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

Case Reference : LON/OOAC/OC9/2015/0344

Property : 14 Hendon Hall Court, Parsons Street, Hendon, London NW4 1QY

Applicant : Natalie Jane O'Neill

Representative : Comptons Solicitors LLP

Respondent : Calabar Estates Limited (1)
Alexander Rael Barnett and
Spencer Adam Leslie (2)
Hendon Hall Court Residents
Limited (3)

Representative : For (1) Wallace LLP
For (2) Ultratown Ltd

Type of Application : S60 and 91 Leasehold Reform,
Housing and Urban Development
Act 1993 (the Act)

Tribunal Members : Tribunal Judge Dutton
Mr N Martindale FRICS

Venue of determination : 10 Alfred Place, London WC1E 7LR

Date of Decision : 2nd March 2016

DECISION

DECISION

The Tribunal determines that the sum payable by Natalie O'Neill to Calabar shall be £750 plus VAT and disbursements of £27.00 in respect of the first notice of claim; £2,448 inclusive of VAT for solicitors costs with disbursements of £20.40 and a valuation fee of £1,211.22 in respect of the second notice and £720 for the fees of Ultratown Limited with a valuer's fee of £1,020 inclusive of VAT in respect of the costs of Alexander Rael Barnett and Spencer Adam Leslie representing the total costs payable under the provisions of section 60 of the Act.

BACKGROUND

1. This application was to consider the costs of the freeholder and intermediate landlord which are payable by Ms O'Neill pursuant to section 60 of the Act.
2. The matter came before us for a paper determination on 2nd March 2016. In the bundle provided for the determination were the Notices served under the Act, one of which was invalid; Counter Notice; notices served by the second and third respondent showing they were acting independently; the application and directions; the Schedule of costs and supporting invoices from Wallace LLP and a letter from Ultratown and Mr Nesbitt the surveyor for the second respondents and the parties statements of case.
3. It appears from the papers that an Initial Notice had been served in February 2015 but was defective, omitting reference to the third respondent. This was corrected by a notice dated 18th March 2015 to which a counter-notice was served dated 29th May 2015. The second and third respondents served notices that they were acting independently on 18th and 17th September 2015 respectively.
4. An application to determine the matters in dispute was lodged with the Tribunal and is dated 10th August 2015. It appears that the premium payable has been agreed and that the only matter for us to consider is the costs payable under s60 of the Act. The third respondent has made no claim and accordingly we confine our findings to the costs sought by the first and second respondent.

SUBMISSIONS

5. We had before us schedules of the costs claimed by Wallace LLP, a short statement of the costs sought by the second respondents, a detailed response made by Comptons Solicitors LLP for Ms O'Neill and a lengthy response thereto by Wallace LLP with exhibits.

6. We have noted all that has been said. We noted the problems facing Ms O'Neill, with which we have sympathy but unfortunately can have no influence on our decision.
7. The basis of the challenge on behalf of Ms O'Neill was the hourly rate claimed by Wallace LLP, the appropriate use of fee earners and the time spent. In respect of the second respondent an offer is made based on a suggested hourly rate of £220 leading to a fee of £720, plus it is said VAT. As to the valuers fees a figure of £450 plus VAT is suggested for Chestertons costs, although no real explanation is given other than that it is suggested the premium allocated to the first respondent is less than that payable to the second respondent. As to the costs of Mr Nesbitt a fee of £850 plus VAT is offered.
8. There is a detailed and somewhat repetitive response from Wallace LLP and a short letter of explanation from Ultratown and from Mr Nesbitt to substantiate the fees they seek.

THE LAW

9. The law relating to this matter is contained at s60 of the Leasehold Reform, Housing and Urban Development Act 1993. The section is set out at the end of this decision.

FINDINGS

10. There appears to be no doubt that the first notice served was indeed defective and that as a result was deemed to be withdrawn, no action being taken on it by the tenant, other than replacing same. As a result Ms O'Neill has responsibility to meet the costs associated therewith and to pay those as well as the costs incurred by the landlords in respect of the notice which was effective.
11. We will deal with the costs of the second respondent. The offers made on behalf of Ms Neill of £720 for the costs of Ultratown and £1,020 for the fees of Mr Nesbitt, are we find reasonable. With regard to the Ultratown figure sought, of £960 plus VAT, no breakdown is given. No time sheets were completed and although it is said that the hourly rate is based on Mrs Sandler's salary and overheads no details are given. An hourly rate of £260 appears to have been selected but is only 'approximate' and is based on rates that Ultratown are advised is attributable to a Grade A fee earner. There is no evidence that VAT is payable. Accordingly we consider the offer made by Ms Neill of £720 to be wholly reasonable.
12. As to the fee of Mr Nesbitt we have the charge made by Chestertons to compare. The time he says he spent seems slightly excessive and no fee note is produced. The offer of £850 plus VAT we find is very reasonable in the circumstances of this case.
13. We now turn to the costs of Wallace LLP solicitors for the first respondent. We will firstly address the hourly rate point. It is our finding

that Calabar are entitled to instruct the solicitor they usually appoint for this type of work, which is Wallace LLP (W). Calabar do so aware that they will have to meet the rates charged. W have acted for Calabar for some time according to the submission of W (see para 29). The rates are reasonable given the status of the fee earner and the expertise that W possesses in this field. Accordingly we reject any challenge to the hourly rates claimed, or the level of fee earner used. Indeed there has been extensive use of an assistant solicitor. The legislation is indeed complicated, and needs to be handled correctly for the reasons set out in the submission of W. The counter schedule prepared and annexed to the applicant's statement of case has been noted by us. It has adopted somewhat arbitrary timings and excluded costs which are properly claimable, for example correspondence with the intermediate landlords.

14. There are certain areas of the schedule of costs with which we take issue but they are not extensive. We will deal with them separately as follows:
 - (a) For the costs sought under the first invalid notice we have taken a broad brush approach. We would reduce the time spent on considering the notice and do not consider that the correspondence time which exceeds 1.5 hours is reasonable. We find that a figure of £750 plus VAT for the costs incurred in respect of the first notice is a reasonable sum payable under the Act.
 - (b) As to the time spent following the service of the second correct notice we have again adopted a broad brush approach. We consider the time spent on considering the second notice to be excessive. There is some 1.5 hours spent on considering the initial notices. The second notice was amended to include the third respondent, but no other changes were made. We would therefore reduce the time spent on this element to £84.
 - (c) As to the remaining costs we reduce the time spent preparing the Counter-notice to 0.6 hours. We are after all considering the costs of a very experienced practitioner charging very high hourly rates. One would expect a certain rapidity in dealing with this issue. As to the time spent obtaining office copies for the second time we reduce this to one unit and the consideration of same, appreciating it includes the intermediate leases, but nonetheless the second time of asking, to 3 units. Finally anticipated costs are claim of £264. We do not consider it appropriate to approve these. They are not costs incurred and to be frank we consider that the costs we have allowed covers the work necessary to finalise the completion, which will be minimal. On our calculation this reduces the profit costs claimed to £2,040 with VAT of £408.
15. As to the valuation fee of Chestertons we do not consider that the sum sought is unreasonable. We do not understand the comments made by Comptons on this point. The notice and counter notice indicate that the first respondent is to receive the lion's share of the premium. The details attached to the fee note set out the time spent of 3.95 hours, some at half rate and the hourly rate of £300 is not excessive.
16. **Accordingly we determine that the solicitor's costs for W shall be £2,448 inclusive of VAT, the fees of Chesterton are £1,211.22**

and £47.40 disbursement. The fees for the second respondent is as offered by the applicant, namely £720 for Ultratown, we have seen no evidence that VAT is payable and £1,020 for the fees of Mr Nesbitt.

Andrew Dutton
Andrew Dutton - Tribunal Judge

2nd March 2016

The Relevant Law

60 Costs incurred in connection with new lease to be paid by tenant.

(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.

(3) Where by virtue of any provision of this Chapter the tenant's notice ceases to have effect, or is deemed to have been withdrawn, at any time, then (subject to subsection (4)) the tenant's liability under this section for costs incurred by any person shall be a liability for costs incurred by him down to that time.

(4)A tenant shall not be liable for any costs under this section if the tenant's notice ceases to have effect by virtue of section 47(1) or 55(2).

(5)A tenant shall not be liable under this section for any costs which a party to any proceedings under this Chapter before a leasehold valuation tribunal incurs in connection with the proceedings.

(6)In this section "relevant person", in relation to a claim by a tenant under this Chapter, means the landlord for the purposes of this Chapter, any other landlord (as defined by section 40(4)) or any third party to the tenant's lease.