41654

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	AB/LON/00BG/OC9/2018/0118
Property	:	7A St James Avenue, Sutton, Surrey, SM1 2TQ
Applicant	:	Susan Southwick
Representative	:	Winckworth Sherwood LLP
Respondent	:	Nirlake Investments Limited
Representative	:	Bude Nathan Iwanier LLP
Type of Application	:	Enfranchisement - costs
Tribunal Members	:	Judge Robert Latham Luis Jarero BSc FRICS
Date and venue of paper determination	:	13 June 2018 at 10 Alfred Place, London WC1E 7LR
Date of Decision	:	15 June 2018

DECISION

The Tribunal determines the section 60 statutory costs in the sum of £1,425 + VAT for legal fees, a total of £1,710.

Introduction

1. This is an application under section 91 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act"). The current application by the Applicant tenant is for the determination of the costs payable by the tenants under section 60(1) of the Act. The landlord seeks legal costs in the sum of £2,693.00 + VAT. No surveyor's fees are claimed. The Tribunal has been provided with a Bundle of Documents which extends to 232 pages.

2. There is a discrete issue as to whether the landlord is entitled to recover VAT.

3. On 17 April 2018, the Tribunal issued its standard Directions, pursuant to which:

> (i) The Respondent landlord has provided a Schedule of Costs, dated 12 April 2018 (at p.31-33). The charge rate for all the work is £285 per hour. No costs are claimed under section 60(1)(b) of the Act. The Directions required the landlord to provide a schedule "sufficient for summary assessment" and to identify and explain any unusual or complex features of the case. No such features are identified.
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> (ii) The Applicant tenant has filed her Statement of Case (at p.35-38 with exhibits at p.39-69). She suggests costs should be assessed in the sum of £577.50 + VAT. She contends that the work involved is excessive. She notes that a total of 312 letters and emails out have been claimed. A claim has been made for administrative work such as diarising deadlines. She questions whether VAT is recoverable. She refers to the SCCO Guideline Hourly Rates and suggests that a maximum of £267ph should be allowed for a Grade A Fee Earner. She notes that all the work has been done by a Grade A Fee Earner and suggests that much of the work could have been delegated to a lower grade fee earner.
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> (iii) The landlord was permitted to send the tenant a Statement in Response. The Landlord's Statement extends to 145 pages. This is disproportionate to the legal costs in dispute. The landlord has filed a witness statement from Samuel Pariente (at p.72-86) with exhibits (at p.87-232). The landlord accepts that the costs are higher than usual and suggests that this was due to the "adversarial and inflexible stance" of the tenant. This was not raised as a relevant factor when the landlord filed its Schedule of Costs and is not a matter to which the tenant has had an opportunity to respond.

The Background

4. On 27 September 2017, the tenant served a Section 41 Notice to Obtain Information. On 2 October, the landlord responded. The Respondent is the only relevant landlord.

5. On 10 November, the tenant served her Section 42 Notice applying for a new lease. A premium of £15,000 was proposed. The tenant proposed that the terms of the new lease should be in accordance with the Act.

6. On 21 November, the landlord served a Notice requiring the payment of a deposit and to provide Office Copy Entries. On 27 November, the tenant provided the particulars of title. On 28 November, she paid a deposit of £1,500.

7. On 9 January 2018, the landlord served its Section 45 Counter-Notice. A premium of £20,930 was proposed. It was agreed that the new lease should be granted in accordance with the terms of the Act.

8. On 14 March 2018, the parties agreed terms. The agreed premium was £18,250. The proposed terms of the lease are at p.22-29. There are no unusual aspect to the lease.

The Statutory Provisions

9. Section 60 provides, insofar as relevant for the purposes of this decision:

> "(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—
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> > (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;
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> 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.
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> (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.
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> .....
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> (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.
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> (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... or any third party to the tenant's lease."

The Principles

10. In *Metropolitan Property Realisations v Moss [2013] UKUT 415*, Martin Rodger QC, the Deputy President, gave the following guidance on the approach to be adopted:

"9. These provisions are straightforward and their purpose is readily understandable. Part I of the 1993 Act is expropriatory, in that it confers valuable rights on tenants of leasehold flats to compel their landlords to grant new interests in those premises whether they are willing to do so or not. It is a matter of basic fairness, necessary to avoid the statute from becoming penal, that the tenant exercising those statutory rights should reimburse the costs necessarily incurred by any person in receipt of such a claim in satisfying themselves that the claim is properly made, in obtaining advice on the sum payable by the tenant in consideration for the new interest and in completing the formal steps necessary to create it.

10. On the other hand, the statute is not intended to provide an opportunity for the professional advisers of landlords to charge excessive fees, nor are tenants expected to pay landlords' costs of resolving disputes over the terms of acquisition of new leases. Thus the sums payable by a tenant under section 60 are restricted to those incurred by the landlord within the three categories identified in section 60(1) and are further restricted by the requirement that only reasonable costs are payable. Section 60(2) provides a ceiling by reference to the reasonable expectations of a person paying the costs from their own pocket; the costs of work which would not have been incurred, or which would have been carried out more cheaply, if the landlord was personally liable to meet them are not reasonable costs which the tenant is required to pay.

11. Section 60 therefore provides protection for both landlords and tenants: for landlords against being out of pocket when compelled to grant new interests under the Act, and for tenants against being required to pay more than is reasonable."

The Tribunal's Determination

11. The Tribunal assesses costs in the sum of £1,425 + VAT. This is an expert tribunal. We consider that the costs claimed by the landlord to be excessive.

12. The landlord's Schedule for Costs is at p.88-90. The Applicant challenges the hourly rate of £285 charged by Mr Pariente for a Grade A fee earner for a firm based in Golders Green. We do not accept that £285 is unreasonable. However, if all the work is done by an experienced Grade A fee earner, with no delegation to a more junior member of staff, the time involved should be less.

13. Whilst full details are provided of the time engaged, details are not provided of the work done. A landlord is only entitled to recover statutory costs for limited work, of or incidental to the following:

(a) Any investigation reasonably undertaken of the tenant's right to a new lease: We compute that the landlord is claiming 35 units for this work, a total of 3.5 hours. This seems excessive. We accept the tenant's argument that the landlord seems to have claimed for administrative costs such as diarising deadlines. Whilst statute permits a landlord to require the payment of a deposit, the costs of serving a Notice Requiring Payment and subsequently securing payment, do not fall within the scope of this sub-paragraph.

(b) Any valuation of the tenant's flat obtained for the purpose of fixing the premium: No costs are claimed in respect of this.

(c) The grant of a new lease under section 56: The landlord is claiming 98 units for this work, including 6 units for work which will be incurred down to completion. This is a total of 6.3 hours. The work involved is not specified in the landlord's Schedule of Costs. We are satisfied that this is excessive. There are no unusual aspects to the lease.

14. We conclude that A Grade A fee earner would be able to carry out the work specified under sub-paragraphs (a) and (c) in no more than five hours. We therefore allow 5 hours at £285 ph, giving a total of £1,425.

15. We are satisfied that the VAT of 20% is payable on these sums. Statutory costs are intended to indemnify the landlord for the costs that he would otherwise be obliged to pay. VAT must therefore be added to the costs assessed by the Tribunal.

Judge Robert Latham,
15 June 2018

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).