

4302



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

Case Reference : **LON/00AL/OC9/2016/0071**

Property : **First Floor Flat, 215 Burrage Road,
London SE18 7JZ**

Applicant : **Mr Norman Michael Freed**

Representative : **Debenhams Ottaway Solicitors**

Respondent : **Mrs Hilary Leonora Winch**

Representative : **Bishop & Sewell LLP**

Type of Application : **Assessment of costs under section
60(1) of the Leasehold Reform
Housing and Urban Development
Act 1993**

Tribunal members : **Sonya O'Sullivan**

Date of Decision : **29 August 2016**

:

DECISION

The background

1. The Applicant is the long leaseholder of First Floor Flat, 215 Burrage Road, London SE18 7JZ .
2. The Respondent is freeholder of the building and the competent landlord for the purposes of the Leasehold Reform, Housing and Urban Development Act 1992 (the “1993 Act”).
3. The leaseholder served a section 42 notice seeking to exercise his right to a lease extension under S48 of the 1993 Act and a Counter notice was served which admitted the right but did not agree the proposed premium.

The application

4. By an application dated 17 February 2016 the leaseholder has now applied for an assessment of the landlord’s costs under section 60(1) of the 1993 Act.
5. Directions were issued dated 5 July 2016. Further to those directions a bundle was lodged by the Respondent.
6. Neither party having requested an oral hearing, the application was considered by way of a paper determination on 29 August 2016.
7. Woolsey Morris & Kennedy acted for the Respondent in this matter in relation to the investigation of claim and preparation and service of the counter notice.
8. Radcliffes Le Brasseur acted for the Respondent in relation to the agreement of the new lease.
9. The costs in issue (show inclusive of vat) are as follows;

Legal costs (investigation/c notice Woolsey Morris & Kennedy	£612
Legal costs (new lease) RadcliffesleBrasseur	£2,800
Total	£3,412

Landlord's investigation/counter notice costs

10. In its letter of 6 July 2016 Woolsey Morris & Kennedy confirm that the landlord claims the sum of £500 plus Vat in respect of its investigative and counter notice costs under Section 60 (1)(a). This is said to relate to work carried out by an associate at a cost of £250 plus Vat per hour. £12 in relation to land registry costs is also claimed.
11. The Applicant points out that the agreed premium was £17,500 and that the value of the transaction does not reasonably require the instruction of specialist solicitors or for work to be carried out by Grade A or B fee earners. It is also said that the hourly rate for a Grade C solicitor in SE18 is £170 or alternatively for a Grade B solicitor £200 plus Vat. The Applicant asks that the reduced hourly rate be applied. The Applicant also says that it was given no reasons why there was a change of solicitor and that much of the work was subsequently duplicated by the next solicitors instructed, Radcliffes.

Landlord's investigation and counter notice costs – the tribunal's decision

12. There is no specific challenge to the amount of time spent with the hourly rate only being challenged. The Applicant does however contend there is duplication between the costs of the solicitors. The tribunal addresses this below in relation to Radcliffes Le Brasseurs' costs. The tribunal considers the hourly rate falls within a reasonable range given that irrespective of the premium at stake this is specialist work and therefore allows the time claimed of 2 hours at the rate of £250 per hour plus VAT plus land registry fees of £12.

Legal costs under section 60 (1) (c)

13. Legal costs are in issue in the total sum of £2,800 inclusive of Vat.

The Applicant's case

14. The Applicant says that the time spent of 11.2 hours is excessive. The lease did not require extensive review or drafting. There were no terms in dispute. The Applicant says only 2-3 hours work is recoverable and that the majority of the work is solely due to the Respondent's attempts to improve its commercial position and therefore does not fall within the Act. It is also said that there is duplication between the two firms acting in this matter.

The Respondent's case

15. The Respondent has submitted a costs schedule. This sets out the time spent on various categories of work described as letters/emails, telephone calls, reviewing documents, preparation and drafting. Although it was given the opportunity to respond to the Applicant's challenges at paragraph 4 of the directions it chose not to do so.

Legal costs under section 60(1) (c) - the tribunal's decision

16. The provisions of section 60 are well known to the parties and the tribunal does not propose to set the legislation out in full. However costs under that section are limited to the recovery of reasonable costs of an incidental to any of the following matters, namely:-
- i. Any investigation reasonably undertaken of the tenant's right to a new lease;
 - ii. Any valuation of the tenant's flat obtained for the purpose of fixing the premium or amount payable by virtue of Schedule 13 in connection with the grant of a new lease under section 56
 - iii. The grant of a new lease under that section.
17. Subsection 2 of section 60 provides that *"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"*.
18. The tribunal considers that the rate charged by the fee earners falls within the range generally adopted by the tribunal in cases of this kind.
19. The tribunal has been provided with a printed schedule from the landlord's solicitors and is satisfied that the time has been incurred. It is noted that not all the time incurred has been charged.
20. The tribunal notes and accepts that the majority of time spent in relation to the tribunal proceedings has not been charged.
21. However given the nature of this transaction the tribunal does consider that the time spent appears excessive. The tribunal has been provided with copy correspondence between the solicitors in relation to the lease negotiation and notes that work done in compiling a list of disputed terms is included and was clearly prepared for the purposes of the tribunal proceedings. In addition much time was spent on an attempt

to include new lease terms which were clearly not within the confines of the legislation. We do not consider that any duplication between the two forms of solicitors has been charged as handover work as identified in the print out has clearly not been charged.

22. Considering the schedule and time spent as a whole and having regard to its experience and expertise the tribunal considers that reasonable costs under section 60 (1) (c) in this matter should be limited to 4 hours work for what should have been a straightforward lease to include the costs of completion at the hourly rate claimed of £250 plus Vat.

Conclusion

23. The total recoverable costs are therefore £1500 plus Vat and land registry fees of £12.

Name: Sonya O'Sullivan

Date: 29 August 2016