sought to change it when completing a deed of variation of the existing lease in November 1995, nor was s57(6)(b) applicable as there had not been material changes since the existing lease was granted making it unreasonable to include without modification the term in question.
 - 1.2. Changing a fixed fee to a reasonable fee of not less than a higher amount than the fixed fee, and providing for VAT to be charged on it constitutes an addition to the existing clause and the Act contemplates the grant of the new lease being on the same terms as the existing lease. A re-evaluation of the fee is only supported by case law where the existing fee is stated in shillings and guineas.

The applicant supported her submission with reference to the following tribunal cases

Lubaczewska and oths v Daejan Properties Limited LON/NL/3010-3020/04 (“**Daejan**”)

Picton v Undercrane Limited LON/00AC/2007/0858 (“**Picton**”); and

Fallow v Corcoran (“**Fallow**”) LON/00AZ/OLR/2013/0054

2. The respondents submitted that the authorities supported the respondents’ claim for an increased fee, stating that each of the authorities stated or recorded an agreed higher fee.
3. The applicant rejected the respondents’ submission on the basis that in the first two cases any increase only related to leases made before 1971 and in the third the “agreed” fee was only if the tribunal determined that the registration fee required amendment and in that case the tribunal determined that under statute they were unable to vary the fee, even if it was low.

Section 60 Recoverable Costs

1. The respondents provided a draft invoice breaking down the work which they had done under various headings. The invoice stated that all the work had been undertaken by “Joseph Edward Kennedy admitted 1973, Grade A, £300 per hour”
2. the applicant
 - 2.1. questioned whether all the work had been undertaken by Joseph Kennedy, given that they had received e mails from Caspar Kennedy, whose charge out rate is stated in the firm’s terms and conditions to be £200 per hour.

- 2.2. noted that the invoice was a draft, not an actual invoice and that no documents/reports accompanied it.
 - 2.3. submitted that the following headings of costs should be disallowed
 - 2.3.1. dealing with tenant's proposal for lease extension outside the provisions of the 1993 Act
 - 2.3.2. advising on irrecoverability of costs following transfer to tribunal
 - 2.3.3. disbursements incorrectly charged or relating to the period after proceedings at the tribunal commenced.
 - 2.4. questioned Joseph Kennedy's charge out rate with reference to the County Court Summary Assessment of Costs Guidelines, submitting that an hourly rate of £225 to £263 was more appropriate to "London 3"; the charge out rate being used by Joseph Kennedy being that for Central London postcodes. The applicant submitted that an hourly charge out rate of £230 was more appropriate.
 - 2.5. submitted that the time claimed for drafting the lease should not have been more than one hour and that the conveyancing aspects of the grant of the lease need not be dealt with by a Grade A fee earner.
 - 2.6. Invited the tribunal to determine that the appropriate legal costs to which section 60 applies are £550 exclusive of VAT, with disbursements of £12.
 - 2.7. Accepted the valuation fee of £525 (no VAT)
3. In response the respondents submitted that they should be permitted to use Joseph Kennedy, the solicitor whom Mr Rigby had instructed for many years, that his charge out rate was reasonable given his level of experience and that to charge for 5.25 hours was not unreasonable. He submitted that all the work identified on the draft invoice was properly chargeable under section 60. Further the Costs Guidelines the applicant referred to were guidelines only and from 2010.

Reasons for the tribunal's decision.

Notice Registration Fee

1. The tribunal agree with the applicant that the amount of the registration fee is not a defect.
2. The tribunal are not bound by previous tribunal decisions but they have regard to them in reaching their decision, particularly in this case where both parties have referred to the decisions in their submissions. The tribunal does not consider that the applicant has accurately reflected the decisions in the following cases in her submissions.
 - 2.1. In *Daejan* the tribunal found that to expect notification of change of ownership to be recorded and acted upon would reasonably require a sum of more than three guineas to be paid but the registration fee should not be capable of change. They increased the registration fee to a fixed £30.
 - 2.2. In *Picton* the tribunal accepted that the current registration fee of two guineas was inadequate and determined that the new lease should provide for a fee of £50 plus VAT.

Neither of these decisions state that the decision was taken because the fee was fixed in guineas.

The tribunal accept that the applicant has correctly reflected the decision in *Fallow*.

3. The respondents have not sought to argue that there has been a material change since the existing lease was granted which would make it unreasonable to include the registration fee without modification. However, the tribunal elected to adopt the same approach as adopted by the tribunals in *Daejan* and *Picton*. They consider that it would be unreasonable in the circumstances of the inflation that has occurred since the existing lease was granted in 1987 to include the registration fee clause without modification, but this should be a fixed sum, as it is in the existing lease, and without reference to VAT. They therefore determine that the new lease should provide for a fixed registration fee of £40, based on the lowest fee proposed by the respondents.

Section 60 Recoverable Costs

1. The tribunal agree with the applicant that the respondents' draft invoice includes matters which fall outside the recoverability contemplated by section 60, namely dealing with a proposal outside the 1993 Act and anticipated file closure and storage. They also consider that more time than is reasonable appears to have been spent on the matters set out in the invoice for Jan 2015 and Mar 2015. On the basis of their knowledge as an expert tribunal they consider that a charge for 3 hours' work in relation to the matters covered by section 60 would be reasonable.
2. The tribunal note that the guidelines provided by the applicant (for 2010) are not for the years stated in her submission, and accept the respondents' submission that the charge-out rates are "guidelines".
3. There is no conclusive evidence before the tribunal as to whether the work was undertaken entirely or in part by Joseph Kennedy (who was claiming a charge-out rate of £300 per hour) or Caspar Kennedy, whose charge-out rate is stated to be £200 per hour. Accordingly, mindful of the parameters of the guidelines and the respective charge-out rates of Joseph Kennedy and Caspar Kennedy the tribunal have adopted a blended rate of £250 per hour.
4. The tribunal accept the applicant's submissions on the disbursements.

Other

The tribunal note that in the applicant's submissions she reserves the right to apply for costs under Rule 13 against the respondent. This is not a matter before this tribunal to determine.

Name: Judge Pittaway

Date: 23 July 2015

APPENDIX

LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993

s 48 Applications where terms in dispute or failure to enter into new lease.

- (1) Where the landlord has given the tenant—
- (a) a counter-notice under section 45 which complies with the requirement set out in subsection (2)(a) of that section, or
- (b) a further counter-notice required by or by virtue of section 46(4) or section 47(4) or (5),

but any of the terms of acquisition remain in dispute at the end of the period of two months beginning with the date when the counter-notice or further counter-notice was so given, a leasehold valuation tribunal may, on the application of either the tenant or the landlord, determine the matters in dispute.

(7) In this Chapter “the terms of acquisition”, in relation to a claim by a tenant under this Chapter, means the terms on which the tenant is to acquire a new lease of his flat, whether they relate to the terms to be contained in the lease or to the premium or any other amount payable by virtue of Schedule 13 in connection with the grant of the lease, or otherwise.

S 57 Terms on which new lease is to be granted.

- (1) Subject to the provisions of this Chapter (and in particular to the provisions as to rent and duration contained in section 56(1)), the new lease to be granted to a tenant under section 56 shall be a lease on the same terms as those of the existing lease, as they apply on the relevant date, but with such modifications as may be required or appropriate to take account—
- (a) of the omission from the new lease of property included in the existing lease but not comprised in the flat;
- (b) of alterations made to the property demised since the grant of the existing lease; or
- (c) in a case where the existing lease derives (in accordance with section 7(6) as it applies in accordance with section 39(3)) from more than one separate leases, of their combined effect and of the differences (if any) in their terms.
- (6) Subsections (1) to (5) shall have effect subject to any agreement between the landlord and tenant as to the terms of the new lease or any agreement collateral thereto; and either of them may require that for the purposes of the new lease any term of the existing lease shall be excluded or modified in so far as—
- (a) it is necessary to do so in order to remedy a defect in the existing lease; or
- (b) it would be unreasonable in the circumstances to include, or include without modification, the term in question in view of changes occurring since the date of commencement of the existing lease which affect the suitability on the relevant date of the provisions of that lease.

S 60 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.