4367

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/OOBK/OC9/2016/0374**
Property	:	**First Floor Flat, 110 Great Portland Street, London W1W 6PQ**
Applicant	:	**Hatton Garden Properties Limited**
Representative	:	**Structadene Limited (Mr Geoffrey Karikari)**
Respondent	:	**Mr Mark Willingale**
Representative	:	**Wallace LLP Solicitors** **Mr S Serota**
Type of Application	:	**Sections 60 and 91 of the Leasehold Reform Housing and Urban Development Act 1993**
Tribunal Members	:	**Tribunal Judge Dutton** **Mr P J M Casey MRICS**
Date and venue of Hearing	:	**10 Alfred Place, London WC1E 7LR on 2nd November 2016**
Date of Decision	:	**29th November 2016**

DECISION

DECISION

The Tribunal determines that the amount payable by the Respondent in respect of the costs under the provisions of Section 60 of the Leasehold Reform Housing and Urban Development Act 1993 (the Act) shall be the sum of £1,162 together with the agreed valuer's fee of £750 plus VAT, full details of which are set out below.

BACKGROUND

1. On 7th May 2015 the Respondent, Mr Mark Willingale, served a Section 42 notice seeking a lease extension in respect of his property, the First Floor Flat at 110 Great Portland Street, London W1W 6PQ. On 8th June 2015 Structadene Limited, on behalf of the Applicant, served a counter notice under Section 45 of the Act accepting the Respondent's right to a new lease but suggesting an alternative premium. Eventually the premium was agreed but the question of the costs under Section 60 was not resolved. An application was made to the Tribunal by the Applicants, Hatton Garden Properties Limited through Structadene Limited and the determination of the sum of costs came before us for hearing on 2nd November 2016.

2. Prior to the hearing we received a bundle of documents which included the application, the Applicant's schedule of costs, the notices served, correspondence, Land Registry details and the parties' respective statements of case and responses.

3. A schedule of costs for summary assessment was included, broken down into three headings dependent upon the fee earner involved. The first was Mr Karikari a solicitor indicated at grade 3 status with a basic hourly charging rate of £250. Under various headings he set out the work that had been done. The first heading was "Emails as at the date of submission of costs" and it is appropriate to set out in full the narrative. It says as follows: *"Specific to dealing with directions by the Tribunal for the assessment of premium, dealing with the draft lease with solicitor for tenant, liaising with valuer and client and tenant solicitors for agreement of the premium, emails to Lloyds Bank for lender consent for Hatton Garden Properties to grant lease, discussion with Rodney Evans (Head of Legal) and client regarding lender consent and report and reference to service charges in the draft lease, liaising with clients property manager's completion statement issues."* It is recorded that some 19 standard emails and 8 long emails were sent giving a purported total of £896.

4. The next heading related to incoming emails for which a charge of £725 was sought and this was followed by a heading "Reporting Documents and Drafting documents" for which £850 was sought. The final headings were in respect of reporting to client and meetings which had a rounded down sum of £325 and letters, up to 20th April 2016, for which a total of £325 was sought. There were further charges sought in respect of the approval of letters and other matters for which £100 was claimed and a number of telephone calls again for which £100 was claimed. The total time said to have been spent by Mr Karikari in respect of this schedule was 11 hours and 12 minutes giving a total cost on the schedule of £3,321.

5. The second element of costs related to a Mr Sam Shurkin said to be from May 2015 to 26th June 2015, which is in essence the period during which the initial notice and counter notice were produced. This included emails and attendances seeking a charge of £181.50, a charge for incoming emails of £99, a further charge for approval and reporting of £148 and finally letters out for which there appeared to be three but for which a charge of only £2.75 was made giving a claim for £8.25 and telephone calls to the valuer giving rise to charge of £44. It was said that some 3 hours 10 minutes was spent and that this gave a figure of £381.75.

6. The final element of charge related to Mr Evans, Head of Legal Services having some 40-41 years' post-qualification experience, although claimed at a grade 3 rate of £267 per hour. Under the heading Emails and Attendances three were charged at £13.35, an email from the Respondent's solicitors at £4.45 and the review of further emails involving the approval of Lloyds Bank consent and other matters at £53.40. Finally, there was a Land Registry disbursement of £12. This gave rise to a total charge on the schedule of £3,752.20. This was inconsistent with the fee note that Structadene Limited had raised of their client, which indicated a fee of £4,740.

7. The Respondent's statement of case in response to the application was included in the bundle at pages 110 onwards. This pointed out that the amount apparently being claimed by the Applicant as shown on the invoice from Structadene at £4,740 is more than the sum shown on the schedule of costs. It was suggested that because overheads were lower for a company such as Structadene, than solicitors firms, there should be a reduction of 15% on the guideline rates for assessment. It was said that no explanation was given as to the uplift from Mr Shurkin who handled the matter initially at a rate of £165 per hour to Mr Karikari or Mr Evans where rates of £250 and £267 per hour had been claimed.

8. It was also suggested that the schedule appeared to be an attempt by Structadene to recover all costs carried out in connection with the extension of the lease. This was, it was said, inappropriate.

9. In respect of the works by Mr Shurkin there was not a great deal of challenge to these by the Respondent other than a suggestion that the claim for incoming emails should not be allowed. Costs limited to £225 was suggested for this element.

10. In respect of the works carried by Mr Karikari, it was said that these were excessive. A form of a new lease had already been agreed in connection with Flat 3, which had been dealt with a few months earlier and accordingly the cost charged in respect of that should be limited to the sum of £775. The other charges in respect of emails, both long and standard, was far too high as only a fraction related to the costs covered by Section 60 and there was no justification for the charges sought for dealing with incoming communications. The element of costs relating to the involvement of the Applicant's mortgagee was rejected as being irrecoverable, as were other items claimed by Mr Karikari. It was said none of the works carried out by Mr Evans related to costs incurred under Section 60.

11. The Applicants filed a statement in response to this in which they indicated that it had been suggested that the fees could be agreed at £3,000 plus VAT but this had

been rejected. The statement dealt with a number of responses relating to the reduction suggested by the Respondent's solicitors of 15% to the hourly rates and gave an explanation as to why Mr Shurkin was not able to deal with the whole of the case, it seems because he had left Structadene Limited. Apparently there were no other fee earners to deal with the matter and in any event the fee earners used were reasonable in the circumstances. It is said that the fees charged were in line with the HM Courts and Tribunal Service Guidelines. The response went on to detail various matters but we will deal with those in the findings section as necessary.

HEARING

12. At the hearing of the case Mr Karikari attended on behalf of Hatton Garden and Mr Serota on behalf of Mr Willingale.

13. Mr Karikari indicated that the bundle before us contained the majority of the correspondence, although not every internal email was included. It was suggested by Mr Serota that the schedule in respect of the costs carried out by Mr Shurkin appeared not to include any specific element relating to the counter notice. Mr Karikari had sought to introduce this but limited it only to a six-minute element which Mr Serota, whilst objecting to the inclusion of an item which was not within the schedule, did not think it necessary to raise any particular issue with regard to this charge. Mr Serota indicated the sum of £381.75 would be agreed by him for the works carried out by Mr Shurkin. He disputed the entitlement to recover £99 for incoming correspondence which was contrary to the County Court Procedural Rules.

14. Mr Karikari was of the view that the emails to Lloyds Bank were recoverable as the Applicant had a legal obligation to ensure that the lease, once extended, would be registerable. It was said that Section 60 covered the right to deal with these elements and he referred us to Section 56(1) of the Act which indicates that the landlord is bound to grant a lease to the tenant on certain terms. He also indicated that some of the work that he had undertaken was included as it was completing elements that Mr Shurkin may have missed. As far as Mr Evans was concerned, apparently he had advised on the terms of an undertaking sought from the Respondent in connection with the payment of sums due to complete the lease.

15. Mr Karikari considered that the cost of £600 suggested for the purposes of drafting and reviewing the lease was reasonable, although Mr Serota pointed out that this sum included the negotiation of same, which would not be recoverable. Mr Karikari made certain concessions, for example that the costs of preparing the lease would be £450 and that £100 element relating to negotiations should not be included.

16. He confirmed that Hatton Garden was part of the group of which Structadene was also a member. He also confirmed that he thought a figure of £2,750 plus the disbursement of £12 was reasonable. He did not agree the figure of 15% reduction overall for costs and confirmed with us that he had been qualified for more than ten years and his hourly rates were backed up by HMCTS Guidelines. He confirmed that no discount was applicable to Hatton Garden notwithstanding they had a close relationship with Structadene but could not really explain why the fee

note to Hatton Garden was at £4704 when the total of the costs on the schedule was £3,752.20.

17. Mr Serota in response submitted that all works that fell within the provisions of Section 60, save for the preparation of the lease and completion, had been covered by Mr Shurkin during his period of involvement.

18. On the question of the consent that was needed it is said from the mortgagees, Mr Serota referred us to Section 58 of the Act. This deals with the grant of a new lease where the interest of the landlord and tenant is subject to a mortgage. That makes provisions for how this matter has to be dealt with. It is submitted by Mr Serota that this does not fall within the provisions of Section 60. He also told us in his experience he had never seen a case where costs had been claimed for obtaining the lender's consent.

19. He thought that three hours was sufficient time to be spent on the drafting and completing of the lease. As to charging rates, he thought that as Structadene was non-regulated there would be lower overheads than a solicitor would have to meet, for example insurance, accountancy costs, infrastructure, clients account etc. In those circumstances he thought it appropriate to reduce the rate and as he indicated the 15% figure had been achieved by "finger in the air" assessment. He also pointed out that Mr Shurkin's costs appeared to include the request for the deposit and separate representation which only arises after the counter notice and is not, therefore, recoverable. Finally he considered that Mr Evans' claims for costs were not recoverable in total.

20. Mr Karikari referred to the case of *Sinclair Garden Investments (Kensington) Limited v Wisbey [2016]UKUT2003(LC)* indicating the extent for which costs under Section 60 could be recovered and an earlier case of *Sidewalk Properties Limited v Twin [2015]UKUT0122(LC)* where the Upper Tribunal gave guidance as to the hourly rates recoverable for in-house solicitors.

21. Mr Serota's final response re-asserted the submission with regard to the reduction of 15%, that the costs claimed appeared to be less than the amount actually billed to the client and finally Mr Karikari put forward the proposition that a sole practitioner could have lower overheads than a large firm but still be entitled to charge the rate applicable to his or her qualifications.

THE LAW

22. The law applicable to the assessment of costs is contained at Section 60 of the Act which is set out below.

FINDINGS

23. We have considered carefully the cost schedule and the various statements of case and responses lodged by the parties and also considered the matters referred to at the hearing before us. We bear in mind the provisions of Section 60 of the Act which restrain the costs that can be recovered by a landlord. The Act essentially has three elements which can be claimed. The first is the investigation reasonably undertaken of the tenant's right to a new lease. Second is the valuation of the

tenant's flat for the purposes of fixing the premium and the third is the costs of and incidental to the drafting and execution of the lease. It is we think accepted the costs of arguing or negotiating the claim do not fall within Section 60 and further that a tenant is not liable under this section for any costs a party incurs in proceedings before the Tribunal.

24. It seems to us clear from the assessment of the costs schedule that Structadene are seeking to recover the totality of their costs in dealing with this claim. For example, the submission on page 1 of the schedule includes dealing with directions by the Tribunal for the assessment of the premium. Clearly that does not fall within Section 60. We do not accept either that correspondence with Lloyds Bank the lenders for Hatton Garden Properties fall within the terms of Section 60, it falling within the provisions of section 58 of the Act. We are not prepared to accept that there is an entitlement to charge for incoming correspondence or emails. These ordinarily fall within the time charge for letters/emails written, unless the incoming missive is of such complexity as to require specific time being spent on it. There appeared to be two such emails but it was not made clear to us what the justification was for this charge.

25. For our part we do not consider that the hourly rates charged are unreasonable. Although Mr Serota sought to argue that overheads needed to be considered in assessing what those hourly rates should be, this is contrary, in effect, to the judgment of the Upper Tribunal in the Sidewalk Properties Limited case. The Deputy President in that case said that we should accept the costs given as a guidance to represent the sums that would be reasonable for tasks undertaken under Section 60 of the Act. The question of overheads is by and large not an area we should involve ourselves in. It is clear also from this judgment that we were not entitled to calculate our own in-house rates. The rates that are being sought are in line with the Court's guidance and commensurate with solicitors having the experience of those acting through Structadene. We accept Mr Karikari's submission that Mr Shurkin left and that the only solicitors able to deal with the work after that time were him and Mr Evans. With respect to Mr Serota, we do not consider that the hourly rates that are being sought by the Applicants in this case are unreasonable and we therefore allow those in full where claimed and allowable under the provisions of the Act.

26. Mr Serota indicated that he had little challenge to the costs of Mr Shurkin. There are a number of mathematical errors in the assessment of his costs. Firstly, nine units at £16.50 per unit would be £148.50 not the £148 claimed. Furthermore, outgoing letters would not be charged at £2.75 each but at a one-unit rate of £16.50 for which there were three which would give a figure of £49.50 not £8.25. In addition, the total sum said to have been incurred for 3 hours 10 minutes at £381.75 is patently wrong.

27. Mr Serota indicated the willingness to accept the figure of £381.75 for this element. We heard what was said in that regard. There are these mathematical errors and we would propose, therefore, **to allow a rounded figure of £400** in respect of the costs attributable to Mr Shurkin. We rule out the cost of considering incoming emails and the works involved with the representation for the intermediate landlord and the deposit as we find that they do not fall within the provisions of Section 60.

28. Insofar as Mr Evans' fees are concerned, we disallow those in total as we cannot see that any of the work he did fell within the provisions of the Act.

29. Insofar as Mr Karikari is concerned, Mr Serota considered that three hours was a reasonable time for preparing the lease and completing the matter. We agree and would therefore **allow the sum of £750** in connection with Mr Karikari's costs. We disallow the remainder because on our findings it includes a large element of costs relating to matters before the Tribunal, which are not recoverable. Further, the costs in relation with the Lloyds Banks consent is not we find something that falls within the provisions of Section 60 and neither do the extensive negotiations, reporting and meetings.

30. **Accordingly, we find the total sum payable in respect of the Applicant's costs is £1,150 together with the £12 for the Land Registry fees and £750 plus VAT for the valuation fee.**

Judge: Andrew Dutton

A A Dutton

Date: 29th November 2016

ANNEX – RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-Tier at the Regional Office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request to an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.