



**First-tier Tribunal
Property Chamber
(Residential Property)**

Case reference	:	CAM/00MD/OLR/2018/0158, 159 & 160
Properties	:	67, 179 & 186 Maplin Park, Slough, SL3 8YB, 8YD & 8XZ
Applicants	:	Carole Anne Dodd (67) Dodds Properties Ltd. (179) and Sunil Nanji Bhika Jetha Solanki & Saroj Sunil Solanki (186)
Respondent	:	Freehold Managers (Nominees) Ltd.
Date of Applications	:	10th, 17th & 10th September 2018
Type of Application	:	To determine the costs payable on lease extensions (Section 60 of the Leasehold Reform and Urban Development Act 1993 (“the 1993 Act”))
The Tribunal	:	Bruce Edgington (lawyer chair) David Brown FRICS

DECISION

Crown Copyright ©

1. The reasonable legal costs of the Respondent payable by the Applicants pursuant to Section 60 of the 1993 Act are £1,408.50 plus disbursements.
2. The reasonable valuation fees payable by the Applicants are £650.00.
3. If the Respondent company is unable to reclaim the VAT as an input then VAT is payable by the Applicants at the appropriate rate on both legal fees and the valuation fee. VAT on disbursements will depend on how they are claimed as explained in the text below.

Reasons

Introduction

4. This dispute arises from the service of Initial Notices seeking lease extensions of the properties by qualifying tenants. In these circumstances there is a liability on the Applicants to pay the Respondent’s reasonable legal and valuation costs. The valuation fee

has, in effect, been agreed and this decision will therefore only deal with legal fees.

5. The Tribunal issued a directions Order on the 28th September 2018 timetabling the 3 lease extension cases to a final hearing. All matters save for the costs were agreed and the solicitors acting for the parties agreed to that matter being dealt with by the Tribunal considering the papers only, to include any representations from the parties.

The Law

6. It is accepted by the parties that the Initial Notices were served and therefore Section 60 of the 1993 Act is engaged. For the reasons set out below, the Applicants therefore have to pay the Respondent's reasonable costs of and incidental to:-
 - (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;*
(Section 60(1) of the 1993 Act)
8. What is sometimes known as the 'indemnity principle' applies i.e. the Respondent is not able to recover any more than it would have to pay its own solicitors or valuer in circumstances where there was no liability on anyone else to pay (Section 60(2)). Another way of putting this is to say that any doubt is resolved in the receiving party's favour rather than the paying party.

Legal fees

9. The Respondent has instructed Bolt Burden who are solicitors in London N1. As the Respondent is in Bishopsgate, the Tribunal accepted that it was reasonable to instruct solicitors in London. The statement of costs filed sets out the names of no less than 4 fee earners i.e. a partner charging £400 per hour, a solicitor charging £280 per hour and 2 senior solicitors charging £315 per hour. The total claimed is £2,185.20 for 67 Maplin Park, £2,192.40 for 179 and £2,185.20 for 186.

10. The objections to the legal costs are short and are set out as follows:-

- (1) Investigating the claim – fee earners

There is no breakdown of the time spent and using a partner charging £400 per hour for this sort of work is unreasonable. The Applicants agree to pay £970 in profit costs rather than the £1,050 claimed.

- (2) Investigating the claim – tasks

The Applicants challenge all the work with the valuer and finalising the counter-notice as this is not a separate task.

(3) Grant of new lease
Again, no breakdown of time spent.

(4) VAT is claimed on disbursements
It should not be payable.

(5) Valuation costs
The Applicants did not follow whether the valuer's fees include further claims. It is stated that the Applicants considered that the fee should only be £650 plus VAT. The response on behalf of the Respondent is that the figure claimed is only £650.00 plus VAT per property.

(6) The Wisbey deduction

Conclusions

11. The Tribunal has considered the objection and the responses and determines as follows.
12. As far as objection (1) is concerned, the Tribunal was also troubled about the lack of detail. The fact that an amount has been agreed with the Respondent as a block figure is irrelevant. This Tribunal's task is to assess the reasonable amount actually payable by these Applicants. That task can only be undertaken with a breakdown. The Respondent's solicitors were ordered to file and serve such a breakdown and they have chosen to just ignore the Tribunal's order.
13. As to the charging rates, the rates recommended by the Advisory Committee on Civil Costs in 2010 for solicitors practicing in N1 was £229-267 in Grade A and £172-229 in Grade B. There have been no recommendations since then and clearly an amount to cover inflation must be added. However, the period in question has been one of modest inflation rates. Even assuming Grade A rates throughout, the rates actually charged are, in the Tribunal's view, excessive. The offer of £970 for profit costs is reasonable.
14. As to objection (2), the argument of the Applicants is not a good one and the figure for the investigation therefore remains at £970.
15. Objection (3) is similar to (1) and the Tribunal makes the same comments. A Grade A fee earner is justified for the technical legal work involved in investigating the claim. The form of the lease is largely dictated by Statute and if a separate fee earner is being used, a Grade B fee earner would suffice for work to complete the lease. The problem is that the Respondent does not say who is dealing with this part of the work. The form of the new leases will be virtually identical for the 3 flats and the Tribunal agrees that 2 hours per lease would be reasonable. The offer of £595 is reasonable.
16. As to objection (4), the law as to VAT is that a disbursement which does not attract VAT, e.g. a Land Registry fee can be claimed in one of two ways. If it is charged as a separate disbursement, VAT cannot be

claimed as it is not payable to the original contractor. However, if it is added to profit costs, then VAT is payable on the whole amount, including the disbursement. In this case, the disbursements seem to be claimed separately which means that VAT is not paid by the solicitors and cannot therefore be recovered.

17. As the valuation fee seems to be agreed, the last objection (6) deals with the reduction for volume of duplicated work. The Respondent's solicitors say that a reduction has already been built into the fees. However, there is no evidence to suggest that i.e. no breakdown followed by a reduction. Bearing in mind the charging rates being claimed and the very generous times being claimed, the Tribunal determines that with these 3 cases where the Initial Notices were served within days of each other, there must have been substantial savings. The Upper Tribunal agreed 20% for 21 lease extensions. A figure of 10% is reasonable in these cases.
18. Therefore the figures for each lease are £1,565.00 less 10% i.e. £1,408.50 for profit costs plus disbursements and VAT on profit costs, if payable.

.....
Bruce Edgington
Regional Judge
26th November 2018

ANNEX - RIGHTS OF APPEAL

- i. 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 Tribunal at the Regional office which has been dealing with the case.
- ii. 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.
- iii. If the application is not made within the 28 day time limit, such application must include a request for 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.
- iv. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. 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.