



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

Case Reference : **LON/00BB/OC9/2020/0103
P:Paperremote**

Property : **116C Leytonstone Road London E15 1TQ**

Applicant : **Raymond Michael Sullivan**

Representative : **Vicarage Court Solicitors**

Respondent : **Antonio Tiago Rodrigues**

Representative : **Archstone Solicitors Limited**

Type of Application : **Determination of the landlord's
recoverable costs on an application
under section 60(1) of the Leasehold
Reform, Housing and Urban
Development Act 1993**

Tribunal Member : **Evelyn Flint FRICS**

Date of Decision: : **22 December 2020**

DECISION

This has been a remote hearing on the papers which has been consented to by the Applicant and not objected to by the Respondent. A face to face hearing was not held

because it was not practicable, no-one requested the same, and all the issues could be determined on the papers. The documents that I was referred to were emailed to the Tribunal, the contents of which I have recorded.

Decision of the tribunal

The tribunal determines that pursuant to section 60(1) legal fees of £1,125 plus VAT and £6 disbursements and surveyor's fees of £750 + VAT are payable by the Applicant.

Introduction and background

1. The Applicant is the long leaseholder of the flat known as 116C Leytonstone Road Stratford London E15 1TQ (the "Property").
2. The Respondent is the freeholder of the building and the competent landlord for the purposes of the Leasehold Reform and Urban Development Act 1993.
3. This is an application under section 60 of the Leasehold, Reform, Housing and Urban Development Act 1993 (the "Act") to determine the amount of the landlord's recoverable costs in connection with a claim under section 42 of the Act to exercise the tenant's right to extend the lease of the "Property".
4. On 25 October 2019 the Applicants, served notices of claim on the landlord under section 42 of the Act.
5. Archstone Solicitors, on behalf of the Respondent, served a counter notice on 4 December 2019 admitting the Applicants' right to acquire a new lease.
6. The parties agreed the terms of acquisition and the new leases were completed on 16 July 2020.
7. On 13 July 2020 the Applicant applied for a Determination of Costs payable pursuant to Sections 60 of the Leasehold Reform Housing and Urban Development Act 1993 and confirmed that a paper determination was acceptable.
8. The valuation fees have been paid although there appears to be a discrepancy in the papers regarding the amount due: the fee is stated to be £1080 inclusive of VAT however the invoice and some correspondence refers to a fee of £750 + VAT totalling £900.
9. The Tribunal issued Directions on 3 September 2020 requiring the landlord to send the following documents to the tenant:

The schedule shall identify the basis for charging legal and/or valuation costs. If costs are assessed by reference to hourly rates, detail shall be given of fee earners/case workers, time spent, hourly rates applied and disbursements. The schedule should identify and explain any unusual or complex features of the case.

Copies of the invoices substantiating the claimed costs.

Copies of any other documents/reports upon which reliance is placed.

10. The tenant was required to send a statement of case and any legal submissions.

The statement shall identify any elements of the claimed costs that are agreed and those that are disputed (with brief reasons). The statement may usefully (a) specify alternative costs that are considered to be reasonable and (b) where the tenant is represented, details of the hourly rates, or other basis for charging, applied by its solicitors, valuers or other professional advisors in the calculation of their equivalent costs.

Copies or details of any comparative cost estimates or accounts upon which reliance is placed.

Copies of any other documents/reports upon which reliance is placed.

11. The Directions also provided for the landlord to send to the tenant by **29 October 2020** a statement in response to the tenant's statement of case and any legal submissions.
12. An initial bundle, plus copies of the original and counterpart of the new lease and correspondence was provided in accordance with the Directions.
13. The Respondent's solicitors responded to the Applicants' statement of case
14. The Respondent's solicitors apologised for the late service, due to illness on the part of the solicitor with responsibility for the case. They considered that the Tribunal should consider the submissions because the late service had not caused any prejudice to the Applicants because there had been no provision for the Applicant to make further submissions in the original Directions and the documents submitted were already in the Applicant's possession. The Directions had provided for the bundles to be sent to the Tribunal by 12 November therefore the late service had not affected the Tribunal's ability to make a determination.
15. The Tribunal has reviewed the late submissions and admits them. To do otherwise would not comply with the overriding objective set out in Rule 3 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Moreover, the Directions did not provide for the Applicants to make further submissions on receipt of the landlord's response to their statement of case.

The costs in issue

16. The landlord has provided a schedule of the costs it says it has properly incurred under section 60(1) in the sum of £4,725 + VAT legal fees plus £6 Land Registry fees. No invoices in respect of the legal fees has been provided.
17. The applicant has offered £950 + VAT legal fees and £750 + VAT surveyors fees.
18. Both parties have submitted statements of case as to the costs recoverable under section 60.

The Respondent's evidence

19. The Tribunal was provided with an itemised schedule of the legal fees with the date and description of each item, the time spent and resultant cost. The schedule is not broken down into discreet areas covering each subsection of section 60 of the Act, being S.60(1)(a) to (c).
20. The Respondent says the rates charged are reasonable, the applicant was advised of the hourly rate early in the process, and are properly payable by the Applicant. The Respondent denies that the charges are excessive or unreasonable or not within the ambit of section 60.
21. The Respondent states that the surveyor's fees have been paid. The documents appear to state that the fee is £900 + VAT however the invoice within the bundle clearly states the fee of £900 as being inclusive of VAT and for the avoidance of doubt the Tribunal determines £900 inclusive of VAT.

The Applicants' evidence

22. The Applicant did not dispute the hourly rate for the fee earner however considered that some elements of the costs were excessive and that others did not fall within Section 60 of the Act.
23. In particular the Applicant relies on paragraph 31 of Sinclair Gardens Investments (Kensington) Ltd v Wisbey UKUT203(LC) which highlights that there is a burden on the landlord who is claiming costs for professional services to provide evidence that they are reasonable in extent and amount.
24. A schedule of the costs with notes showing those areas where it was contended that the charge was excessive or outside the scope of S.60 and therefore not payable was submitted to the Tribunal.
25. The Applicant stated that there was no need to use a solicitor with over 10 years PQE for the entirety of the matter and that the total costs should not be disproportionate to the premium. There was no differentiation between the charge out rates of the two solicitors acting in this matter. Administrative tasks are not chargeable.

Determination

26. Costs under S.60 are limited to the recovery of reasonable costs of and incidental to any of the following matters:
- 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.
27. 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*".
28. Having read all the representations made by both parties the tribunal determines that the work was undertaken by the appropriate Grade of fee earner.
29. However, the Tribunal considers that an excessive amount of time has been claimed throughout the process. In particular 12 minutes for diarising the date for a response to the initial notice is disallowed as being an administrative task; almost two hours was claimed liaising with the landlord's surveyor and the Applicant's solicitor to arrange an internal inspection of the flat: there is no reason why the surveyor could not have made his own appointment, the time charged is reduced to 12 minutes to allow for the relevant details to be provided to the surveyor. A significant amount of time is claimed for copying in the Respondent on correspondence, 84 minutes for reading the surveyors report with a further 12 minutes to confirm, at a later date, that the surveyor had indeed inspected. The Tribunal determines that a total of 180 minutes is allowed.
30. The costs relating to the grant of a new lease are also payable. The surrender and grant of the new lease comprises only three pages plus the front page, Land Registry prescribed clauses, execution and other standard wording. There was some work undertaken in relation to amendments. The Tribunal determines 90 minutes for costs in relation to the grant of the new lease, including completion. The Tribunal noted that although the lease was completed on 16 July 2020 the actual time taken was estimated on the schedule which was produced several months after the event.
31. The Tribunal determines that the following amounts are payable:

legal fees £1,125 + VAT plus disbursements £6.00

Name: Evelyn Flint

Date: 22 December 2020

Costs recoverable under section 60 of the Act

Costs incurred in connection with new lease to be paid by tenant.

(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.

(3) Where by virtue of any provision of this Chapter the tenant's notice ceases to have effect, or is deemed to have been withdrawn, at any time, then (subject to subsection (4)) the tenant's liability under this section for costs incurred by any person shall be a liability for costs incurred by him down to that time.

(4) A tenant shall not be liable for any costs under this section if the tenant's notice ceases to have effect by virtue of section 47(1) or 55(2).

(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, any other landlord (as defined by section 40(4)) or any third party to the tenant’s lease.

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 Tribunal 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 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.
4. 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.