

4209



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

Case Reference : **LON/OOAZ/OC9/2016/0193**

Property : **5 Loxton Road, London SE23 2ET**

Applicant : **Ms Rebecca Carpenter (leaseholder)**

Representatives : **Comptons Solicitors LLP**

Respondent : **Mountview Estates (competent landlord)**

Representative : **Wallace LLP (solicitors)**

Type of Application : **Application under section 91(2)(d) of the Leasehold Reform, Housing and Urban Development Act 1993 ('the Act') to determine the costs payable under section 60 of the Act.**

Tribunal Member : **Judge James Driscoll and Mr Ian Holdsworth FRICS**

Date of Hearing : **With the agreement of the parties the tribunal made its determination on the basis of the papers filed and without an oral hearing on 12 July 2016.**

Date of Decision : **15 July 2016**

DECISION

Summary of the decision

1. It is determined that the landlord is entitled to recover the following costs which are payable by the leaseholder under section 60 of the Act. This is the total of £2,502. of which the sum of £1,320 is payable for legal fees along with the fees for the valuation report and the Land Registry fees.

Introduction

2. This is an application for a determination of costs. It is made under section 91(2)(d) of the Act. Under section 60 a claimant leaseholder is required to pay the reasonable costs incurred by the landlord in connection with a claim for a new lease. Copies of these two statutory provisions are contained in the appendix to this decision.
3. The claimant is the leaseholder of the subject premises. She has exercised her right to a new lease under the provisions in Chapter 2, Part I of the Act. She is represented by Comptons Solicitors LLP. The respondent is the landlord who are represented by Wallace LLP, solicitors.
4. The claim for a new lease was made in a notice dated 21 December 2015. In a counter-notice dated 4 March 2016 the landlord admitted the claim but disagreed over the premium to be paid and on the terms of the new lease (a draft lease was appended to the counter-notice). However, all the terms of the grant of the new lease were agreed just before the counter-notice was given.
5. However, the parties have not agreed on the amount of the costs payable by the leaseholder to the landlord under section 60 of the Act. Accordingly, an application was made by the leaseholder to the tribunal under section 92(2)(d) of the Act seeking a determination of the costs. Directions were given on 16 May 2016. Those advising the leaseholder prepared a bundle of documents in accordance with the directions. This bundle included a statement made by Mr Compton a partner in the firm of solicitors advising the leaseholder and a statement of the solicitors advising the landlord. The latter included copies of several previous decisions of this tribunal on the costs payable in new lease and enfranchisement claims.

Our decision

6. The dispute is over the reasonableness of the landlord's solicitors costs. Mr Compton submits that the appropriate rates for a partner and an assistant solicitor to charge are the sums of £317 and £242 respectively. This compares with the rates charged by the landlord's solicitors in the sums of £450 and £330 respectively. The leaseholder's costs submission is based on the 'Solicitors Guideline Hourly Rates.'
7. In a second submission the leaseholder argues that the claim was an unusually simple matter which did not warrant the involvement of a partner or, if so, only to a limited extent.
8. In all, argues the leaseholder, 4 hours work at the rate of £242 is justified. Mr Compton sets out his detailed assessment of the amount of work that can be reasonably charged. In reaching this conclusion he compares the charges of his firm in the sum of £1,250 (exclusive of disbursements and VAT) to the legal costs in the sum of £2,531 claimed by the solicitors for the landlord.
9. There is no challenge to the valuer's fee or the Land Registry disbursement.
10. In response Wallace LLP, the solicitors for the landlord, filed a statement dated 21 June 2016. Appended to this statement are copies of various decisions of the tribunal on the reasonableness of costs. We note the copies of these decisions occupies 124 pages of their 136 page response.
11. One of their central points is the leasehold enfranchisement and new lease claims is a complex area of law and that a landlord is entitled to seek advice from specialist solicitors involved. For similar reasons a landlord is entitled to the services of a partner. The reference by the leaseholder to the Guideline Rates is, they submit, misplaced as those rates have been developed to assist in a summary assessment of court costs. This is not appropriate in enfranchisement and new lease cases.
12. They also reject the suggestion that a leaseholder's costs are comparable to those of the landlord as the landlord's solicitors have a far more complex set of issues to consider.
13. In reaching our decision we start by considering the reasonableness of the costs referred to in section 60 (copied in the appendix to this decision). It is noteworthy that the tribunal is to determine what would be a reasonable amount to be payable by a claimant leaseholder to the landlord. In this connection we refer to section 60 (2) which states *'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’.

14. Commenting on this the authors of *Hague Leasehold Enfranchisement* (6th ed) state ‘a landlord cannot instruct a professional person, or a more expensive professional person, simply because he will not be footing the bill’ (paragraph 32.24).
15. We also note that the premium and the terms of the new lease were agreed shortly after the giving of the claim notice. It had been suggested by the landlord’s solicitors that the leaseholder withdrew her claim notice pending the grant of the new lease. In response the leaseholder’s solicitors suggested that the parties first enter into a contract. The matter did not proceed in this way and we cannot criticise the reluctance of the leaseholder’s solicitors not to withdraw, nor the landlord’s solicitors giving a counter-notice to protect the position of their clients (as failure to give a timely counter-notice gives the claimant leaseholder the right to apply to the court for an order on the basis of the premium and new lease terms proposed).
16. We note that the landlord’s solicitors claim that some 6.7 hours work was carried out whilst the leaseholder’s solicitors suggest that only 4 hours could reasonably be claimed.
17. The tribunal accepts that the area of leasehold enfranchisement and new lease claims is complex area as countless tribunal, upper tribunal and the decisions of the courts confirms. That said we can see nothing in this claim that is complicated. There appears to have been no disputing the fact of the leaseholder’s entitlement to a new lease. However, these are all matters that clearly require the attention of a suitably qualified solicitor.
18. That the landlords are entitled to appoint specialist solicitors to advise was not questioned by the leaseholder and we agree with that. But just as it may be sensible for a landlord to instruct a specialist, such a specialist might also reasonably be expected to complete the tasks required with more expedition than a non-specialist.
19. We do not consider that there is anything about this claim that requires the almost exclusive attention of a partner. Referring to the terms of section 60(2) of the Act and to the commentary in *Hague* (in paragraph 14 above) we do not consider that a landlord would pay for the services of a partner for dealing with a routine claim where the parties agreed terms soon after the giving of the claim notice.
20. As to the claim for the services of a paralegal, these tasks appear to be confined to obtaining office copy entries. We consider that these tasks are

purely administrative and the costs of a paralegal is not a reasonable sum to recover.

21. On the hourly rates relied on by the leaseholder we prefer the submissions of the landlord for the reasons they gave. These published rates are a guide to the assessment of costs in civil claims. They were not designed for use in enfranchisement and new lease claims. On the basis of our professional knowledge and experience in these matters we consider that the hourly rate charged for an assistant solicitor, though on the high side, is not unreasonable. This is the hourly rate of £330.

22. Before recording our determinations, we note that the legal costs claimed by the landlord amount to the sum of £2,531.00 which is about 10% of the premium agreed. We also refer to the copies of some 14 previous decisions of this tribunal on costs. Even though we accept that the tribunal must strive to for consistency with its decisions, we are concerned that citing so many decisions in full in a relatively modest claim such as this is disproportionate and it also adds unnecessary copying costs.

23. We have considered the notices and the lease and we conclude that it would be reasonable to expect the leaseholder to pay the landlord for 4 hours for the work involved. The work included considering and advising on the merits of the claim and the validity of the claim notice; instructing and considering the valuation; drafting and giving a counter-claim and the drafting of the new lease. On the latter we remind ourselves that under section 57 of the Act the terms of the new lease are usually to be same as those of the current lease except that the new lease is for a longer term at a nominal rent. The terms of the new lease appear to be the very similar to those of the existing lease. We determine that the landlord is entitled to recover costs representing 4 hours work at the rate of £330.

24. The total solicitor's fees recoverable is the sum of £1,320 (with VAT of £264), along with the agreed valuer's fee of £750 (with VAT of £150) and the Land Registry fee of £18. The total recoverable is the sum of £2,502.

James Driscoll and Ian Holdsworth, 15 July 2016

Appendix

Leasehold Reform, Housing and Urban Development Act 1993

Section 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.

Section 91

Jurisdiction of leasehold valuation tribunals.

(1)

Any jurisdiction expressed to be conferred on a leasehold valuation tribunal by the provisions of this Part (except section 75 or 88) shall be exercised by a rent assessment committee constituted for the purposes of this section; and any question arising in relation to any of the matters specified in subsection (2) shall, in default of agreement, be determined by such a rent assessment committee.

(2)

Those matters are—

(a)

the terms of acquisition relating to—

(i)

any interest which is to be acquired by a nominee purchaser in pursuance of Chapter I, or

(ii)

any new lease which is to be granted to a tenant in pursuance of Chapter II, including in particular any matter which needs to be determined for the purposes of any provision of Schedule 6 or 13;

(b)

the terms of any lease which is to be granted in accordance with section 36 and Schedule 9;

(c)

the amount of any payment falling to be made by virtue of section 18(2);

[F1(ca)

the amount of any compensation payable under section 37A;]

[F2(cb)

the amount of any compensation payable under section 61A;]

(d)

the amount of any costs payable by any person or persons by virtue of any provision of Chapter I or II and, in the case of costs to which section 33(1) or 60(1) applies, the liability of any person or persons by virtue of any such provision to pay any such costs; and

(e)

the apportionment between two or more persons of any amount (whether of costs or otherwise) payable by virtue of any such provision.

(3)

A rent assessment committee shall, when constituted for the purposes of this section, be known as a leasehold valuation tribunal; and in the following provisions of this section references to a leasehold valuation tribunal are (unless the context otherwise requires) references to such a committee.

(4)

Where in any proceedings before a court there falls for determination any question falling within the jurisdiction of a leasehold valuation tribunal by virtue of Chapter I or II or this section, the court—

(a)

shall by order transfer to such a tribunal so much of the proceedings as relate to the determination of that question; and

(b)

may then dispose of all or any remaining proceedings, or adjourn the disposal of all or any such proceedings pending the determination of that question by the tribunal, as it thinks fit;

and accordingly once that question has been so determined the court shall, if it is a question relating to any matter falling to be determined by the court, give effect to the determination in an order of the court.

(5)

Without prejudice to the generality of any other statutory provision—

(a)

the power to make regulations under section 74(1)(b) of the Rent Act 1977 (procedure of rent assessment committees) shall extend to prescribing the procedure to be followed consequent on a transfer under subsection (4) above; and

(b)

rules of court may prescribe the procedure to be followed in connection with such a transfer.

(6)

Any application made to a leasehold valuation tribunal under or by virtue of this Part must comply with such requirements (if any) as to the form of, or the particulars to be contained in, any such application as the Secretary of State may by regulations prescribe.

(7)

In any proceedings before a leasehold valuation tribunal which relate to any claim made under Chapter I, the interests of the participating tenants shall be represented by the nominee purchaser, and accordingly the parties to any such proceedings shall not include those tenants.

(8)

No costs which a party to any proceedings under or by virtue of this Part before a leasehold valuation tribunal incurs in connection with the proceedings shall be recoverable by order of any court (whether in consequence of a transfer under subsection (4) or otherwise).

(9)

A leasehold valuation tribunal may, when determining the property in which any interest is to be acquired in pursuance of a notice under section 13 or 42, specify in its determination property which is less extensive than that specified in that notice.

(10)

Paragraphs 1 to 3 and 7 of Schedule 22 to the Housing Act 1980 (provisions relating to leasehold valuation tribunals constituted for the purposes of Part I of the M3Leasehold Reform Act 1967) shall apply to a leasehold valuation tribunal constituted for the purposes of this section; but—

(a)

in relation to any proceedings which relate to a claim made under Chapter I of this Part of this Act, paragraph 7 of that Schedule shall apply as if the nominee purchaser were included among the persons on whom a notice is authorised to be served under that paragraph; and

(b)

in relation to any proceedings on an application for a scheme to be approved by a tribunal under section 70, paragraph 2(a) of that Schedule shall apply as if any person appearing before the tribunal in accordance with subsection (6) of that section were a party to the proceedings.

(11)

In this section—

“the nominee purchaser” and “the participating tenants” have the same meaning as in Chapter I;

“the terms of acquisition” shall be construed in accordance with section 24(8) or section 48(7), as appropriate; and the reference in subsection (10) to a leasehold valuation tribunal constituted for the purposes of Part I of the Leasehold Reform Act 1967 shall be construed in accordance with section 88(7) above.