



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

Case Reference : **CAM/38UE/OLR/2018/0140**

Property : **12 Foster Road, Abingdon, Oxon
OX14 1YN**

Applicant : **Melanie Jane Owen**

Representative : **Franklins solicitors**

Respondent : **Wallace Partnership Reversionary
Group Holding Limited**

Representative : **Stevensons solicitors**

Type of Application : **Determination of costs under s60
and s91 Leasehold Reform,
Housing and Urban Development
Act 1993**

Tribunal Members : **Tribunal Judge Dutton
Mrs S F Redmond BSc (Econ)
MRICS**

Date determination : **27th November 2017**

DECISION

DECISION

The Tribunal determines that the sum payable by the Applicant in respect of the Respondent's costs under the provisions of section 60 of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act) is £1,561.60 together with the valuation fees of £714 both inclusive of VAT.

BACKGROUND

1. This is an application for the determination of the costs payable by the Applicants to the Respondent under the provisions of section 60 of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act). The parties have provided a Points in Dispute schedule which we have completed.
2. In the papers before us we had copies of the Notice and Counter Notice and the application. In addition to the Points in Dispute schedule a copy of the Upper Tribunal decisions in Sinclair Gardens Investments(Kensington) Limited and Wisbey, Metropolitan Prop. and Moss, Akora and some first Tier Tribunal decisions were provided. As though this was not sufficient we were also provided with copies of the case report from the UT in Trustees of John Lyon's Charity and Terrace Freeholds and Willow Court v Alexander. We had what appeared to be a travelling draft of the lease for the property. We were provided with a copy of the First tier Tribunal decision in respect of 16 Foster Road dated 29th November 2017, which does not appear to have been the subject of an appeal
3. The legal costs were claimed at £2,148.40 inclusive of VAT and disbursements. The valuation fees of Bureau Property Consultants appeared not challenged and are recorded at £595 plus VAT.
4. The application was originally to determine the premium payable and the terms of the lease. It would seem that the lease terms have yet to be agreed and as such it could be suggested that this application was premature. It is noted that by a letter dated 11th October 2018 the Respondent's solicitors return the draft approved as amended. We have no indication as to whether those amendments have been agreed. We will confine our decision to the question of costs under s60 of the Act.
5. The parties requested that the determination of the s60 costs be dealt with on the papers before us, which we have done.

THE LAW

6. The provisions of section 60 are set out in the appendix and have been applied by us in reaching this decision.

FINDINGS

7. We have completed the Points in Dispute which sets out our findings on those matters which are in dispute. We have borne in mind the findings of the Upper Tribunal in the various relevant cases put to us. We have also considered the lengthy submissions of the Respondent running to some 11 pages with 71 pages of addendums. We have also noted all that is said in the Points in Dispute, both the submissions by the Applicant and of the Respondent. Whilst the Upper Tribunal is authority for the principles to be applied, each case should be decided on the facts.
8. Much is made of the allegation that the initial notice(s) were defective and the Counter Notice was served on a without prejudice basis. However, no application was made by the Landlord under s46 of the Act and it would seem, according to a letter from Messrs Stevensons acting for the Landlord, that the premium had been agreed by 11th October 2018.
9. There is also much comment concerning the terms of the proposed lease, which we understand is yet to be agreed. We have seen the original draft, the amendments made and a copy of the agreed lease for 16 Foster Road, resolved in January 2018. We are reluctant to comment in the absence of an agreed document or a request for us to make a determination of the terms. All we would say is that it is to be hoped that agreement can be reached given that the terms of the leases for 16 and 17 Foster Road have been resolved previously.
10. Turning to the Points of Dispute. As a matter of comment we note the concessions made, in particular to the hourly rate. However, there are some areas where we find that the costs are high or do not fall within the provisions of the Act.
9. Generally there has been little attempt to reach common ground by either party. On the basis of the information before us we find that the costs payable under what is shown as A is £636.00 and under B £650. This gives a total profit costs of £1,286.00, plus VAT of £257.20 and disbursements of £18.40, giving a total of costs payable under the provisions of s60 of the Act of £1,561.60 inclusive of VAT with a further £714.00 for the valuers fee, again including VAT
11. The parties appear to be alleging that there are costs claims under rule 13 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013. No formal application has been made. We have given an indication of our view at present and remind the parties of the Upper Tribunal findings and guidance in the case of ***Willow Court Management Company Limited and Alexander [2016] UKUT 0290 (LC)***. If either party wishes to pursue this matter further they must contact the Tribunal within 28 days explaining why such an order should be made, or should not and we will consider whether it is appropriate and if we do will issue directions.

Andrew Dutton

Tribunal Judge Dutton

27th November 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).

The Relevant Law

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.