



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

Case Reference : **LON/00BK/OC9/2019/0049**

Property : **11 Oslo Court, Prince Albert Road
London NW8 7EN**

Applicants : **Ms Yelena Konnova**

Respondent : **Brickfield Properties Limited**

Representative : **Wallace LLP**

Type of Application : **Application to review decision issued on 29
April 2019 under the Leasehold Reform,
Housing & Urban Development Act 1993 to
determine the costs payable under section 60
of the Act.**

Tribunal Member : **Mrs A J Rawlence MRICS**

**Date of Reviewed
Decision** : **15 May 2019**

DECISION

Decision

1. The Tribunal determines a figure of £27.00 for the disbursement for Land Registry fees with no VAT due on this amount.

Further Introduction

2. By letter dated 2 May 2019 the Respondent asked that the Tribunal make a ruling in respect of the VAT payable on the Land Registry fees.
3. The Tribunal having reviewed its decision, proposes to amend its decision under Rule 55 Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013.
4. Rule 55 states:
 - (1) The Tribunal may only undertake a review of a decision—
 - (a) pursuant to rule 53 (review on an application for permission to appeal); and
 - (b) if it is satisfied that a ground of appeal is likely to be successful.
 - (2) The Tribunal must notify the parties in writing of the outcome of any review, and of any right of appeal in relation to the outcome.
 - (3) If the Tribunal takes any action in relation to a decision following a review without first giving every party an opportunity to make representations, the notice under paragraph (2) must state that any party that did not have an opportunity to make representations may apply for such action to be set aside and for the decision to be reviewed again.

Submissions

5. The Respondent referred in paragraph 22 of its submissions on the case *Brabners LLP v The Commissioners for Her Majesty's Revenue & Customs* and provided Exhibit BPI in this regard.
6. Paragraph 22 of that decision states the 8 disbursement conditions in VAT Notice 700 Paragraph 25.1 which reads as follows:
 - You acted as the agent of your client when you paid the third party
 - Your client actually received and used the goods or services provided by the third party
 - Your client was responsible for paying the third party
 - Your client authorised you to make the payment on their behalf
 - Your client knew that the goods or services you paid for would be provided by a third party
 - Your outlay will be separately itemised when you invoice your client
 - You recover only the exact amount which you paid to the third party
 - The goods or services, which you paid for, are clearly additional to the supplies which you make to your client on your own account.

7. The Applicant stated that the Land Registration fees were a disbursement to be passed on to the Applicant and should not therefore be subject to VAT.

Tribunal's deliberations

8. The Tribunal is satisfied that all of the above conditions are met and that the Land Registry fee is a disbursement and as such no VAT is payable on this item.

Tribunal's Reviewed Decision

9. The Tribunal has reviewed its decision and set this out below i.e. with the omission of the previously numbered paragraph 43.
10. Any party that did not have an opportunity to make representations on the reviewed decision may apply for such action to be set aside and for the decision to be reviewed again.

Introduction

11. By Application dated 15 February 2019 and received by the Tribunal on 22 February 2019, the Applicant applied to the First-tier Tribunal, Property Chamber for the determination, under section 60 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act"), of the reasonable legal and valuation costs.
- 12.
13. The Applicant is the leaseholder of 11 Oslo Court, Prince Albert Road, London NW8 7EN ("the Property") and has exercised her right to extend the lease of the Property under the Act.
14. The Tribunal issued directions on 4 March 2019. These Directions allocated the matter to be a paper determination unless either side requested a hearing. There was no such request and, accordingly, this matter has been considered on the basis of the submissions provided by both parties.
15. The premium for the lease extension was determined by the Tribunal on 25 November 2018.
16. The Applicant accepts its liability to pay the landlord's reasonable costs and accepts the courier fees and land registration fees are reasonable (though believes that the Land Registration fees are a disbursement to be passed on to the Applicant and should not therefore be subject to VAT.)
17. The Applicant considers the legal and valuation costs excessive.

The Law

18. The relevant law is set out below:

Leasehold Reform Housing and Urban Development Act 1993
Costs incurred in connection with new lease
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.

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.

The Applicant's Submissions

19. The Applicant's statement of case said that the legal costs were unreasonable on the following grounds:

20. *Seniority of solicitor involved was unreasonable.*

The Partner, Samantha Bone carried out much of the work and accounted for over 57% of the costs. The majority of this work could have been performed by a senior associate at a lower hourly charge rate.

21. *Excessive time was spent on certain matters.*

Considering Notice of Claim took 40 mins and their separate legal costs to consider the Notice. Preparation of Counter Notice and letter to Lessee required the partner to spend one hour when it was the standard from used by

the solicitors for lease extensions at Oslo Court where they have been involved in many recent lease extensions.

22. *Unnecessary lease preparation costs.*

It was not necessary to prepare a whole new lease and subsequently attach it to the Counter Notice.

23. *Second notice.*

The Second Notice was served when the Applicant's original notice was served on the wrong entity of the landlord's group of companies. In the end the landlord did accept the first Notice as a valid notice.

24. *Unreasonable estimate of continued costs.*

As the terms of the lease and the premium have been agreed, the only outstanding matter is competing the land registration form.

25. *Negotiated rates.*

An analysis of FTT and UT hearings show that Wallace LLP have acted for the landlord and other companies within the Freshwater Group of Companies on many occasions. It would be reasonable to expect a discount or to consider a fixed fee.

26. The Applicant considered the valuer's fees were unreasonable on the following grounds:

27. The Landlord had previously indicated valuer costs of £570 plus VAT.

28. Elements of the work done could have been carried out by a more junior member of his team at a lower hourly rate of £120. The valuation report contained a large proportion of generic material which could have been prepared by a junior member of the team and the report contained a number of errors that were highlighted by the Tribunal.

29. Travel costs to the property were excessive as the partner could have travelled from his home address to the Property on his way to his City office.

30. The Applicant believed that a fixed fee within the range quoted by the RICS for Lease Extensions Valuations would be appropriate.

31. The Applicant proposed legal fees of £1149.50 plus VAT and Valuer fees of £793.00 plus VAT.

32. The Applicant accepted the courier fees plus Vat. She also accepted the Land Registry fees but not VAT.

The Respondent's submissions

33. The Respondent's statement of case drew the Tribunal's attention to the fact that Wallace LLP are the Respondent's choice of solicitor and their rates charged are consistent with rates charged out by solicitors in Central London. It supplied the Tribunal with details of cases regarding the reasonableness of costs, charge out rates and the use of a Partner.
34. The Respondent replied to the Applicant's statement of case as follows:
35. *Seniority of Solicitor/Use of Partner*
The use of a partner falls within the reasonable expectation test i.e. that the Respondent was not required to find the cheapest or cheaper solicitors but simply to give instructions as it would originally give if they were bearing the cost themselves. The time spent by a partner to undertake tasks set out in the cost schedule would be less than that required by a lower level fee earner.
36. *Excessive Time.*
The nature of the legislation is technical and the involvement of a partner in assessing the notice to claim is reasonable. It was necessary to review the Second Notice as to its validity.
37. *Time spent preparing counter-notice.*
Given the draconian consequences of failing to serve a valid Counter-Notice the time spent is reasonable. Each new lease application is dealt with on an individual basis.
38. *Unnecessary lease preparation costs*
The Counter-Notice must specify the extent to which the Landlord seeks to vary the terms of the existing lease. The preparation of a new lease requires a review of title documentation, a review of the current lease and the preparation of a new lease which complies with the provisions of the Act. A lease for each flat is considered individually.
The e-mail dated 9 October 2017 was seeking instructions from the Respondent as to whether the invalidity of the first Notice of Claim was to be conceded and the letter of 10 October 2017 was in relation to serving the Counter-Notice.
39. *Second Notice of Claim.*
The letters dated 5 and 25 September requested confirmation that the Applicant accepted that the first Notice of Claim was invalid. A further 12 minutes was spent considering the second Notice of Claim.
40. *Unreasonable estimate of confirmed costs.*
The items marked 'TBA' are for tasks such as finalising any details of outstanding arrears, preparing an updated Completion Statement (if necessary) and agreeing a completion date. 18 mins was allocated to this.
Furthermore, to effect completion a further 5 tasks would need to be undertaken with an anticipated time of 30 minutes.
41. *Negotiated rates.*
No fixed fees or reduced rates apply as each case is reviewed on an individual basis.

42. *VAT on Land Registry fees.*
The Respondent referred to a 2016 case where it was ruled that VAT was due on search fees.
43. *Valuer's Fees.*
The Tribunal's attention was drawn to the submissions made by Mit Kotak of Chestertons as follows:
44. *Travel Time.*
The Valuer had travelled from his office to the Property and back. The travel time was charged at half his hourly charge out rate of £300.
45. *Research time.*
The Valuer had carried out his own research including speaking to many local agents.
46. *Reading the lease.*
The Valuer submitted that it was essential to check the lease to ensure there were no clauses which would have a detrimental effect on the value of the existing lease.
47. *Valuation Fee.*
The rate is £300 an hour plus VAT and it has been accepted by the Respondent on many occasions. £120 per hour is not a Central London valuer's fee.
The Respondent can ask for an internal valuation or ask a junior valuer to do a desktop valuation but that was not the case here. The valuations are complicated, and it would be unacceptable for a junior member of staff to do the valuation having regard to Chesterton's professional liability.
The final report produced for the Tribunal was different from the valuation report produced for the client for the purpose of serving the counter-notice. Such errors as found in the evidence presented to the Tribunal did not necessarily exist in the original valuation report and this does not discredit the number of hours spent by the valuer in producing the first valuation.
The difference in the premium put forward by Chestertons and that determined by the Tribunal was a different consideration of the relatively to be applied to this short lease value.
Chestertons do not have a fixed fee arrangement with the Respondent. Details were provided of a recent determination in NW8 where a valuation fee of £2,500 plus VAT was determined.
Additional information with regards to overheads was also provided.

The Tribunal's Deliberations

48. The Tribunal considered the written evidence submitted by all the parties.

49. The Tribunal accepts that enfranchisement work is complex, and the Respondent is entitled to choose a specialist solicitor. However, the costs have to be reasonable and in the opinion of the Tribunal the rates seem to be in excess of what is reasonable and the partner Samantha Bone's are reduced to £450 per hour; the senior associate Fleur Neale's rate to £365, the senior associate Shamin Kashem's rate to £345 and the paralegal Jennifer Nyame to £175.
50. The Tribunal accepts the time taken by Wallace LLP as set out in the schedule except for the time spent by the Partner considering the Second Notice of Claim i.e. total time 0.3 hours on 19 and 20 October 2017. The Applicant explained the situation on 4 October 2017 and the first Notice of Claim was subsequently accepted. The Tribunal also confirms the estimated of time of 48 minutes to be spent on correspondence and documents for completion appropriate.
51. The Tribunal could not reconcile the time spent in the schedule of costs with the overall figures given in the letter to the Applicant dated 9 January and for clarity states the following:

Partner S. Bone's time	2.8 hours	@ £450	1260
Senior Associate F. Neal	2 hours	@ £365	730
Senior Associate S. Kashem	1.7 hours	@ £345	586.50
Paralegal J. Nyame	0.2 hours	@ £175	<u>35.00</u>
		TOTAL	£2,611.50

52. The Tribunal consider the submissions made with regard to the valuer's fees and do not find these excessive:
 Travel time to and from the property was charged at half charge out rate.
 Reading the lease was a prerequisite in preparing the valuation report.
 4 hours to research comparable and prepare the report appears reasonable.
53. The Tribunal determines a figure of £2,611.50 for legal fees and £1,735 for the valuation report plus VAT if applicable.

Appeal Provisions

54. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making a written application to the First-tier Tribunal at the Regional Office which has been dealing with the case which application must:
- be received by the said office within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
 - identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

55. If the application is not received within the 28-day time limit, it must include a request for an extension of time and the reasons for it not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal.

Anthea J Rawlence
Chair