



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

Case Reference	:	LON/00AK/OC9/2018/0362
Property	:	34a Chase Side, London N14 5PA
Applicant	:	St Gabriel Investments Limited
Representative	:	Curwens LLP
Respondent	:	Surbhio Shah and Neha Shah, by assignment from Christopher Pishiri and Jon Pishiri
Representative	:	Watermans, Solicitors
Type of Application	:	New Lease - costs
Tribunal Member	:	Judge Robert Latham
Date and venue of paper determination	:	7 February 2019 at 10 Alfred Place, London WC1E 7LR
Date of Decision	:	7 February 2019

DECISION

The Tribunal determines the section 60 statutory costs in the sum of (i) £2,250 + VAT, namely a total of £2,700 for legal fees; (ii) disbursements of £12; and (iii) £1,140 (inc VAT) for surveyor's fees. The total costs payable are £3,852 (including VAT).

Introduction

1. This is an application under section 91 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act"). The current application by the Applicant landlord is for the determination of the costs payable by the tenants under section 60(1) of the Act. The landlord seeks legal fees of (i) £2,017.00 (sub-paragraph (a)); (ii) £887.50 (sub-paragraph (b)); (iii) £1,879.50 (sub-paragraph (c)), a total of £4,784.00. The total, if VAT of £954.40 is added, is £5,738.40. The landlord further seeks surveyor's fees of £950 + VAT of £190, a total of £1,140.

2. The tenant agrees the surveyor's fees of £1,140. The Applicant contends that the landlord's costs are wholly unreasonable. The landlord had previously claimed costs of £2,750 + VAT in a completion statement. The Tribunal has not been provided with a copy of this completion statement. The tenant states that there was no suggestion that this was a compromised or discounted figure. The tenant had considered this claim to unreasonable and made two offers of £1,450 + VAT, later increased to £1,750 + VAT.
3. On 26 November 2018, the Tribunal issued its standard Directions, pursuant to which:
 - (i) The Applicant landlord has provided a Statement of Case breaking down the landlord's costs under the three sub-paragraphs in section 60(1). The landlord suggests that the case has involved complex, technical and peculiar issues.
 - (ii) The Respondent tenant has filed their Statement of Case. This does not specifically address the costs claimed under the three sub-paragraphs in section 60(1). The tenants rather rely on their second offer of £1,750 + VAT.
 - (iii) The Applicant has filed a Statement in Response. The landlord states that the reference to £2,750 was a "without prejudice" negotiation for an expedited completion by a deadline which had passed. The Tribunal cannot accept this argument. Before any party makes an application to this Tribunal for the determination of statutory costs, we expect the parties to seek to resolve the dispute between themselves. This requires a landlord to quantify their claim for costs and for the tenant to make an informed response. This should set the parameters within which the Tribunal will be asked to determine costs.
4. The Tribunal has also had regard to the further letters from the tenants, dated 25 January) and landlord (28 January). These do not add anything of substance to the submissions which have already been made.

The Background

5. On 2 January 2018, the former tenants served their Section 42 Notice applying for a new lease. A premium of £15,000 was proposed. The tenants proposed that the terms of the new lease should be in accordance with the Act, namely the terms in the existing lease or such other terms as may be agreed.
6. On 8 January, the landlord required the former tenants to pay a deposit of £1,500 on account and deduce title as required by the Act.
7. On 23 February, the landlord served its Section 45 Counter-Notice on a "without prejudice basis. The landlord contended that the former tenants

had no right to serve a further notice as they had previously served a Section 42 Notice on 20 November 2015 which had not been withdrawn. The Notice proposed a premium of £35,000 and accepted the tenants' proposal for the terms of the new lease.

8. In the interim, on 5 January 2018, the former tenants assigned their lease to the Respondent tenants for a premium of £295,000 and also assigned the benefit of the Notice of Claim.
9. After what the Applicant describes as "protracted negotiations and several amendments to the draft lease" the parties have agreed the terms of the acquisition including the Lease and a premium in the sum of £18,000. The Applicant states that as late as 16 November 2018, the Respondents' Solicitor were not in funds to complete the conveyance.
10. In the interim, the Respondent tenants issued an application to the Tribunal to determine the terms of acquisition including the premium. The Applicant states that none of its costs relating to this application have been included.
11. The former tenants had also issued an application to the Tribunal in respect of the First Notice. On 14 July 2016, the tenants withdrew this application. The Tribunal notified the parties that the application had been withdrawn. There has been an issue as to whether the withdrawal of the application was a deemed withdrawal of the Section 42 Notice or whether section 52 of the Act required a formal "notice of withdrawal".
12. The tenants contend that this argument was no more than a tactical ploy, so that the landlord could negotiate a lease extension outside the terms of the Act and thereby achieve a higher premium. The Tribunal notes that the premium of £18,000 which was agreed was much closer to the figure proposed by the former tenants in their Notice of Claim than that proposed by the landlord in their Counter-Notice.

The Statutory Provisions

13. Section 60 provides, insofar as relevant for the purposes of this decision:

"(1) Where a notice is given under section 42, then (subject to the provisions of this section) 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 and 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;

but this subsection shall not apply to any costs if on a sale made voluntarily a stipulation that they were to be borne by the purchaser would be void.

(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 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 a leasehold valuation tribunal incurs in connection with the proceedings.

(6) In this section “relevant person”, in relation to a claim by a tenant under this Chapter, means the landlord for the purposes of this Chapter... or any third party to the tenant's lease.”

The Principles

14. In *Metropolitan Property Realisations v Moss [2013] UKUT 415*, Martin Rodger QC, the Deputy President, gave the following guidance on the approach to be adopted:

“9. These provisions are straightforward and their purpose is readily understandable. Part I of the 1993 Act is expropriatory, in that it confers valuable rights on tenants of leasehold flats to compel their landlords to grant new interests in those premises whether they are willing to do so or not. It is a matter of basic fairness, necessary to avoid the statute from becoming penal, that the tenant exercising those statutory rights should reimburse the costs necessarily incurred by any person in receipt of such a claim in satisfying themselves that the claim is properly made, in obtaining advice on the sum payable by the tenant in consideration for the new interest and in completing the formal steps necessary to create it.

10. On the other hand, the statute is not intended to provide an opportunity for the professional advisers of landlords to charge excessive fees, nor are tenants expected to pay landlords' costs of resolving disputes over the terms of acquisition of new leases. Thus the sums payable by a tenant under section 60 are restricted to those incurred by the landlord within the three categories identified in section 60(1) and are further restricted by the requirement that only reasonable costs are payable. Section 60(2) provides a ceiling by reference to the reasonable expectations of a person paying the costs from their own pocket; the costs of work which would not have been incurred, or which would have been carried out more cheaply, if the

landlord was personally liable to meet them are not reasonable costs which the tenant is required to pay.

11. Section 60 therefore provides protection for both landlords and tenants: for landlords against being out of pocket when compelled to grant new interests under the Act, and for tenants against being required to pay more than is reasonable.”

The Tribunal’s Determination

15. The Applicant’s Solicitors are based in Enfield, Middlesex. They assess costs on a charge out rate of £325 per hour for a Partner; £275 ph for a Senior Litigation Executive and £100 ph for a paralegal. The Tribunal accepts that these rates are reasonable.

Section 60(1)(a) Costs – Investigation of the tenant’s right to a new lease

16. A total of £2,017 is claimed. The work is described in Schedule A. Work done on documents totals £617.50, including 48 minutes of a Partner and 1 hr 18 minutes of a Senior Litigation Executive. The landlord also claims for 59 letters/e-mails (£1,387.50), namely 26 with the landlord and 33 with the tenants’ Solicitor.
17. The landlord’s decided to take a technical point as to the validity of the former tenants’ Notice of Claim. The landlord merely needed to ascertain that the previous application to the Tribunal had been withdrawn. The Tribunal had notified this fact to both parties. Thereafter, the landlord had decided to raise a legal argument which it later abandoned. The cost of canvassing this point is not something that should be included in the statutory costs.
18. The Tribunal allows £750 for considering the Notice of Claim, confirming that the previous application has been withdrawn and drafting the Counter-Notice. The Tribunal also allows the disbursements of £12.

Section 60(1)(b) Costs – Valuation of the Tenant’s Flat

19. The tenants accept the costs charged by the surveyor. In addition, legal fees of £887.50 are claimed. The work is described in Schedule B. Work on documents totals £130, namely 24 minutes of a Partner (£130). The landlord also claims for 39 letters/e-mails (£757.50), namely 10 with the landlord, 14 with the surveyor and 15 with the tenants’ solicitor.
20. The Tribunal allows £250, namely the reasonable costs of arranging for the Surveyor to inspect the flat and for perusing his report.

Section 60(1)(c) Costs – The Grant of a New Lease

21. Legal fees of £1,879.50 are claimed. The work is described in Schedule C. This includes one hour to complete the conveyance. Work done on

documents total £1,374.50, including 3 hours 30 minutes for a Partner, 30 minutes for a Senior Litigation Executive, and one hour for a Paralegal. In addition, the landlord claims for 18 letters/e-mails (£505), namely 9 with the landlord, 9 with the tenants' solicitor.

22. The tenants contend that the hours claimed are “preposterous” for such a simple document. The tenants contend that the lease was badly drafted in the first place. The landlord responds that the documents related to a surrender and re-grant of the existing lease together with prescribed clauses. These were subsequently reworded on several occasions on the insistence of the tenants' Solicitor.

23. The Tribunal accepts that this was not simply an extension on the terms of the original lease and that there was some negotiation for additional clauses to be included. The Tribunal allows a sum of £1,250 which is somewhat more than it would normally consider to be reasonable.

**Judge Robert Latham,
7 February 2019**

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

