



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

Case Reference : LON/00AU/OC9/2017/0181

Property : Gound Floor Flat, 55 Hargrave
Mansions, Hargrave Road,
London N19 5SR

Applicant : Charles Timothy Peter Scott

Representative : Comptons Solicitors LLP

Respondent : 55 to 60 Hargrave Mansions Ltd

Representative : Wilson Barca LLP

Type of Application : Costs on extension of lease

Tribunal : Judge Nicol
Mr WR Shaw FRICS

Date of Decision : 7th March 2018

DECISION

The Tribunal has determined that the amount payable by the Applicant shall be the following:-

- (1) For the Respondent's legal costs, £2,400 (plus VAT).
- (2) For the Respondent's valuer's fee, the full amount of £960 (inc VAT).

Reasons for Decision

1. The Applicant has applied following his request for a new lease for a determination as to the costs recoverable by the freeholder, the Respondent, in accordance with section 60 of the Leasehold Reform,

Housing and Urban Development Act 1993 which is set out in the Appendix to this decision.

2. The Applicant does not dispute the valuer's fee of £960 (inc VAT) but challenges the Respondent's legal costs:
 - (a) Investigating Tenant's right to a new lease and preparing section 45 notice; 1.5 hours at £300 per hour £450
 - (b) Correspondence re valuation and advice thereon; 30 mins @ £300 per hour £150
 - (c) Time spent dealing with the grant of the lease including drafting amending revising engrossing etc; 6.8 hours @ £300 per hour £2,040
 - (d) Allow a further 1 hour to deal with completion statements, finalising lease etc £300

Applicant's submissions

3. The Applicant submitted a bundle of relevant documents in accordance with the Tribunal's directions, including a witness statement of Tim Wild of the Applicant's solicitors in which various submissions were made. Those submissions are dealt with in turn below.
4. The Applicant asserted that £300 per hour was too high for the time of the Respondent's solicitor, Mr Maurice Evans. The Tribunal disagrees. Particularly in this uniquely complex area of the law, the Tribunal is satisfied that this rate falls within the range of what is reasonable for the purposes of section 60 of the Act.
5. The Applicant asserts that it is not clear from the Respondent's solicitor's time ledger where the fee of £450 for investigating the Applicant's right to a new lease comes from. However, this is a process of summary assessment. It will rarely be proportionate to determine costs by checking each element of time recording to ensure the maths is accurate. In broad terms, the Tribunal is satisfied that £450 is a reasonable sum for this part of the process.
6. The Applicant asserts that the Respondent's solicitor's costs of £150 relating to the valuation do not come within section 60(1)(a) or (c) and are therefore irrecoverable. However, they clearly come within section 60(1)(b) as costs incidental to the valuation (the Upper Tribunal said the same in *Sinclair Gardens Investments (Kensington) Ltd v Wisbey* [2016] UKUT 203 (LC)). It is possible that the Applicant was misled by the summary of section 60(1) at paragraph 32-24 of the Sixth Edition of Hague's Leasehold Enfranchisement which omits the words "incidental to", giving the mistaken impression that sub-section (b) only covers the valuation itself.

7. The Applicant objects to the sum of £2,040 for dealing with the grant of the new lease. In the Tribunal's opinion, this is certainly on the high side and so deserves closer examination.
8. The Applicant makes a legal point that the new lease in this case was only finalised after substantial negotiation. According to Hague at the same paragraph 32-24, supported by a 1997 decision of the Leasehold Valuation Tribunal, *Huff v Trustees of the Sloane Stanley Estate*, the costs of negotiation are not covered by section 60, being limited to the costs of and incidental to the drafting and execution of the new lease.
9. *Huff* is not binding on this Tribunal because:
 - (a) It is a decision of a first-tier tribunal; and
 - (b) The case was actually dealing with the costs of a surveyor's negotiation of the premium and so the LVT's statement of principle should be limited to such circumstances, not extended to those here.
10. The words "negotiation" and "drafting" do not appear in section 60(1)(c). The statute permits the recovery of "the reasonable costs of and incidental to ... the grant of a new lease." In the Tribunal's opinion, the process by which the parties agree the contents of the new lease comes within this statutory wording according to its natural meaning.
11. Therefore, the Tribunal is satisfied that the costs claimed by the Respondent are recoverable in principle. However, the Tribunal is also concerned that they are too high. In his submissions, provided 10 days later than the Tribunal's directions required (without reason or apology), Mr Evans asserted that it was the Applicant's fault that the grant of the new lease had taken so long, resulting in the higher costs, but he provided no supporting evidence. The Tribunal cannot accept mere unsupported assertions.
12. Taking a broad-brush approach, the Tribunal is satisfied that, in accordance with section 60(2), the amount claimed is not reasonable in that the Respondent would have accepted that they should pay no more for this element than £1,500 (plus VAT), representing 5 hours' work instead of 6.8 hours.

Conclusion

13. The Tribunal is satisfied that the Respondent's solicitor's costs are recoverable from the Applicant, save for the sum of £540 plus VAT.

Name: NK Nicol

Date: 7th March 2018

Appendix of relevant legislation

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.