



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

Case Reference : Lon/00BH/OC9/2014/0096

Property : 230 Albert Road, London E10 6PD

Applicant : Victoria Louise Fielden

Representative : Sykes Anderson Perry Limited

Respondent : Mr Aryn Nazeralli

Representative : Suriya & Douglas

Type of Application : Section 91 Leasehold Reform, Housing and
Urban Development Act 1993 –
determination of costs payable pursuant to
section of the Act

Tribunal Member : Judge John Hewitt

Date of Determination : 13 February 2015

Date of Decision : 13 February 2015

DECISION

Decision

1. The decision of the tribunal is that the costs payable by the applicant to the respondent are:
 - 1.1 Legal costs £1,400.00 + VAT of £280.00 making a total of £1,680.00; and
 - 1.2 Valuation costs £1,000.00 - no VAT is payable.
2. The reasons for the decision are set out below.

NB Reference to a number in square brackets '[]' is a reference to the page number of the trial bundle provided to the tribunal.

Background

3. The applicant is the assignee of a notice given by the previous long lessee who sought a new lease pursuant to the Act.
4. The respondent is the reversioner. The respondent gave a counter-notice in which the entitlement to a new lease was admitted.
5. On 7 August 2014 the applicant made an application to the tribunal to determine terms of acquisition which, at that time, were in dispute.
6. The tribunal has been informed that the terms of acquisition have now been agreed and that the only issue between the parties is the amount of costs payable pursuant to section 60 of the Act.
7. Directions were given and the parties informed that the tribunal proposed to determine the amount of costs payable on the papers and without an oral hearing pursuant to rule 31. No objection to that has been taken and no request for an oral hearing has been made.
8. On 28 January 2015 the tribunal received a trial bundle from the applicant's solicitors which contained material documents. On 10 February 2015 the tribunal received a letter dated 9 February 2015 from the respondent's property lawyers which made an enquiry about the costs of an oral hearing which was not in the event material. Attached to the letter was copies of further exchanges of correspondence concerning the section 60 costs which is material.
9. Both parties have been professionally represented throughout. The materials provided by the parties' representatives contain correspondence which is plainly subject to 'without prejudice' privilege. I infer that both parties' representatives waive whatever privilege attaches to such correspondence.

The issues

10. The respondent originally claimed:

Solicitors costs and expenses £1,790.00 + VAT
Valuation fees £1,750.00, but no VAT is claimed

Evidently it was initially stated that both fees were quoted fixed fees and that no time breakdown to support them was available.

Later breakdowns were provided [2-4]. Invoices were evidently issued [5-6].

11. The applicant's detailed submissions on costs and fees are at [25-30]. The letter is dated 13 January 2015.
12. As to solicitors' costs, they are based on a charge-out rate of £225 per hour which is not challenged. The applicant attacks some of the time claimed asserting it to be unreasonable and excessive and also asserts that time is claimed for some activities which are outside the scope of section 60 and thus such costs are not payable by the applicant.
13. As to the valuation fees at [31] the applicant exhibits a letter dated 19 May 2014 from the respondent's property lawyers to the applicant's solicitors which says in the concluding paragraph:

"I am informed at this time that his initial costs for the valuation report would be £975 inc. VAT."

14. In summary the applicant offered [30]

Valuer's fee: £795 plus VAT or £1,000 if it could be demonstrated that further work was undertaken within the remit of section 60.

Legal fees: £1,200 plus VAT.

15. The respondent's solicitors do not appear to have responded in detail to the objections taken by the applicant's solicitors.
16. By letter dated 14 January 2015 [34] the respondent's property lawyers stated that by way of compromise the respondent would reduce its legal costs to £1,000 + VAT, but later in an email dated 16 January 2015 said that was an error and the proposed reduction was to £1,500 + VAT.
17. By email dated 28 January 2015 the respondent's property lawyers stated the valuer was prepared to reduce his to "£1,250 to include VAT".

Conclusions

18. The respondent has not made a full or reasoned response to the detailed challenges and objections made by the applicant.
19. As to the legal costs I prefer the submissions made on behalf of the applicant. I agree that some of the time claimed for appears to be unreasonable and excessive and no explanations have been provided by the respondent. I also agree that some time has been claimed for matters outside the scope of section 60 – for example items 2,6,8,9,1, and 10.

20. Doing the best I can with the imperfect materials before me I conclude that the reasonable legal costs incurred by the respondent ought not to have exceeded £1,400.00 plus VAT of £280.00 making a total of £1,680.00. I have not allowed the claim for £40.00 or expenses because postage, telephone calls and copying fall within overheads where the charge-out rate is £225.
21. As regards the valuation fee, no explanation has been given to explain the original quoted fee of £975.00 and how and in what circumstances a fixed fee of £1,750.00 was then negotiated. It is hard to understand how a person who was to pay a bill personally would reasonably and readily agree to such a substantial increase. The respondent ought to have explained this but has chosen not to do so. Further the respondent has not answered the point raised in the applicant's submissions.
22. The time breakdown does not assist me to understand the fee claimed because evidently there was not an hourly charge-out rate agreed between the respondent and the valuer.
23. Again, doing the best I can with the imperfect materials before me I conclude that the reasonable costs incurred by the respondent on the footing that he was paying the bill personally would not have exceeded £1,000.
24. I have therefore assessed the legal costs payable by the applicant at £1,680 and I have assessed the valuation fee payable at £1,000.

Judge John Hewitt
13.02.2015