



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

Case Reference : **LON/00BK/OC9/2019/0241**

Property : **Flat 13B Hyde Park Mansions,
Cabbell Street, London NW1 5BD**

Applicant : **Amestown Limited**

Representative : **Wallace LLP**

Respondent : **David Flood**

Representative : **In person**

Type of Application : **Section 60 costs**

Tribunal Members : **Judge Tagliavini
Miss M Krisko FRICS**

**Date and venue of
hearing (paper)** : **10 Alfred Place, London WC1E 7LR
18 February 2020**

Date of Decision : **18 February 2020**

DECISION

THE TRIBUNAL'S SUMMARY DECISION

I. The tribunal determines that the following sums are payable by the respondent to the applicant:

- (i) Legal fees in the sum of £2355.60 including VAT @ 20%.**
- (ii) Valuer's fees in the sum of £1,352.28 including VAT @ 20%**
- (iii) Courier's cost in the sum of 19.11 (plus VAT).**
- (iv) Land Registry fees in the sum of £21.00**

The application

1. This is an application made under section 92(2)(d) of the Leasehold Reform Housing and Urban Development Act 1993 ("the 1993 Act") seeking the tribunal's determination of the costs payable by the respondent lessee to the applicant landlord under section 60(1) of that Act.

The background

2. In a section 42 Notice of Claim dated 10 May 2018 served under section 42 of the 1993 Act the respondent's predecessor in title sought the grant of a new lease in respect of the subject property for a premium payable of £100,000. A lease of the subject property was made on 23 January 1984 between (1) Montrose Investments limited (2) Amestown Limited and (3) Eres Van Den Bergh a term of 99 years from 29 September 1981. By a counter-notice dated 18 July 2018 the landlord accepted the lessee's right to a new lease and proposed a premium payable of £356,445.00.
3. Subsequently, the respondent was assigned the right to claim a new lease under the previously served Notice of Claim. However, as the parties could not agree the terms of the new lease or the premium payable and the respondent failed to make an application seeking the tribunal's determination of issues in dispute, in a letter dated 6 March 2019 the Notice of Claim was deemed to have been withdrawn.* As costs could not be agreed by the parties the applicant subsequently made the current application to the tribunal for its determination of the costs payable.

****The applicant's costs schedule states that the Notice was deemed withdrawn on 17 January 2019.***

Preliminary issue

4. On receipt of the application, directions were given by the tribunal dated **27 November 2019** instructing the parties on how this matter would be dealt with. On 4 December 2019 these Directions were amended at the applicant's request to allow further time in which to provide submissions to the tribunal and provided that the respondent tenant was directed to send to the applicant landlord a statement of case and any submissions by **8 January 2020** and a provision made for the applicant landlord to send to the tenant by **31 January 2020** a statement I response and any legal submissions. Subsequently, in a letter dated 10 February 2020 the respondent sought to rely on further written submissions which, had not previously been provided to either the respondent or to the tribunal. The applicant objected to the late service of these submissions and stated;

“We note that ample time has been given to both parties to prepare Submissions, and there was no provision for the Directions issued by the Property Chamber for further Submissions to be supplied following the lodgement of the Bundle of documents which you agreed.....we have reserved our client's position to make further Submissions if they agree to consider your further documentation.

5. The tribunal refuses to admit the respondent's Supplementary Submissions dated 10 February 2020 in respect of its determination of this application.
6. The tribunal finds that both parties have been provided with ample opportunity to make their submissions and provide their documentation in respect of this matter. The tribunal finds that both parties have made extensive submissions which are included in the agreed bundle of documents and finds that the relevant core points raised in the supplementary submissions have already been raised by the respondent in his original submissions.
7. Further, the tribunal has regard to The Tribunal Procedure(First-tier Tribunal) (Property Chamber) Rules 2013. The tribunal finds that both parties have been able to present their case to the tribunal and that neither party has sought an oral hearing of this application. Therefore, having regard to the provisions of the tribunal rules and the overriding object set out in rule 3, the experience and expertise of this tribunal in determining these costs applications, the tribunal finds it is reasonable and appropriate to proceed on the documents provided in the agreed bundle and without recourse to the supplementary submissions of the respondent, necessitating the adjournment of the determination of this

application and the provision of a direction allowing the applicant to submit any further submissions in answer to those of the respondent.

The applicant's case

Valuation costs

8. In its application the landlord claimed: (i) legal fees of £2,250 plus VAT; a valuation fee of £1,680 (including VAT); courier's fees of £19.11 plus VAT and Land Registry fees of £21.00. The tribunal was provided with an indexed and paginated Bundle of Documents containing both parties' statements, submissions and documents in support.
9. In support of the claim for the valuation the tribunal was provided with a submission on valuation costs by Mr. Robin Sharp dated 24 January 2020. In this he included a breakdown of the time spent and the costs incurred in carrying out a valuation of the subject property, which he rounded down to £1,400 plus VAT.

The tribunal's determination and reasons

10. In light of Mr. Sharpe's experience both in valuing flats at Hyde Park Mansions and of valuing properties since the 1960's, the tribunal were of the opinion that the hourly rate charged of £295 was in the range of what is considered to be reasonable. However, the tribunal were of the view that the 2 hours claimed for considering site notes and researching the market was excessive in light of Mr. Sharp's experience and access to material quickly and easily by electronic means. Therefore, the tribunal reduced this item to 1 hour which provided an over sum for valuation costs of £1126.90 plus VAT.

The applicant's legal fees

11. The applicant provided the tribunal with a Schedule of Costs specifying the fee earner, the time spent and the item of work dealt with. In support of its application, the tribunal was provided with written Submissions on costs dated 28 January 2020 together with supporting documentation and previous tribunal cases on costs in respect of the same applicant.
12. The applicant clarified in its submissions that there had been typographical errors in its Schedule of costs in respects of the hourly rates charged and the dates on which certain items of work had been carried out.

The respondent's case

13. The respondent relied upon written submissions dated 8 January 2020 together with supporting documentation. In his submissions, the respondent challenged the hourly rates charged by the applicant as excessive, the extent of the work carried out and made reference to the typographical errors contained in the applicant's Schedule of Costs. The respondent asserted that the total figure for legal costs was £1,427.50.

The tribunal's determination and reasons

14. The tribunal finds that the hourly rates claimed by the applicant to be within the range of what is considered to be reasonable. The tribunal notes the discrepancies in the Schedule of costs and finds that the proper rate charged for a partner is £475 per hour (as accepted by the applicant in its submissions).
15. However, the tribunal finds that the extent of the work carried out by a partner to be excessive in parts having regard to the experience and familiarity of that fee earner in dealing with this type of application. Therefore, the tribunal reduced the following entries:

14 May 2018: Time spent 0.7 claimed - reduced to 0.5

15 May 2018: Item disallowed

04 July 2018: Item disallowed

16 July 2019 (sic)*: Time spent 0.7 claimed – reduced to 0.5 at an hourly rate of £475 (preparing draft Counter-Notice)

16 July 2019 (sic)*: Hourly rate corrected to £475 (letter)

16 July 2019 (sic)*: Hourly rate corrected to £475 (preparing draft letter)

16 July 2019 (sic)*: Item disallowed (letter)

****These dates should read 2018***

16. Therefore, the tribunal finds that the total sum to legal fees to be reasonable and payable by the respondent is £2355.60 (inc. VAT).

17. As the respondent conceded in his submissions that the land registry and courier fees are not disputed, the tribunal does not make any determination in respect of these.

Name: Judge Tagliavini

Dated: 18 February 2020

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 might 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 , such application must include a request for an extension of time and the reasons 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 these time limits.

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).

