



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

Case reference : LON/OOAJ/OC9/2015/0202

Property : 8 and 8A Valetta Road, London W3
7TN

Applicant : Adam Whitfield Tancock &
Ana-Liza Rivera (“the tenants”)

Representatives : Ashley Wilson, Solicitors LLP

Respondent : Coibe Lee Butler (“the landlord”)

Representatives : Rix & Kay Solicitors LLP

Type of application : For a determination of the
statutory costs under section 33 of
the Leasehold Reform, Housing
and Urban Development Act 1993

Tribunal members : Angus Andrew
Richard Shaw FRICS

Date of decision : 14 July 2015

DECISION

Decision

Pursuant to section 33(1) of the of the Leasehold Reform, Housing and Urban Development Act 1993 statutory costs of £4,289.40 inclusive of VAT are payable by the tenants to the landlord.

The application

1. By their application received on 30 April 2015 the tenants sought a determination under section 33(1) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act) of the landlord's statutory costs incurred in their collective enfranchisement claim.
2. Standard directions were issued on 30 April 2015. The directions stated that the application was suitable for determination on the basis of written submissions and without an oral hearing but they informed the parties of their right to request an oral hearing. No such request was received and accordingly we have determined the statutory costs on the basis of the written submissions and other documents included in the comprehensive document bundle that was submitted in accordance with the directions.

Background

3. By an initial notice dated 22 May 2014 the tenants claimed the right to acquire the freehold reversionary interest in the property. The initial notice proposed a purchase price of £40,500. The initial notice gave the 4 August 2014 as the last day for the service of the landlord's counter-notice.
4. The landlord's counter-notice is dated 29 July 2014 although it seems that it was not given until the following day. The counter-notice admitted the tenants claim but proposed a purchase price of £235,500.
5. Eventually the parties agreed a purchase price of £59,650 and also the terms of the proposed transfer which was completed on 28 May 2015. The parties were however unable to agree the statutory costs that are payable to the landlord under section 33(1) of the Act.
6. The landlord lives in Ireland and instructed Rix & Kay Solicitors LLP in Brighton. The landlord requested her solicitor to instruct a valuer on her behalf. They instructed a Mr Davie Robson on 15 July 2014. One week later on 22 July 2014 Mr Robson indicated that he was conflicted because he also acted for the tenants. Accordingly on 28 July 2014, with the last day for the service of the counter-notice fast approaching, the landlord's solicitor instructed Mr James Hamand of Douglas and Gordon. It seems that Mr Hamand inspected the property on the morning of 29 July 2014 and gave some very perfunctory valuation advice in an e-mail timed at 12:09 on that day.

7. The e-mail suggests long lease values of £700,000 and £500,000 for 8 and 8A Valetta Road respectively and concludes by advising that a figure of £160,500 should be included in the counter-notice, with £75,000 of that being attributable to “other losses”.
8. At 9.22 am on the following morning, 30 July 2015, Mr Hamand sent a second email revising his advice. He now advised that the figure of £235,500 should be included in the counter-notice of which he attributed £80,000 to flat 8, £5,500 to flat 8A and £150,000 to development value.
9. A month after the counter-notice had been served Mr Hamand produced a very detailed valuation report. In some respects the report contradicts the advice given in his e-mail of 29 July 2014. The long lease or freehold values are now put at £485,550 and £571,200 rather than the £700,000 and £500,000 suggested in the earlier e-mail. He suggests that a price of £235,500 be sought at the commencement of the negotiations but without any explanation he then concludes in the next sentence that the landlord should “*expect to receive a sum in the region of say £57,000*” which is of course close to the figure actually agreed. It is also unclear why his valuation includes the “Freeholder’s Proposed Interest” after an additional 90 year from the expiry of the existing lease because the issue here is not a lease extension.
10. The reversionary freehold interest was registered in the name of Coibe Leigh Plunkett and the landlord is so named in the initial notice. The spelling of the landlord’s middle name in the register was a mistake whilst she had married and changed her last name since the registration of her title. Her solicitors arranged for the register to be corrected and brought up to date.

The statutory framework

11. The relevant sections of section 33 of the Act provide:-

33 Costs of enfranchisement.

- (1) Where a notice is given under section 13, then (subject to the provisions of this section and sections 28(6), 29(7) and 31(5)) the nominee purchaser shall be liable, to the extent that they have been incurred in pursuance of the notice by the reversioner or by any other relevant landlord, for the reasonable costs of and incidental to any of the following matters, namely—
 - (a) any investigation reasonably undertaken—
 - (i) of the question whether any interest in the specified premises or other property is liable to acquisition in pursuance of the initial notice, or
 - (ii) of any other question arising out of that notice;
 - (b) deducing, evidencing and verifying the title to any such interest;

(c) making out and furnishing such abstracts and copies as the nominee purchaser may require;

(d) any valuation of any interest in the specified premises or other property;

(e) any conveyance of any such interest;

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 the reversioner or any other relevant landlord 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 claimed costs

12. In response to the tribunal's directions the landlord provided a schedule of costs suitable of summary assessment. The schedule is detailed and records the time spent in 6 minute units. All the work was undertaken by Jane Bone a grade A solicitor whose time is charged at £235 plus VAT per hour. No objection is taken to her hourly charging rate.

13. By the application of the hourly rate to the time spent the schedule seeks to justify the following costs exclusive of VAT by reference to section 33(1) of the Act:-

33(1) a: £1,386.50

33(1) b: £305.50

33(1) c: none claimed

33(1) d: £2,303 to include drafting and serving the counter-notice

33(1) e: £450

14. Thus in summary the schedule seeks to justify what might loosely be described as litigation costs in sum of £3,995 plus VAT and conveyancing costs of £450 plus VAT. The landlord's solicitors have however invoiced their clients for litigations costs of £2,350 plus VAT and in summary they claim the following costs:-

Rix & Kay Solicitors LLP Litigation fees	£2,350.00
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VAT on litigation fees	£470.00
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Professional Valuer Fees of Mr Hamand	£2,440.00
VAT on Valuer's fees	£480.00
Rix and Kay Solicitors LLP Conveyancing Fees	£450.00
VAT on conveyancing fees	£90.00
Office Copy Entries	£21.00
Process Servers' Fees	£219.00
VAT on process servers' fees	£43.80
Total costs:	£6,563.80

Cost in dispute

15. The tenants considered that much of the litigation costs claimed by the landlord were not recoverable under section 33 of the Act. In particular obtaining instructions, providing advice to the landlord, reseaching the law, correcting the landlord's name in the property register, instructing the valuer and instructing process servers to serve the counter-notice by hand. They contended for litigation costs of £890.50 plus VAT.
16. The tenants also disputed the conveyancing fees of £450 despite having previously agreed that figure. They suggested that 1 hour should have been sufficient to complete the conveyancing process including drafting the transfer and propose a fee of £250 plus VAT.
17. The tenants objected to the whole of the valuation fees on the basis that the valuation was completed after the service of the counter-notice. If however, we come to a different conclusion they suggest that the valuation cost should be limited to between £750 and £1,500 plus VAT.
18. Although the tenants do not specifically agree the Land Registry charges for official copy entries they do not appear to dispute them.
19. Finally the tenants objected to the process server's fees on the basis that it is accepted practice to send a counter-notice by first class recorded post.

Reasons for our decision

The test

20. The proper basis of assessment of costs in enfranchisement cases under the 1993 Act, whether concerned with the purchase of the freehold or the extension of a lease, was set out in the Upper Tribunal decision of *Drax v Lawn Court Freehold Ltd* [2010] UKUT 81 (LC), LRA/58/2009. That decision established that costs must be reasonable and have been incurred in pursuance of the initial notice and in connection with the purposes listed in sub-sections 33(1)(a) to (e). The tenant is also protected by section 33 (2) which limits recoverable costs to those that the landlord would be prepared to pay if it were using its own money rather than being paid by the tenant.
21. In effect, this introduces what was described in *Drax* as a “(limited) test of proportionality of a kind associated with the assessment of costs on the standard basis.” It is also the case, as confirmed by *Drax*, that the landlord should only receive its costs where it has explained and substantiated them.
22. It does not follow that this is an assessment of costs on the standard basis (let alone on the indemnity basis). This is not what section 33 says, nor is *Drax* an authority for that proposition. Section 33 is self-contained.
23. Although the landlord’s cost schedule identifies all the time spent by the solicitor in 6 minute units it is only possible on a summary assessment to consider the landlord’s costs in the round. This decision is already too long and a consideration of each 6 minute unit would result in a disproportionately long decision the preparation of which would unduly erode the tribunal’s limited resources.

The litigation fees

24. Although the landlord has only charged for 10 hours work at £235 per hour our starting must be the schedule of the time spent and the costs that would have been claimed had it not been for the application of the indemnity principle. On the basis of that schedule the landlord’s solicitor spent 17 hours in completing the tasks listed in section 33(1) of the Act.
25. We disagree with a number of the objections made by the tenants. It is generally accepted that the intention of section 33 is to enable the landlord to recover her reasonable costs incurred as a result of the service of the initial notice upto and including the service of the counter notice. The landlord’s solicitor cannot for example investigate the tenants’ claim in a vacuum: she must obtain instructions from the client and provide relevant

advice on the enfranchisement procedure and the landlord is entitled to recover the reasonable cost of that work. Equally the landlord should not be criticised for arranging for service of the counter notice by hand. We agree that service is usually effected through the postal system. However postal service is often difficult to prove and results in frequent jurisdiction points being taken before this tribunal. The landlord's solicitor was entitled to adopt a cautious and prudent approach and the landlord is entitled to recover the reasonable cost of personal service.

26. We disallow the time claimed in researching the law. Generally costs can only be recovered for researching novel or unusual points of law and there were none in this case. A client is entitled to expect her solicitor to have a grasp of the basic law and procedure relevant to the case.
27. Generally only the valuation costs and the cost of preparing the counter notice are recovered under section 33(1)(d). However the landlord's solicitor claims costs of £2,303 that equates to 9 hours 48 minutes. Of that time some 7 hours 24 minutes seems to have been spent in instructing and communicating with the valuer. The landlord lives in Ireland and it is reasonable that she should request her solicitor to instruct a valuer and the reasonable cost incurred in that work is recoverable under section 33. However the time actually spent is utterly disproportionate. It is in particular unreasonable to claim for the time spent in instructing a valuer who was conflicted. We allow only 2 hours rather than the 7 hours 24 minutes apparently spent.
28. Equally the landlord is not entitled to recover under section 33 the cost of correcting her name on the property registry. The correction would have had to have been made in any event and was not a consequence of the initial notice.
29. Taking each and all of these factors into account and in particular the time disallowed in communicating with the valuer, we allow only half the time claimed. Thus allow we allow 8 hours 30 minutes at £235 per hour: that is £1,997.50 plus VAT.
30. Standing back those are the sort of costs that we would expect a landlord to recover in a reasonably straightforward enfranchisement claim of this type.

The process server's fees

31. For the reasons explained above the landlord is entitled to recover the reasonable fees of a process server. However for reasons that are not adequately explained the landlord's solicitor instructed the process server to serve the counter notice on the tenant's solicitor and also at the property and consequently two fees of £109.05 plus VAT were incurred. The initial notice states that notices should be given by the nominee purchaser to the landlord's solicitors. It was wholly unnecessary to arrange for service of

the counter notice at the property. Consequently we allow only one fee of £109.05 plus VAT.

The conveyancing and Land Registration fees

32. It is apparent from an e-mail of 30 March 2015 that the tenant's solicitors agreed the conveyancing fees of £450 plus VAT. The tenants cannot now resile from that agreement. Even if they could resile from that agreement the proposed conveyancing fee is reasonable. A solicitor could not complete the conveyancing process in 1 hour as suggested. The claimed fee for £450 plus VAT is reasonable and we allow it. Equally we allow the land registry fees incurred in obtaining up to date official copy entries that were required to enable the landlord's solicitor to check the validity of the claim.

The valuation fees

33. Section 33(1) provides that costs can only be recovered "to the extent that they have been incurred in pursuance of the notice by the reversioner". Consequently the recoverable valuation fees under section 33(1) are those which are incurred for the purpose of enabling the landlord to prepare a valid counter notice. A landlord cannot recover valuation costs incurred in connection with subsequent negotiations.

34. Although the valuation report post-dates the counter notice it is apparent from the e-mails contained in the document bundles and also from Mr Hamand's statement, which includes a statement of truth, that he inspected the property and gave his valuation advice both by e-mail and over the telephone. That advice was affectively incorporated in the counter notice. The landlord is entitled to recover the reasonable cost of that work and we reject the tenant's argument that Mr Hamand's fee should be disallowed in full.

35. However the landlord is not entitled to recover Mr Hamand's fees incurred in preparing the subsequent detailed valuation that not only post-dated the counter notice but which was clearly produced for negotiating purposes. The fact that the landlord agreed a fixed fee with Mr Hamand does not assist her. That fee included the cost of the inspection, the initial advice and the subsequent detailed report and for the reasons given the landlord can only recover under section 33 the reasonable costs of the first two items of work.

36. We anticipate that Mr Hamand must have spent somewhere in the region of 5 hours in obtaining instructions, inspecting the property and providing his initial advice. It is also reasonable to have regard to the fact that this was not a complicated valuation and that there were discrepancies between his oral and written valuations.

37. Taking each and all of these factors into consideration we allow valuation fees of £1,000 plus VAT which again are of the order that we would expect in a straightforward enfranchisement case of this type.

Summary

38. We therefore allow the following fees:-

Litigation fees of Rix & Kay Solicitors LLP	£1,997.50
VAT on litigation fees	£399.50
Professional Valuer Fees of Mr James	£1,000.00
VAT on Valuer's fees	£200.00
Rix and Kay Solicitors LLP Conveyancing Fees	£450.00
VAT on conveyancing fees	£90.00
Office Copy Entries	£21.00
Process Servers' Fees	£109.50
VAT on process servers' fees	£21.90
Total allowed:	£4,289.40

Name: Angus Andrew

Date

14 July 2015