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

Case reference : LON/00BH/OC9/2015/0488

Property : First Floor Flat, 54 Lindley Road,
London E10 6QT

Applicant : Ronald John Woodman

Respondents : Dean Huby

Type of application : Costs under section 60 Leasehold
Reform, Housing and Urban
Development Act 1993

Tribunal member : Judge P Korn

Date of decision : 2nd February 2015

DECISION

Decision of the tribunal

The costs payable by the Respondent to the Applicant pursuant to section 60 Leasehold Reform, Housing and Urban Development Act (“the 1993 Act”) are £2,156.99 (inclusive of VAT).

The application

1. The Applicant has made an application for the determination of the reasonable costs payable under section 60(1) of the 1993 Act in connection with the grant of a new lease to the Respondent following the giving of a notice under section 42 of the 1993 Act.
2. The costs claimed amount to £3,060.00 inclusive of VAT. This sum comprises legal costs of £2,065.00 + VAT, Land Registry fees of £12.00 and surveyor’s costs of £475.00 + VAT. The legal costs have been broken down in a schedule provided by the Applicant.

Paper determination

3. In its application the Applicant stated that he would be content with a paper determination if the Tribunal considered it appropriate. In its directions dated 3rd December 2015 the Tribunal stated that the matter would proceed as a paper determination (i.e. without an oral hearing) unless either party requested an oral hearing. Neither party has requested an oral hearing and therefore this matter is being dealt with by way of paper determination.

Points not in dispute

4. The Respondent is not disputing the payability of the Land Registry fees (£12.00) or the surveyor’s costs (£475.00 + VAT). In relation to the legal costs, the Respondent accepts that the sum of £50.00 + VAT is payable for telephone attendances (item 6 on Scott Schedule) and that the sum of £75.00 + VAT is payable for written communications received in respect of completion (item 13 on Scott Schedule).
5. The Respondent is also not disputing the charge-out rate of the fee earner dealing with the matter.

Submissions

General point

6. The Respondent has drawn the Tribunal’s attention to an email from Pearl Ross-Dale to Jan Woodland dated 15th July 2014 stating that “the solicitor will be approximately £650 plus VAT” and comments that this

would have been based on a quote from the solicitors on which the Applicant would have been able to reply. The Applicant would not have expected a substantial increase from £650 + VAT to £2,065 + VAT and therefore in his submission the actual amount claimed is unreasonable.

7. In response the Applicant states that no fixed fee was agreed for this work. As regards the email referred to above, this was from the Applicant's P.A. and was given without reference to the Applicant's solicitors who had not issued a quote. The Applicant also expresses the view that his P.A. had in mind fees that might apply just for the conveyancing element of a straightforward voluntary extension.

Item 1 on Scott Schedule

8. This relates to reviewing the section 42 notice, and considering both parties' title, the lease and the valuation, and the charge was £166.66 on the basis of 40 minutes of fee earner time. The Respondent considers that 40 minutes was an unreasonably long amount of time to spend but feels that 30 minutes would be reasonable. The Applicant maintains that the amount of time was reasonable and has also referred the Tribunal to the First-tier Tribunal decision in *Van Straten v Brickfield Properties Ltd* (Ref: LON/00AC/OC9/2014/0159).

Item 2

9. This relates to drafting and finalising the request for the deposit, and the charge is £125.00 on the basis of 30 minutes of fee earner time. The Respondent submits that this was a simple process and that 6 minutes should have sufficed. The Applicant disagrees.

Item 3

10. This relates to drafting, checking, refining and finalising the section 45 notice, and the charge is £312.50 on the basis of 1 hour 15 minutes of fee earner time. The Respondent submits that this work does not fall within section 60(1), referring the Tribunal to Hague (6th Edition) and to the First-tier Tribunal decision in *Shaun Stephen & Susan Joanne McKeever v Sinclair Gardens Investments (Kensington) Ltd* (Ref: CAM/26UD/OC9/2014/0010). In any event he feels that the work should have taken less than 12 minutes rather than the 1 hour 15 minutes claimed.
11. In response the Applicant submits that this work is incidental to the section 42 notice and that the assertion that the work should only have taken 12 minutes is unrealistic.

Item 4

12. This relates to written communications received, being 12 communications in total at a charge of £150.00. The Respondent submits that this work does not fall within section 60(1) and that incoming post should not be charged for anyway. In response the Applicant submits that receiving written communications is part and parcel of dealing with the case.

Item 5

13. This relates to written communications issued, being 12 communications in total at a charge of £300.00. The Respondent submits that this charge has not been sufficiently broken down and that a charge of £75.00 – equal to 3 communications – would be reasonable. In response the Applicant states that the communications were between his solicitor, his valuer, his office and the Respondent's solicitor and that the number is not considered unreasonable.

Item 6

14. This relates to telephone attendances at a charge of £50.00 and is accepted by the Respondent.

Item 7

15. This relates to drafting, refining and finalising the Deed of Surrender and Re-grant and in this context considering the title entries and the existing lease, and the charge is £437.50 on the basis of 1 hour 45 minutes of fee earner time. The Respondent submits that the deed is in a standard form and that there was no need to check the title again. He considers that 1 hour would have been a reasonable amount of time.
16. The Applicant disagrees, stating that the Respondent is making light of the amount of work involved, as the precedent document has to be carefully reviewed and the relevant information collated, inserted and checked. As regards reviewing title documents, the Applicant comments that the original review took place some 14 months after dealing with the section 42 notice.

Items 8 and 9

17. These relate to reviewing the tenant's proposed amendments (£62.50 on basis of 15 minutes of fee earner time) and checking and finalising engrossments (£62.50 on same basis). The Respondent considers 15 minutes to be sufficient for these two processes in aggregate. The Applicant disagrees.

Item 10

18. This relates to written communications received, being 6 communications in total at a charge of £75.00. The Respondent again submits that this work does not fall within section 60(1) and that incoming post should not be charged for anyway. In response the Applicant again submits that receiving written communications is part and parcel of dealing with the case.

Item 11

19. This relates to written communications issued, being 9 communications in total at a charge of £225.00. The Respondent submits that this charge has not been sufficiently broken down and that a charge of £75.00 – equal to 3 communications – would be reasonable. In response the Applicant states that the communications were between his solicitor, his valuer, his office and the Respondent's solicitor and that the number is not considered unreasonable.

Item 12

20. This relates to written communications received in respect of completion, being 2 communications in total at a charge of £25.00. The Respondent again submits that this work does not fall within section 60(1) and that incoming post should not be charged for anyway. In response the Applicant again submits that receiving written communications is part and parcel of dealing with the case. He also states that these two letters were included in the estimate and breakdown provided on 2nd September 2015.

Item 13

21. This relates to written communications issued in respect of completion at a charge of £75.00 and is accepted by the Respondent.

The relevant legal provisions

22. Section 60(1) and (2) of the 1993 Act read as follows:-

“(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."

Tribunal's decision

General point

23. In relation to the apparent estimate provided by email by the Applicant's P.A., I do not accept that this email by itself prevents the Applicant from claiming a substantially larger amount. This was not a solicitor's estimate and the Applicant's written evidence, which has been submitted and signed by its solicitors, is that his solicitors issued no quote and were unaware of the existence of the email until it was drawn to their attention. Whilst the Respondent may feel misled by the email and might have cause to feel aggrieved, if he had wanted to obtain a reliable estimate he should have sought one from the Applicant's solicitors through his own solicitors.

Item 1 on Scott Schedule

24. I prefer the Applicant's submissions on this item. The Respondent is only seeking to argue that 30 minutes would have been a more reasonable amount of time to spend than 40 minutes and it is only an assertion. I am satisfied on the basis of the Applicant's explanation that 40 minutes was a reasonable amount of time to have spent. This item is therefore payable in full. (**£166.66 + VAT payable**)

Item 2

25. It is not realistic for the Respondent to argue that it should only have taken 6 minutes to draft and finalise the request for the deposit. However, on balance I consider that it need not have taken as much as

30 minutes. 20 minutes should have been sufficient and therefore only two-thirds is payable. (**£83.33 + VAT payable**)

Item 3

26. I do not accept that preparing the counter-notice falls within section 60(1). In this regard I note the Respondent's reference to Hague and to the case of *Shaun Stephen & Susan Joanne McKeever v Sinclair Gardens Investments (Kensington) Ltd.* It does not fall within the investigation envisaged by section 60(1)(a) nor the valuation envisaged by section 60(1)(b), and in my view it is simply too much of a stretch to argue that it is incidental to the grant of the new lease within section 60(1)(c). Therefore this item is not payable at all. (**Nothing payable**)

Item 4

27. I do not consider the mere receipt of correspondence to be something for which one can reasonably charge. In any event the Applicant has failed to show that the receipt of correspondence – which has not been properly particularised – falls within section 60(1). Therefore this item is not payable at all. (**Nothing payable**)

Item 5

28. This does seem excessive, especially in the absence of a more detailed itemisation or explanation. Based on the limited information available I consider that 6 letters would have been reasonable and therefore that 50% is payable. (**£150.00 + VAT payable**)

Item 6

29. This has been conceded by the Respondent and in any event is considered by the Tribunal to be payable. Therefore this sum is payable in full. (**£50.00 + VAT payable**)

Item 7

30. Whilst I note the arguments put forward by the Respondent I accept the Applicant's argument as to the amount of work involved (albeit that the explanation appears to contain a typographical error), and I do not consider 1 hour and 45 minutes to be unreasonable. Therefore this sum is payable in full. (**£437.50 + VAT payable**)

Items 8 and 9

31. In my view 30 minutes for these combined tasks seems perfectly reasonable and I am surprised by the Respondent's challenge. Therefore these sums are payable in full. **(£125.00 + VAT payable)**

Item 10

32. For the reasons given above I do not consider the mere receipt of correspondence to be something for which one can reasonably charge. Again, in any event the Applicant has failed to show that the receipt of correspondence – which has not been properly particularised – falls within section 60(1). Therefore this item is not payable at all. **(Nothing payable)**

Item 11

33. The Applicant has provided a reasonable explanation to justify the number of communications and I prefer his evidence on this point. Therefore this sum is payable in full. **(£225.00 + VAT payable)**

Item 12

34. For the reasons given above I do not consider the mere receipt of correspondence to be something for which one can reasonably charge. Again, in any event the Applicant has failed to show that the receipt of correspondence – which has not been properly particularised – falls within section 60(1). The Applicant's point about the estimate does not in itself demonstrate that this item is properly payable. Therefore this item is not payable at all. **(Nothing payable)**

Item 13

35. This has been conceded by the Respondent and in any event is considered by the Tribunal to be payable on the basis of the Applicant's explanation. Therefore this sum is payable in full. **(£75.00 + VAT payable)**

Aggregate

36. The aggregate payable is £2,156.99 (inclusive of VAT). This comprises the amounts allowed in paragraphs 24 to 35 above together with the undisputed Land Registry fees **(£12.00)** and surveyor's costs **(£475.00 + VAT)**.

Name: Judge P Korn

Date: 2nd February 2016