



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

Case Reference	:	LON/00BA/OC9/2019/0137
Property	:	25 Grosvenor Court, London Road, Morden, Surrey, SM4 5HG
1st Applicant	:	Daejan Investments Limited (“the landlord”)
2nd Applicant	:	Tripomen Limited (the intermediate landlord)
Representative	:	Wallace LLP (for 1st Applicant) Hammond Bale (for 2nd Applicant)
Respondents	:	Shafquat Sikander and Shazia Sikander
Representative	:	Slater & Gordon (UK) LLP
Type of Application	:	A determination of the reasonable costs under section 60(1) of the Leasehold Reform, Housing and Urban Development Act 1993
Tribunal Members	:	Patrick M J Casey MRICS John Francis JP QPM
Date and venue of Hearing	:	24 July 2019 10 Alfred Place, London WC1E 7LR
Date of Decision	:	22 August 2019

DECISION

Decision

1. Pursuant to section 60(1) of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) the following statutory costs are payable by the tenant to the landlord:
 - Wallace’s legal costs of £3,940 plus VAT, Hammond Bale’s legal costs of £300 plus VAT and the valuer’s fee of £1,150 plus VAT.
 - disbursements of £81.04 including VAT of £3.82.

The application and determination

2. By application dated 7 June 2019 the 1st applicant’s solicitors, Wallace LLP, sought a determination of the landlord’s statutory costs under section 60(1) of the Act in respect of matters arising from the respondent tenants’ attempts to secure a new lease under the provisions of Part I, Chapter II of the Act.
3. Standard directions were issued on 13 June 2019 in respect of the un-agreed S.60 costs. The directions stated that the application was suitable for determination on the basis of written submissions and without an oral hearing, but they informed the parties of their right to request an oral hearing. No such request was received and accordingly the statutory costs have been determined on the basis of the written submissions and other documents included in the document bundle that was submitted by Wallace LLP in accordance with the directions. Neither the respondent tenants nor the solicitors who acted for them in issuing the Notices of Claim to exercise the right to a new lease have responded to the directions or indicated in any way that they dispute the S.60 costs claimed.

Background

4. On 12 February 2018 the respondent tenants served a Notice of Claim under S.42 of the Act on the 2nd applicant, Tripomen Limited seeking a new lease of 25 Grosvenor Court, London Road, Morden, Surrey SM4 5HG. On 13 April 2018 Wallace served on the respondents’ solicitors a Counter Notice but in the covering letter said this was without prejudice to the contention that the Notice of Claim was invalid and of no effect because the competent landlord had been wrongly identified as Tripomen Limited which as an intermediate landlord as defined by S40(4) of the Act was not capable of granting a new lease under the Act.
5. The respondents’ solicitors accepted this and the advice Wallace had given as to the identity of the competent landlord namely the freeholder, Daejan Investments Limited and served a new initial Notice dated 11 May 2018 by which the tenant claimed the right to a new lease. The initial Notice

proposed a premium be paid of £12,500 plus £2,500 to be paid to Tripomen Limited. The initial Notice gave 18 July 2018 as the last day for the service of the landlord's Counter Notice.

6. The landlord's Counter Notice is dated 10 July 2018. The Counter Notice admitted the tenants' claim and proposed a premium of £23,074 plus £8,076 for the intermediate landlord.
7. The matters in dispute were not agreed between the parties and the respondents and/or their solicitors failed to make an application for the determination of these matters to the First-tier Tribunal, Property Chamber (Residential Property) in accordance with S48 of the Act within the statutory time period and on 11 January 2019 accordingly the Notice of Claim was deemed to be withdrawn under the provisions of S53(1)(a) of the Act. Wallace say in their statement of case that subsequent correspondence regarding the claim for costs under S60 of the Act have elicited no response from the respondents hence this application to the tribunal.

The statutory framework

8. The relevant provisions of section 60(1) of the Act provides:

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.

The claimed costs

9. The tribunal standard directions required the landlord to send the following documents to the tenants:

- A schedule of costs sufficient for a summary assessment.

The schedule shall identify the basis for charging legal and/or valuation costs. If costs are assessed by reference to hourly rates, detail shall be given of fee earners/case workers, time spent, hourly rates applied and disbursements. The schedule should identify and explain any unusual or complex features of the case.

- Copies of the invoices substantiating the claimed costs.
- Copies of any other documents/reports upon which reliance is placed.

10. In regard to the legal costs claimed the freeholder's solicitors provided a detailed seven column schedule itemising all the activities undertaken in respect of both Notices. Work was undertaken by three grades of fee earners; a partner charging £475 per hour in respect of matters relating to the claims and Counter Notices (total 6.4 hours); an assistant solicitor charging £365 per hour rising in January 2019 to £385 in respect of matters relating to the new lease and establishing the deemed withdrawal of the Notice of Claim (total 1.2 hours) and a paralegal at £200 per hour in respect of obtaining office copy entries of title from the Land Registry (total 0.5 hours). In addition Land Registry fees incurred of £39 are claimed and courier fees of £38.22. The total claimed is £4,884.86 inclusive of VAT.

11. Tripomen's solicitors, Hammond Bale, have claimed £300 plus VAT being one hour of time spent by a Grade B solicitor in advising his client in respect of the Notices and the valuation while the valuer, Mr Myron Green of MGC Chartered Surveyors, invoiced the freeholder for valuation advice in the sum of £1,150 plus VAT, being 5.75 hours at £200 per hour.

12. Given the total lack of response from the respondents Wallace contend that they should be taken to have agreed the S.60 costs claimed. However they also in their submissions defend their fees both in terms of the fee earners employed and their charge out rates given the specialist nature of the work and the consequences for the client of a failure to carry it out properly.

Each case regardless of premium level has to be dealt with individually and on its own merits. Wallace is a specialist central London based firm and the landlord's solicitor of choice in such matters where it relies on the expertise and experience Wallace provides which also tends to mean that less time is spent than would be the case with solicitors with less experience and expertise in a complex field of law. Their fee levels have been subject to a number of First-tier Tribunal decisions which have largely accepted them. Copies of various such decisions are included with the submissions.

13. Wallace say they first advised the respondents through their solicitors of the invalidity of the first Notice of Claim on 5 April 2018 but received no acknowledgement of this despite pointing out that if no response was received within seven days a without prejudice Counter Notice would be served with S.60 cost implications for the respondents. Slater & Gordon did not acknowledge the invalidity of the first Notice until 11 May 2018 when they served the second Notice.

Decision

14. Wallace's S.60 (and indeed S.33) cost claims on behalf of a number of landlords have indeed been subject to scrutiny by Tribunals over the years possibly more so than any other firms. The decisions of the various tribunals are each made on the facts and evidence before the tribunal and are not in themselves evidential although they do provide helpful guidance. Certainly it is clear that a landlord is entitled to use the solicitor of his own choice and, given that he is being asked to grant a new lease which he may not have been willing to grant had the law not given the tenant a right it is not unreasonable to use a firm with acknowledged expertise and experience in a complex field of law to ensure such claims are fully in compliance with the Act. The first Notice served in the present case was indeed invalid as Wallace pointed out. The fact that the firm is central London based with commensurate hourly rates is immaterial.
15. Those rates are higher than the published guidelines which give £409 for a partner but have not been revised since 2010 and £475 does not seem so out of line with what other leading London firms charge to make it clearly unreasonable. Nor is the use of a partner to consider the validity of the claim and prepare and serve the Counter Notice unreasonable and an assistant solicitor specializing in conveyancing seems entirely proper.
16. There are however aspects of the S.60 costs claim which concern the tribunal. Firstly the sum total of Wallace's costs on the Schedule is £3,940 but in the application to the tribunal is given as £4,000. This is possibly just an arithmetic error. Secondly the time claimed to consider the second Notice of Claim and prepare the Counter Notice is the same as that spent on the first Notice and Counter Notice. If the only defect in the first was the identity of the competent landlord this is surprising. The third potential issue concerns the valuer's fee which included 2.35 hours for the

inspection including travel all charged at £200 per hour. It would be unusual for a valuer to spend the best part of 2 hours travelling to a single inspection without arranging other work on the same trip. However these last two points have not been put to the applicant by the respondent and they are therefore not in a position to put forward explanations which might well satisfy the tribunal. Whilst the tribunal is an expert tribunal it is not its role to make a party's case for it in the complete absence of anything by way of evidence or submission by that party. Accordingly the tribunal accepts the submission that the respondents' failure to engage in the application is to be taken as agreement to the S.60 costs claimed.

Name: Patrick M J Casey

Date: 22 August 2019

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).