



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

Case reference : LON/00AJ/OC9/2017/0057

Property : Second and Third Floor Flats, 149
The Vale, London W3 7RH

Applicants : (1) Mr Valeri Kirilov Traykov
(2) Ms Olivia Campbell

Representative : WT Law LLP, solicitors

Respondent : Ms Lioubov Shephard

Representative : Myers, Fletcher & Gordon,
solicitors

Type of application : Statutory costs on extension of
lease

Tribunal members : Judge Timothy Powell
Mr Duncan Jagger MRICS

Venue : 10 Alfred Place, London WC1E 7LR

Date of decision : 12 May 2017

DECISION

Numbers in square brackets are pages in the hearing bundle

Decision of the tribunal

1. The tribunal has determined that the total sum of **£6,480**, inclusive of VAT and disbursements, it payable by the applicants to the respondent, in accordance with section 60 of the Leasehold Reform, Housing and Urban Development Act 1993, such sum to be shared by the applicants equally, as to £3,240 each.

Reasons for the decision

Background

2. The applicants seek a determination of the recoverable statutory costs incurred by the respondent in responding to their request for new leases, in accordance with section 60 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”). In compliance with directions, the applicants filed a bundle containing the respondent’s schedule of costs, both parties’ submissions and relevant documents; and the tribunal has proceeded to determine the application on those papers, without an oral hearing.
3. The applicants are the lessees of the second floor flat and third floor flats, respectively, of the subject property, 149 The Vale, London W3 7RH. On 18 November and 1 December 2015, the applicants served their notices of claim under section 42 of the Act, seeking to acquire new leases. Each applicant proposed to pay a premium of £12,500 and each proposed variations to the terms of their existing leases, as follows: “the service charge provisions ought to be updated to take account of the abolishment (*sic*) of the domestic ratings system and the creation of new flats by the landlord since the grant of the existing lease.”
4. The respondent served two counter notices under section 45 of the Act, both dated 24 January 2016, proposing a premium of £19,000. In addition, the landlord did not accept the applicants’ proposal with regard to the service charge provisions, but counter-proposed that: “the service charge provisions be updated to reflect the current position in respect of payments made in the last three years and for the Lease as a whole to be modernised”.
5. Negotiations were unsuccessful, so the applicants issued an application to the tribunal, received on 4 May 2016, for a determination under section 48(1) of the premium to be paid for the new leases and of the terms which remained in dispute. Those applications were dealt with under reference LON/00AJ/OLR/2016/0722. The hearing took place on 4 October 2016 and a written decision was issued on 5 December 2016. By that decision, a differently-constituted tribunal determined that the premium payable for each lease extension should be £15,935 and it ordered that certain variations to the service charge provisions of the new leases should be made.

The statutory costs applications

6. The parties being unable to agree the level of the respondent’s statutory costs under section 60 of the Act, the applicants issued two further applications dated 28 February 2017 for a determination of those costs.
7. In her schedule of costs [37], the respondent sought combined costs of £10,000, plus £2,000 VAT and a land registry fee of £30, making a

total of £12,030.00; or £6,015 per flat. In their combined statement of case, the applicants challenged the respondent's costs, offering £1,262.50, plus VAT, each; i.e. £1,515 per flat, or a total of £3,030.

8. The tribunal issued directions on 2 March 2017 for a determination of the landlord's costs on the papers, in the week commencing 24 April 2017, unless either party requested an oral hearing. As no oral hearing was requested, this determination has been made upon consideration of the papers in the hearing bundle.

9. The first page of the respondent's schedule of costs [32] pointed to the alleged complexity of the transactions:

"The Applicants each sought not only to extend the Term of their leases by 90 years under the 1993 Act and reduce the Ground Rent to a peppercorn but also sought to significantly amend the Service Charge provisions in the existing leases. Disagreements arose as a result of the request to amend the service charge provisions which raised complex and protracted negotiations and investigations by all parties concerned. The parties did not resolve the issues in correspondence and the matter proceeded to a full hearing on the 4th October 2016.

As a result of these complexities the Tribunal, following the hearing of the 4th October 2016 decided that it was necessary to visit the building and the flats to understand the composition of the building before making a final determination on the 5th December 2016".

10. Further details of the alleged complexities were contained in the respondent's reply to the applicants' combined statement of case [168-176]. In particular, the respondent pointed to the longstanding dispute between the parties over the basis of calculating the service charge [173]; to the fact that both applicants had undertaken works to their flats without the respondent's prior approval, altering the layout of the flats so that they no longer reflected the plans attached to the existing leases; and that there were other flats in the building that had to be taken into account when considering the proposed changes to the service charge terms.

11. A copy of the earlier tribunal's decision of 5 December 2016 was included in the hearing bundle [105-115] and it deals at some length with parties' respective proposals in relation to the service charge provisions in the leases. Several of the proposals were rejected, but the tribunal did approve two modifications: one, to remove from the leases the reference to rateable values and to substitute an apportionment on a fair and reasonable basis, based on a number of flats in the building; and the other to make modifications in relation to the maintenance of the commercial premises on the ground floor. The tribunal, however, declined to make the other changes submitted by the parties.

The statutory provisions

12. A landlord's entitlement to statutory costs is contained within section 60 of the 1993 Act, which provides as follows:

“ 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.

[...]

- (5) A tenant shall not be liable under this section for any costs which a party to any proceedings under this Chapter before the appropriate 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.”

The basis of assessment

13. The proper basis for the assessment of costs in enfranchisement cases under the Act, whether concerning a freehold purchase or a lease extension, was set out by the Upper Tribunal in *Drax v Lawn Court Freehold Limited* [2010] UKUT 81 (LC). Costs must be reasonable and must have been incurred in pursuance of the notice of claim and in connection with the three purposes listed in section 60(1). Under section 60(2), costs are limited to those the landlord would be prepared to pay if he were using their own money rather than being paid by the tenant. This introduces a “test of proportionality of a kind associated with the assessment of costs on the standard basis” in the courts. The landlord should only receive his costs where they have explained and substantiated them.

14. In their combined statement of case [42], the applicants challenged the costs on various grounds and, taking those comments into account together with the respondent's reply, the tribunal was able to carry out a summary assessment of those costs.

Amount of statutory costs claimable

15. Essentially, the tribunal's task is to look at the works that was carried out by the respondent's solicitors, all the surrounding circumstances of the transactions and the parties involved.

Fee earners and charging rates

16. The work carried out by the respondent's solicitors was done by three Grade A fee earners (sequentially, due to people leaving the firm) and one Grade C fee earner. The applicants challenged the £275 per hour charged by two of the Grade A fee earners and the £325 per hour charged by the third Grade A fee earner, a partner; and challenged the £240 per hour charged for the Grade C fee earner. Instead, they offered a flat hourly rate of £250 plus VAT for any work properly done by any of the Grade A fee earners and an hourly rate of £175 plus VAT for any work properly done by the Grade C fee earner [47].
17. Some limited guidance as to the appropriate charging rates may be gleaned from the Solicitors Guideline Hourly Rates 2010 (which admittedly have not been updated since then). The respondent's solicitors firm is based in Hammersmith in London W6, which is classified as 'Outer London'. In that area, the appropriate charging rate for a Grade A fee earner is said to be between £229 and £267 per hour, and for a Grade C fee earner, £165 per hour. Allowing for inflation over time, the amounts offered by the applicants appear too low; and the tribunal therefore determines that the Grade A fee earner rates of £275 per hour for a senior solicitor and £325 per hour for a partner, are about right, but that the Grade C charging rate is too high and should be set at £190 per hour.

Factors affecting the summary assessment

18. Before turning to the work carried out, the tribunal agrees with the applicants that there must have been some cost savings to be achieved, by reason of the respondent's solicitors carrying out two near-identical transactions in the same building, both at the same time; and that this should be reflected in the summary assessment of the costs.
19. The tribunal also agrees that the investigation into the applicants' right to a new lease should have been very straightforward, given the simple legal title; the lack of intermediate landlords or third parties; and the fact that there was no issue as to the service of notices. Similarly, the obtaining of valuation evidence was, and should have been, quite straightforward. The real dispute in this case lies in relation to the cost of and incidental to the grant of the new leases.

20. Although it is correct to say that the new lease was in a short, standard form, which incorporated the existing lease into it, and that the terms “save for the service charge provisions” were agreed between the parties without complication, nevertheless there were complicating factors to the transactions, which have been alluded to above. Those complicating factors inevitably increased the amount of work required from the respondent’s solicitors. In a simple case, a new lease is usually granted on existing terms, with statutory modification. However, where new terms are proposed in the section 42 notices (as they were here) those new terms come into play and the grant of the new lease cannot take place until negotiations are concluded, or the tribunal makes a determination as to what those new terms should be.
21. It follows that the reasonable costs of such negotiations, incidental to the grant of the new lease, must be claimable by the respondent as part of the statutory costs under section 60(1)(c). Those costs are not to be considered as “costs of proceedings” and therefore ignored, merely because negotiations take place after the tribunal application was made. It is possible, and quite usual, for the negotiations to run in parallel with proceedings: see, for example, the recent judgment in *Chung and Wong v Towey* [2017] UKUT 0157 (LC), where a valuation fee was recoverable, even after the issue of proceedings.

The work done

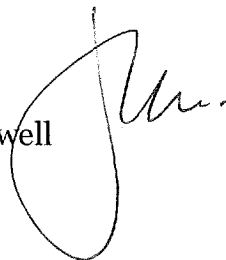
22. Turning to the respondent’s schedule of costs and the work carried out, the tribunal does not intend to go through each individual item when carrying out its summary assessment, but takes a broad brush view of the time claimed for each of the stages of the work carried out.
23. The schedule of costs does not distinguish between the costs incurred in connection with the three purposes set out in section 60(1) of the Act. A large amount of the work on the first page of the schedule will fall within the investigation of the tenants’ right to a new lease and valuations of the tenants’ flats, ending with the drafting and service of counter notices. The roughly 400 minutes of Grade A fee earners’ time and 200 minutes of grade C fee earner’s time appears to be excessive for this early work, even taking into account consideration of the notices of claim, giving thought to the tenants’ proposals to change the service charge provisions and the drafting and service of counter notices. The tribunal would allow 275 minutes of Grade A fee earner time and 130 minutes of Grade C fee earner time for this work.
24. The rest of the costs schedule would appear to fall clearly within the work anticipated by section 60(1)(c), being work relating to the terms and, therefore, the grant of the new leases. However, some significant amounts of works were claimed in May 2016 - some 270 minutes of Grade C fee earner time, discussing amendments to the service charge provisions within the leases and drafting proposals to discuss with the tenants’ solicitors - and these appear far too high, given the nature of the service charge provisions under discussion.

25. There was a dispute about the meeting at the tenants' solicitor's office on 12 September 2016, when four hours of Grade A and four hours of Grade C fee earner time was claimed. The applicants' solicitors say that only 90 minutes was spent on this issue at their office. Therefore, in the absence of evidence to the contrary, this item will be reduced to 90 minutes of Grade A fee earner time. Nothing is allowed for the Grade C fee earner as it was unclear why their attendance was necessary in addition to the Grade A fee earner; and this is duplication for which the applicants should not pay.
26. Of the time claimed on the second page of the schedule of costs, the tribunal is willing to allow about 330 minutes of Grade C fee earner time and 90 minutes of Grade A fee earner time. The third page of the respondent's schedule deals largely with discussions concerning the new lease terms and seeking to agree the draft lease and lease plans. Again, some of the time involved, especially by the Grade A fee earner, appears to be very much on the high side; as do the 100 minutes of Grade C time claimed for preparation of a completion statement and liaising with tenants' solicitors. Overall, in relation to this work, the tribunal would allow 230 minutes of Grade A fee earner time and 240 minutes of Grade C fee earner time, noting that this work spans a five-month period.
27. Lastly, on page 4 of the respondent's schedule, the work concludes with negotiations preparatory to the grant of the new lease, and then with the grant and completion themselves. There appear to be elements of duplication in February 2017 and the final steps appear to have taken rather much longer than the tribunal would have expected. Overall, the tribunal will allow 205 minutes of Grade C fee earner time for this work.

Summary

28. In total, the respondent's reasonable statutory costs are therefore assessed at a total of £5,375 plus VAT of £1,075 and the disbursement of £30, making a total of £6,480. The cost per flat is therefore half of this amount, or £3,240 per flat. While the costs allowed are about half what the respondent's solicitors had claimed, they are still considerably higher than might be expected for comparable lease extension transactions, but the difference may be explained as being largely due to the complications in these transactions, referred to earlier in this decision.

Name: Timothy Powell



Date: 12 May 2017

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).