FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AW/OC9/2019/0149**
Property	**:**	**61a Oakwood Court, London W14 8JY**
Applicant	**:**	**Brickfield Properties Limited ("the landlord")**
Representative	**:**	**Wallace LLP**
Respondent	**:**	**Alister John Calvert Collett as personal representative of the late Michele Rae Hardman**
Representative	**:**	**Child and Child Solicitors**
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**
Date and venue of Hearing	**:**	**29August 2019** **10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**2 September 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 £700 including VAT

    - disbursements of £25.20 including VAT.

The application and determination

2. By application dated 24 June 2019 the 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 tenant's attempts to secure a new lease under the provisions of Part I, Chapter II of the Act.

3. Standard directions were issued on 27 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.

Background

4. On 22 February 2019 the respondent as personal representative of the then deceased tenant served a Notice of Claim under S.42 of the Act on the applicant, Brickfield Properties Limited, seeking a new lease of 61a Oakwood Court, London W14 8JY. The date given in the notice by which the landlord was to serve a counter notice under S45 of the Act was 29 April 2019 but on 4 April Child and Child wrote to Brickfield to say their client had sold the property and was withdrawing the S42 notice. Brickfields then sought the costs they had incurred to date and for which they had been invoiced by their professional advisors namely their solicitor Wallace LLP in the sum of £750 plus VAT and Land Registry fees of £21 and the valuer engaged Robin Sharp £150 including VAT. These sums were disputed by the respondent hence the application to the tribunal.

The statutory framework

5. 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

6. 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.

7. 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 the Notice. Work was undertaken by two grades of fee earners; a partner charging £495 per hour in respect of matters relating to the claim (total 1.5 hours) and a paralegal at £200 per hour in respect of obtaining office copy entries of title from the Land Registry (total 0.2 hours). In addition Land Registry fees incurred of £21 are claimed. The total claimed is £925.20 inclusive of VAT.

8. The valuer invoiced the freeholder for £150 including VAT in relation to receiving instructions, setting up the job, reading the notice and lease and trying to arrange an inspection.

9. The respondent's statement of case, dated 15 July 2019, was prepared by Child and Child on his behalf. In it they say the hourly charge rate of £495 for the partner dealing with the claim notice is excessive and suggested this should not be more than £350, their own rate. They also said they had not seen Wallace's retainer letter and asked to see this as this would be the basis on which the hourly rate was sought to be justified. As to the time spent considering the claim of 0.6 hours they said this should be halved as it was a simple lease extension claim, albeit with the grant of probate included and an experienced solicitor would have not required the time claimed. Allowing for two standard letters they suggested a fee based on 30 minutes time at £350 per hour equalling £175 plus VAT and disbursements. As the valuer did not even inspect let alone produce a valuation nothing should be payable for valuation costs.

10. Wallace 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.

11. They also said they had been acting for the Freshwater group of companies of which Brickfield was part on leasehold enfranchisement since 1996 when terms of engagement were agreed and each year revised charge out rates are sent to Freshwater. Those for 2018 to 2019 were included in the hearing bundle confirming the continuation of the 1996 terms of engagement.

Decision

12. 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. There is no dispute that the S42 notice in this case was considered fully along with the grant of probate prior to its withdrawal.

13. Those rates are higher than the published guidelines which give £409 for a partner but have not been revised since 2010 and £495 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 unreasonable.

14. There are however aspects of the S.60 costs claim which concern the tribunal. It is not clear why three letters to the valuer who did not even inspect never mind produce a valuation were required and only the initial instruction is allowed. There is nothing in the bundle relating to the consideration of an alteration letter on 4 April and this is disallowed as is the letter of the same date asking for confirmation of the withdrawal when a perfectly clear letter to that effect had been sent to the landlord. The time taken considering the notice and office copy entries and the lease are not however considered excessive and the tribunal determines the recoverable legal costs in the sum of £700 to include VAT plus disbursements of£25.20 including VAT.

15. Nothing however is allowed for valuer's costs. He might have an arrangement with the client to be paid for abortive time but cancelled instructions are part and parcel of a valuer's life and are not usually charged for unless a valuation is produced. None was here and S60(1)(b) only allows for the tenant to be responsible for the cost of any valuation of the tenant's flat.

Name: Patrick M J Casey **Date:** 2 September 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).