First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	**:**	**CAM/34UD/OLR/2019/0013**
Property	**:**	**259b Wellingborough Road, Rushden, Wellingborough, NN10 9XN**
Applicants	**:**	**Jane Ellen Pibworth, Bryony Mason & Simon Mark Mason**
Respondents	**:**	**David George Hutchinson, Tanya Hutchinson & Tramperly Ltd.**
Date of Application	**:**	**29th January 2019**
Type of Application	**:**	**To determine the costs payable following a Claim Notice served pursuant to section 42 of Leasehold Reform and Urban Development Act 1993 ("the 1993 Act") (Section 60 of the 1993 Act)**
The Tribunal	**:**	**Bruce Edgington (lawyer chair)** **Mary Hardman FRICS IRRV (Hons)**

DECISION

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1. The reasonable legal costs of the Applicants pursuant to Section 60 of the 1993 Act are £545.00 plus VAT on profit costs.

2. The reasonable valuation fee payable is £875.00 plus VAT.

3. No determination is made as to who is ultimately responsible for paying these costs and fees.

Reasons

Introduction

4. This dispute arises from the service of an Initial Notice seeking a lease extension of the property by qualifying tenants. In these circumstances there is a liability to pay the landlords' reasonable legal and valuation costs.

5. There is a problem in this case because the leasehold interest in the property appears to have been transferred at least once following service of the Initial Notice. It seems to be agreed that it was transferred to the Tramperly Ltd. whose solicitors now say that it was then transferred to Bryen David Rose on the 5th March 2018. It seems that Mr. Rose sadly passed away in April 2018. Nothing was done to pursue the Claim Notice by either the Respondents or Mr. Rose.

6. According to section 60 of the 1993 Act, the costs are payable by the tenant who served the Initial Notice. There seems to be a dispute about who should ultimately be responsible for these costs which presumably depends on the terms of the assignments between the Respondents themselves and then to Mr. Rose. That is not something this Tribunal can determine.

7. The Tribunal issued a directions Order on the 29th January 2019 timetabling the case to a final determination. The Tribunal said that it agreed to the matter being dealt with by the Tribunal considering the papers only, to include any representations from the parties on or after 22nd March 2019 but if any party requested an oral hearing, then one would be arranged. No such request was received.

The Law

8. It is accepted that an Initial Notice was served and therefore Section 60 of the 1993 Act is engaged. For the reasons set out below, the tenant therefore has to pay the landlord's reasonable costs of and incidental to:-

   (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;

   (Section 60(1) of the 1993 Act)

8. As the Claim Notice was not acted upon, the last item is irrelevant.

9. What is sometimes known as the 'indemnity principle' applies i.e. the landlords are not able to recover any more than they would have to pay their own solicitors or valuer in circumstances where there was no liability on anyone else to pay (Section 60(2)). Another way of putting this is to say that any doubt is resolved in the receiving party's favour rather than the paying party. Having said that, there is still an obligation on this Tribunal to determine what is reasonable.

Legal fees

10. The landlords instructed Hart Brown who are solicitors in Guildford, Surrey. Even though the landlords do not live in Surrey, the Tribunal accepted that it was reasonable to instruct those solicitors. The

statement of costs filed sets out the names of 2 fee earners i.e. a Grade A charging £280 per hour and a Grade B charging £240 per hour. The total claimed is £1,892.00 plus VAT and a disbursement of £120 for a process server.

11. The directions order referred to above required the Respondents to serve any objections to the charges and then the Applicants were ordered to file a response to the objections so that the Tribunal will know what each party was saying.

12. In fact, only the solicitors for Tramperly Ltd. have done anything despite the fact that their client did not serve the Claim Notice and appears to have assigned its leasehold interest to Mr. Rose. They served objections which are included in the bundle lodged by the Applicant's solicitors for the Tribunal's determination. Responses to the objections are set out on the form of objections.

13. As preliminary comments to some of the objections, it should be said that the rates claimed are more than are recommended as the starting rates to be applied by the courts in assessing solicitors' costs as recommended by the Master of the Rolls. Unfortunately, the last of such recommendations was in 2010 when the rates for Grade A and Grade B fee earners in Guildford were £217 and £192 respectively. The courts have been applying inflation to those figures and in the Tribunal's experience, the likely amount to be awarded for those Grades in 2017 would have been £250 and £225 respectively. The Tribunal adopts those figures.

14. It is noted that the Applicants' solicitors refer, in their replies to objections, to case number CAM/34UF/OLR/2018/0064 which, they say, sets out Tribunal guidelines. That is not correct. There are no 'guidelines'. The decision simply determines the costs in that particular case. That Tribunal was differently constituted and, in any event, its decision does not bind this Tribunal. Furthermore, that decision, which has been read by this Tribunal, does not actually say what was claimed by way of hourly rates.

15. The Tribunal frequently sees claims for costs which include items not specified in section 60. Objectors also sometimes fail to note the words 'of and incidental to'. These issues were discussed in the leading case of **Sinclair Gardens Investments (Kensington) Ltd. v Wisbey** [2016] UKUT 0203 (LC). It is a pity that the solicitors in this case had clearly not considered **Sinclair Gardens** in any depth before making their claim and objections respectively.

16. The objections to the legal costs and the Tribunal's decisions are set out as follows:-

    (1) <u>Charging rates</u>
    It is said that these are excessive "*and far exceed the court guideline hourly rates. Reduce to £217 + VAT for Grade A fee earner and £192*

+ *VAT for Grade B fee earner*". As has been said, rates of £250 and £225 per hour are awarded respectively.

(2) Investigating the claim etc. – 4.12.17
The claim is for 78 minutes and is said to be excessive. 36 minutes is offered. The items claimed save for 'liaising with A's valuer' are of and incidental to the investigation of the right to a new lease. However, an experienced Grade A fee earner should be able to deal with all these matters in an hour.

(3) Notice to deduce title and request for a deposit – 5.12.17
Not recoverable – nil offered. The objection is upheld. These matters are not incidental to the investigation.

(4) Advising client on assignment and parking – 7.12.17
Not recoverable – nil offered. The objection is upheld for the same reason.

(5) Review of valuation report and drafting counter-notice – 14.12.17
Not recoverable – nil offered. A consideration of the **Sinclair Gardens** case will reveal that these items are recoverable. However, once again, 66 minutes is more than one would expect an experienced Grade A fee earner to take. The counter-notice is a standard printed form with a small amount of standard template wording added save for the premium figure. 30 minutes is allowed.

(6) Letters of service of counter-notice
Not recoverable – nil offered. As the preparation of the counter-notice is allowed, its service should also be allowed. How the fee earner could have taken an hour for this is not understood. The Claim Notice is served by a licensed conveyance and there is a clear address for service. 12 minutes is allowed to instruct a courier to serve. The disbursement of £120 is also excessive. A courier should have been used who would not have charged more than £50.

(7) – (9) Post counter-notice work
Not recoverable – nil offered. The point is made that none of the work claimed for these items is recoverable under section 60 and the Tribunal must agree. None of this work could also be described as being of and incidental to the original investigation, the valuation or the service of the counter-notice. The cut off point really is the decision to challenge the lease extension or the terms. Once that decision has been taken, then work in connection with the dispute is not recoverable.

(10)Valuation costs
A copy invoice has been produced for £1,320.00 although this appears to be for just writing the report which would not be chargeable. The Applicants have instructed a valuer in Chesham which, according to the AA route planner on line is some 57 miles away and there is no explanation as to why a local valuer with local knowledge was not used. Having said that, no time is claimed for inspecting the

property, which is odd. All the Applicants are entitled to is a valuation fee not a fee for a detailed report. In the Tribunal's considerable experience over a number of years, a reasonable valuation figure for a lease extension is about £650 plus VAT i.e. just over 3 hours work at £200.00 per hour. In the **Sinclair Gardens** case referred to above the valuer's fee was agreed at £600 plus VAT. The valuer in this case has provided a detailed breakdown of fees over 2 pages of small font print totalling £2,275 for time spend plus £743.33 for e-mails. All the Tribunal can say is that much of the time claimed is excessive for an experienced valuer. Also, the breakdown of each individual item of work into minutes when many of the items would all be dealt with at the same time is unrealistic. A charging rate of £250 per hour is a little on the high side. £875.00 plus VAT has been offered and this should have been accepted. The Tribunal accepts that figure.

Conclusions

17. As far as legal costs are concerned, the Tribunal has allowed 60 minutes + 18 minutes + 30 minutes of Ms. Fitzpatrick's time at £250 per hour which is £450.00. It has then allowed 12 minutes of Ms. Johnson's time at £225 per hour which is £45.00. Thus the total allowed for time is £495.00 plus VAT and the disbursement allowed at £50.00.

18. As has been said, the offer for the valuation fee of £875 plus VAT is agreed and that figure will be allowed.

Bruce Edgington
Regional Judge
22nd March 2019

ANNEX - RIGHTS OF APPEAL

i. 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.

ii. 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.

iii. 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.

iv. 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.