

2954



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

Case Reference : CHI/29UD/OC9/2014/0002

Property : 12, Cleves View, Priory Place,
Dartford, Kent DA1 2BB

Applicant : Dawn Michelle Munns

Representative :

Respondent : SGR Properties Limited

Representative : W H Matthews and Co, solicitors

Type of Application : Landlord's Costs following lease extension

Tribunal Members : Judge D Agnew

**Date and venue of
Paper Determination** : 7th October 2014

Date of Decision : 7th October 2014

DETERMINATION

Background

1. On 22nd May 2014 the Applicant applied to the Tribunal for a determination as to the reasonableness of landlord's costs that she had been charged following an extension of her lease of 12, Cleves View, Dartford, Kent DA1 2BB under the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act"). The amount that she had been charged was £450 plus vat for dealing with the section 42 and section 45 notices, £850 plus vat for the drawing up and granting of the new lease and £975 for the landlord's surveyor's fees. She considered that these fees were too high when compared with her own solicitor's fees of £734 and her valuer's fee of £250. She also questioned the credibility of the valuation at £14950 when, without seemingly much negotiation, the figure actually agreed was £5250.
2. Directions were issued on 23rd May 2014 which provided for the matter to be dealt with by way of a paper determination under Rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 unless either party objected within 28 days. No such objection was received.
3. Both parties made their written submissions and further information was requested of the Respondent by way of further directions of 5th August 2014 which was duly supplied by the Respondent's solicitors. They provided a breakdown as to the work carried out on behalf of the Respondent in connection with the lessee's claim for a new lease and also gave details of the work carried out by the valuer instructed by them to justify his fee of £975. It was said that the work done by both the solicitor and the valuer actually justified a fee higher than that actually charged.

The law

4. By section 60 of the Act it is provided that: "(1) where a notice is given under section 42, then.....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.....
 - (c) The grant of a new lease under that section.....

“(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.”

The determination

5. The Tribunal first considered the Respondent's solicitor's fee for responding to the tenant's section 42 notice. This was £450 plus vat. The Tribunal

considered that the Respondent was entitled to instruct a solicitor of its choice, particularly one which is experienced in lease extensions under the Act. The Tribunal found that the charging rate for such a solicitor in the sum of £260 per hour based in London is not unreasonable. £450 is less than two hours at such a charging rate and the Tribunal finds that this is not an unreasonable amount of time to have spent in dealing with the claim.

6. Next the Tribunal considered the Respondent's solicitor's charge of £850 plus vat for drafting and completing the new lease. The solicitor for the landlord is likely to be involved in significantly more work in respect thereof than the solicitor for the lessee. £850 relates to just over three hours' work at the aforesaid charging rate. The Tribunal does not consider that this is an unreasonable amount of time for the work that had to be done.
7. Turning to the valuer's fee of £975 this does seem to be on the high side. However, it is claimed on behalf of the valuer that this was more than a desktop exercise in that he is said to have travelled from his office in London to Dartford to obtain comparable evidence. If this is so, it is curious that his valuation of the premium for the extended lease was £14950, almost three times the figure subsequently agreed. Furthermore, it would be reasonable to expect a valuer local to the property to be instructed. Such a valuer, as well as having in all likelihood a lower charging rate would be familiar with values in his area which would reduce the amount of time spent on research. In all the circumstances the Tribunal, using its own knowledge and experience of such matters, considers that a valuation fee of £600 would be a reasonable fee in all the circumstances and is the figure that the landlord would have expected to pay had it been responsible for paying the fee itself.
8. The Tribunal determines therefore that a reasonable fee for the Applicant to have been charged for landlord's costs under section 60 of the Act would have been £2095 rather than the £2535 actually charged.
9. The Tribunal has a number of concerns about the way the Respondent's solicitors have presented their client's case to the Tribunal. They submitted what appeared at first glance to be invoices for both their charges and those of their valuer. However, these cannot have been true invoices because the solicitors' invoice was addressed to the valuer (not their client or even the tenant) and both the date and the account number had been handwritten in. This anomaly was perpetuated in their letter to the Tribunal of 12th August 2014 in which they refer in a number of places to the valuer as their client. The valuer's invoice was said to be in account with Miss Munns when it should have been addressed to those instructing them. The Tribunal is prepared to accept on this occasion that these were genuine errors and that there was no intention to mislead the Tribunal into thinking that these were proper invoices but expects that in future greater care will be taken over such matters.

Dated the 7th October 2014

Judge D. Agnew