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First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	:	**CAM/00KF/OLR/2015/0174**
Property	:	**69 Valkyrie Road, Westcliff-on-Sea, Essex SS0 8AW**
Applicant	:	**Christopher Richard Hawkes**
Respondents	:	**Carloine Susan Tompsett & Mandy Ann Leach**
Date of Application	:	**28th September 2015**
Type of Application	:	**To determine the terms of acquisition and costs of the lease extension of the property**
The Tribunal	:	**Bruce Edgington (lawyer chair)** **Evelyn Flint DMS FRICS IRRV** **Stephen Moll FRICS**

DECISION

UPON the solicitors acting for the parties having notified the Tribunal that the premium and remaining terms of the lease extension have been agreed

AND UPON such solicitors also agreeing that the Tribunal should determine the costs pursuant to section 60 of the **Leasehold Reform, Housing and Urban Development Act 1993** ("the 1993 Act") on the basis of the written representations in the bundle lodged for the Tribunal

IT IS ORDERED that:-

1. The reasonable legal costs of the Respondents payable by the Applicant pursuant to Section 60 of the 1993 Act are £1,268.94.

2. No objection having been raised as to the valuation fee of £720.00 including VAT, it is determined as being reasonable.

Reasons

Introduction

3. This dispute arises from the service of an Initial Notice seeking a lease extension of the property by a qualifying tenant. In these circumstances there is a liability on the Applicant to pay the Respondents' reasonable legal and valuation costs.

4. The Tribunal fixed a hearing to determine all outstanding matters relating to the lease extension for the 14th December 2015, but on the 11th December the Tribunal office was informed that all matters were agreed save for the costs involved. The solicitors representing both sides asked for the costs to be assessed without an oral hearing. The Tribunal agreed to that and cancelled the hearing.

5. The Tribunal was provided with a bundle which contained the Respondents' solicitors' costs calculation. The directions ordered the objections to be dealt with in accordance with the **Civil Procedural Rules 1998** but for some reason they were not. The 'objections' consisted of brief handwritten notes alongside the various items of claim by the Respondents' solicitor. There is then a separate statement from the solicitors answering the notes.

The Law

6. It is accepted by the parties that the Initial Notice was served and therefore Section 60 of the 1993 Act is engaged. For the reasons set out below, the Applicant therefore has to pay the Respondents' reasonable costs of and incidental to:-

   (a) *any investigation reasonably undertaken of the tenant's right to a new Lease;*

   (b) (the valuation fee)

   (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 Respondents are not able to recover any more than they would have to pay their 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.

Discussion

9. The Respondent has instructed Tolhurst Fisher LLP who are solicitors in Southend-on-Sea and Chelmsford who are known to deal with this type of work. The fee earner dealing with the matter throughout has been Mr. Robert Plant who, based on the information supplied, is clearly a Grade A fee earner which is a term used in county court costs assessments for the most senior fee earners. He claims an hourly rate of £217 and this does not seem to be contested by the Applicants.

10. The objections to such costs are short and have two relevant aspects. Firstly, the hourly rate is accepted as the correct rate for Mr. Plant but the Applicant's solicitors consider that "*the majority of the work could have been delegated to a more junior fee earner. £150 + VAT is more reasonable*".

11. The other aspect to the objections is to raise issues with some of the individual items as being excessive or, in one case, not claimable because 'not chargeable as related to the tribunal's directions'. Determining each and every comment that a claim is 'excessive' is a somewhat sterile exercise as it depends on a subjective consideration of each minute spent followed by an objective assessment as to whether it was reasonably spent.

12. The Tribunal will therefore apply its considerable experience and expertise and look at the time spent as a whole. The first point to make is that the Tribunal has long held that the basic legal work on an enfranchisement or lease extension case is highly specialised and deserving of a Grade A fee earner. A slight 'slip-up' can have dire consequences for a landlord. Having said that, once the right to a lease extension is established, the 1993 Act dictates what goes into the deed of surrender and new lease. In essence the new lease has to be the same as the original save as to term, ground rent and, in some cases, updating.

13. All solicitors dealing regularly with this work will have a template document which can be put onto their computer screen within seconds. It consists of the Land Registry standard layout for the first 2 or 3 pages consisting of standard information i.e. the title number, the parties, the property etc. There are then 2 or 3 more pages of recitals and terms which are in standard form in each case.

14. The facts of each individual case including the parties, the old lease details and the demise having to be completed in each case and this obviously takes time and care. This work needs to be dealt with by the Grade A fee earner but everything following to complete the transaction could be delegated. The problem is that the amount of costs in total is relatively low which means that the extra time involved in briefing another fee earner may not be cost effective.

15. A significant issue is whether some of the costs are included within the ambit of section 60 of the 1993 Act. What must be understood is the considerable difference in wording between section 33 (collective enfranchisement) and section 60. Section 33 anticipates that there will be much more involvement of the landlord's solicitors, particularly in matters relating to title.

16. What is also significant is the pointed omission of anything relating to what happens in the event of a dispute. This is clearly designed, it is considered, to encourage agreement because in the event of dispute, neither party will be entitled to recover costs in relation thereto. Thus there is no mention of the service of a counter-notice, or any application to this Tribunal or its predecessor for a determination of

any point in dispute. All of these matters are clearly anticipated in the 1993 Act but they are not mentioned in section 60. If the legislators had intended to include them, it is this Tribunal's view that they would have been specifically mentioned.

17. Thus, as far as legal costs are concerned, the landlord is entitled to recover the legal costs in obtaining advice on the tenant's entitlement to a new lease and then the work involved in the granting of the new lease. It is sometimes said that the words "*and incidental to*" are extremely significant. They are, but they do not change or expand the wording of the section.

18. To suggest that the words "*and incidental to*" extend to include being involved in anything connected with the valuation report and dealing with the counter-notice is wrong. If it appears that proposals in the Initial Notice need to be challenged, then there is no agreement and the landlord has a choice. It can instruct lawyers to deal with the counter-notice and give advice on other matters such as the valuation, but it knows that it will have to pay for that.

Conclusions

19. It is the view of the Tribunal that all the times actually claimed by the Respondents' solicitors are reasonable save for the drafting of the deed of surrender and new lease. This is said using the constraints imposed by section 60 of the 1993 Act i.e. that any doubt is resolved in favour of the receiving party. As far as the drafting is concerned, a Grade A fee earner should be able to do this within 30 minutes either with or without secretarial assistance.

20. One then needs to remove items which are not covered by section 60. There does not seem to be any response to the suggestion that a telephone conversation between solicitors related to the Tribunal's directions order. Thus, the Tribunal deducts the following:-

	£
(a) The telephone call on 23/10/15	21.70
(b) Reviewing valuation report	43.40
(c) Drafting counter-notice (estimated at 45 mins)	162.75
(d) Drafting lease	108.50
	336.35

21. Taking this away from the claim of £1,388.80 leaves a balance of £1,052.45 plus VAT @ 20% and the agreed disbursement. The Tribunal calculates this to be £1,052.45 + £210.49 + £6 = £1,268.94.

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Bruce Edgington
Regional Judge
17th December 2015

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.