



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

Case Reference : **LON/OOAK/OC9/2016/0324**

Property : **Flats 49 & 86 Kirkland Drive,
Enfield, Middlesex**

Applicant : **Anne Elizabeth Bickel, Stephen
Bickel and Suzanne Tracy Hoenig
(1) (Flat 49)
Anna Jayne Gilbert (2) (Flat 86)**

Representative : **Bishop & Sewell LLP**

Respondent : **Freehold Managers (Nominees)
Limited**

Representative : **Bolt Burdon Solicitors**

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 : **19 September 2016**

: :

DECISION

The background

1. The First and Second Applicant are the long leaseholders of Flats 49 and 86 Kirkland Drive, Enfield, Middlesex EN2 respectively.
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 leaseholders each served a section 42 notice seeking to exercise their right to a lease extension under S48 of the 1993 Act and a Counter notice was served in each case which admitted the right but did not agree the proposed premium.

The application

4. By an application received on 22 July 2016 the leaseholders have now applied for an assessment of the landlord's costs under section 60(1) of the 1993 Act.
5. Directions were issued dated 27 July 2016 and pursuant to those directions a bundle was lodged containing the Respondent's costs schedule and submissions made on behalf of both parties to those costs.
6. Neither party having requested an oral hearing, the application was considered by way of a paper determination on 19 September 2016.

The Legal costs

7. Legal costs are in issue in the sum of £1813.42 plus vat making a total of £2193.50 in respect of each flat.
8. Bolt Burdon Solicitors act on behalf of the Respondent and act on a fixed fee basis rather than hourly rate basis. It is said that if the tenants had instructed them on a standard basis their fees would have been between £1750 to £2100 plus Vat. It is further said that they would only apply a higher rate if the matter became unusually complicated or if the notice of claim is invalid and there is a requirement to consider a further notice.
9. The hourly rate for the solicitor acting would be £255 plus Vat if charged and for the paralegal £160 plus Vat. A breakdown of the time spent on each category of work is provided. Invoices are provided in relation to each flat.

10. The applicants say the costs are unreasonable and suggest a rate of £950 plus Vat for each flat.
11. It is said by the applicants that these are low value cases and that 13 lease extensions have recently been completed from the same development where lower fees of £900 plus Vat were agreed with the involvement of a more senior fee earner. The applicants also rely on Sinclair Gardens Investments (Kensington) Limited v Wisbey [2016] UKUT 203 LC where the Upper Tribunal decided that a discount could be obtained where multiple transactions were similar in nature. It is said that these cases are no different from the bulk completions the fees sought are unreasonably high.
12. The following specific points raised are set out below with the respondent's response;
 - (a) There should be no fee for opening a file - no comment is made
 - (b) 54 minutes for drafting one letter is unreasonable - no comment is made
 - (c) The notices served were in the same form as in the bulk completion and thus 2 hours spent on each is unreasonable – the respondent says the same level of attendance is required for each notice as lease terms and names and details of the leases can vary
 - (d) Insufficient detail on the emails to client and surveyor is given – no comment is made
 - (e) 54 minutes for an email containing the completion statement in 5 lines is unreasonable – the content of the email rather than the number of lines is said to be key, this includes considering the service charge statement, apportioning payments, agreeing a completion date, sending completion funds and confirming the matter is completed
13. Equivalent costs for the Claimant's representative is given at a total of £810 inclusive of Vat and £100 of disbursements. The applicants say that they cannot comment on those fees but that they would be more suitable where there are more than 20 flats in a block. It is also said that they have dealt with Bishop & Sewell in the past when they have charged £1650 for their costs.

The tribunal's decision

14. 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.

15. 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"*.

16. The view of the tribunal having taken all the matters set out in the parties' statements into account and having regard to the breakdown provided is that the amount charged by way of a fixed fee appears to be excessive for what were straightforward cases, especially given that there has been bulk completions in the recent past on the same development. The tribunal would expect to see a discount to reflect that. Further the time spent opening the file should be discounted, the time spent drafting the preliminary letters and the completion email both claimed at 54 minutes was clearly excessive in the light of the actual correspondence. Further it is considered that the two hours claimed in each case for the consideration of the initial notice was excessive given that the respondent's solicitors would have been very familiar with the development and the respondent's title at this stage.

17. The tribunal therefore allows reasonable costs under section 60 in respect of each flat in the sum of £1000 plus Vat to include disbursements.

Valuation costs

18. Valuation costs are claimed in the sum of £950 plus Vat in respect of each flat.

19. It does not appear that the valuation fees are in dispute. There is no point made in the points of dispute and no invoice provided. Accordingly the tribunal makes no finding in relation to the valuation fees.

Name: Sonya O'Sullivan

Date: 19 September 2016