



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

Case reference : LON/00BK/OC9/2014/0182

Property : **Basement Flat & Garage**
132H Sutherland Avenue
London W9 1HP

Applicant : Mr Jaffar Saraj

Representative : JPC Law

Respondent : Normandy Properties Limited

Representative : Rafina Solicitors

Type of application : Enfranchisement costs

Tribunal member(s) : Judge Dickie
Ms A Hamilton Farey FRICS

Date of decision : 27 August 2015

DECISION

DECISION OF THE TRIBUNAL

The tribunal determines that solicitors costs of £2000 plus VAT (and any disbursements) and surveyor's fees of £900 plus VAT are payable by the Applicant tenant.

THE APPLICATION

- 1) This application is for a determination of costs payable by the Applicant under section 60(1) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act").

- 2) The tenant made the application to the tribunal (within the application for a determination of the premium). The tribunal issued directions for this matter to be determined on the papers unless a hearing was requested. No such request having been received, the tribunal has proceeded to determine this application without an oral hearing.
- 3) The tribunal has received statements of case from both parties.

THE LAW

- 4) So far as is relevant, section 60 provides:

(1) Where a notice is given under section 42, then ... 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 any 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 be reasonably be expected to have been incurred by him if the circumstances had been such that he was personally liable for all such costs....

(5) A tenant shall not be liable under this section for any costs which a party to any proceedings under this Chapter before [the appropriate tribunal] incurs in connection with the proceedings.

EVIDENCE

- 5) On 28 April 2014 the former lessee of the Basement Flat and Garage 132H Sutherland Avenue, London W9 1HP ("the property"), sent to the Respondent a Notice of Claim to Exercise the right pursuant to section 42 of the Act. The Respondent served a counter notice dated 10 July 2014 on the Applicant as new lessee, admitting the right to acquire a new lease but making a counter-proposal as to the premium. The terms of the new lease have now been agreed.
- 6) The costs that are the subject of this application and sought by the Respondent are £6,690.00 including VAT, comprising:
 - a) Solicitors' costs £3,610 plus VAT and disbursements.
 - b) Valuer's fees £1,950.00 plus VAT

Solicitors Fees

- 7) The solicitors' statement of costs as at 30 April 2015 has been produced. The hourly rates charged are £290 for a Grade A partner and £165 per hour for a Grade D trainee solicitor or paralegal. These rates are not disputed.
- 8) The application to the tribunal for the determination of the premium was made on 14 October 2014. It is not clear from the statement of costs whether any of the costs were incurred in the proceedings, which are not recoverable under s.60.
- 9) The Applicant submits that a reasonable figure for the Applicant's solicitor's costs would be £1750 plus VAT. In summary, the Applicant's principal observations are:
 - a) There was a significant amount of negotiation. Costs incurred in negotiations are not recoverable and are not identified in the schedule.
 - b) Costs incurred after service of the counter notice are not recoverable, as are those of the notice requiring the payment of the deposit.
 - c) The statement of costs does not provide a sufficient breakdown to show that the costs are reasonable and recoverable
 - d) There is no detail of what attendances consisted of or which related to matters recoverable under s.60.
 - e) The costs of drafting a deed of variation should be irrecoverable and those for perusal of the Deed of Surrender and Re-grant are excessive given that the Applicant's solicitors drafted it.
 - f) There is irrecoverable duplication between the partner and trainee.
 - g) All of the costs incurred in relation to the claim have been charged, but this represents a misunderstanding of s.60 costs.
- 10) The Respondent's response, however, contains mere confirmation by solicitors that the costs are reasonable and that attendances relate to section 60(1)(a)-(c) and are therefore recoverable. However, this is not evidence. The statement of costs is excessive, and without an adequate breakdown the tribunal is not persuaded that all of the items fall within those recoverable under s.60. The tribunal notes the Respondent's solicitors engaged in unnecessary correspondence about costs and surveyor's fees. There are also items of correspondence in the proceedings and in negotiations.
- 11) It seems likely to the tribunal that costs, e.g. of negotiation and the proceedings have been incurred. It is not possible for the tribunal to analyse the statement of costs to allow and disallow some items in order to reach a final figure, since it has insufficient information to the nature of each attendance. The tribunal has relied on my knowledge of the range of reasonable costs in these proceedings, in what it is satisfied was a relatively straightforward case. The tribunal would have accepted the Applicant's figure of £1750 plus VAT as representing reasonable costs, but for the issue of the costs incurred in drafting and perusing the deeds.

- 12) Whilst the tribunal notes the Applicant's solicitors' observations, and accepts that a deed of surrender and re-grant is the more usual approach, a deed of variation takes effect in law as a surrender and re-grant, and therefore the Respondent's solicitors did not take the wrong approach. The tribunal does consider the time spent in perusal of the deed of surrender was excessive. It allows £250 in respect of both of these items – and thus a total of £2000 plus VAT in respect of solicitors' costs. The Respondent considers the Applicant's solicitors conduct has been unreasonable, but the tribunal sees no other evidence of this.
- 13) Correspondence is produced in which the Applicant offered £2000 plus VAT for legal costs and £1000 plus VAT for the surveyor's fees in full and final settlement. However, whilst it is not marked as without prejudice, it is in the tribunal's view correspondence genuinely intended to seek to bring about a settlement of the costs dispute, and is of its nature without prejudice and the tribunal has disregarded it.

Valuer's Fees

- 14) The Applicant observes that the Respondent did not comply with the direction of the tribunal to identify the basis of charging valuation costs. That justification has been put forward only in the Respondent's response, but this is not the point at which new evidence may be introduced without the permission of the tribunal, and the Applicant should not be prejudiced.
- 15) The Applicant considers that the surveyor's fee is extremely high in comparison to another flat in the block in respect of which surveyor's fees of £500 plus VAT were claimed. The Respondent however explains this difference as being due to the lower premium offer of £50,000 in that case. The Applicant also considers it unclear whether the surveyor's fee includes time spent on negotiation. The Applicant considers a reasonable valuer's fee would be £500 plus VAT.
- 16) The tribunal sees no reason why the surveyor's fee, based on time spent, should quadruple for valuation of a higher value property. There is no demonstrated link between the value of the property and the amount of time spent or hourly fee appropriate.
- 17) Having considered the breakdown of time spent that has been provided and the nature of the work, the tribunal takes the view that a fee of no more than £900 plus VAT is justifiable for valuer's fees. This notionally represents 6 hours of work at £150 per hour (or less time for a more experienced and costly surveyor). Excessive time has been recorded and the tribunal considers the hourly rate of £285 claimed is too high for work of this nature.

Name: F Dickie

Date: 27 August 2015