



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

Case reference : **LON/00BG/0C9/2019/0080**

Property : **2 Osier Court, Osier Street, London
E1 4AP**

Applicant : **Natalie Vanderiet (“the tenant”)**

Representatives : **Sykes Anderson Perry Limited**

Respondent: : **Sandringham Land Limited (“the
landlord”)**

Representatives : **Wallace LLP, Solicitors**

Type of application : **A determination of reasonable
costs under Section 60(1) of the
Leasehold Reform, Housing and
Urban Development Act 1993**

Tribunal members : **Judge Angus Andrew
Marina Krisko BSc (Est Man)
FRICS**

**Date and venue of
determination** : **29 October 2019
10 Alfred Place, London WC1E 7LR**

Date of Decision : **29 October 2019**

DECISION

Decision

1. Pursuant to section 60(1) of the Leasehold Reform, Housing and Urban Development Act 1993 legal fees of £2,775 plus VAT are payable by the tenant to the landlord.

The application and hearing

2. By her application received on 2 April 2019 the tenant sought a determination under section 60(1) of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) of the landlord’s statutory costs incurred in her new lease claim.
3. The statutory costs were not agreed. Following the issue on 20 August 2019 of a decision on the new lease claim standard cost directions were issued on 3 September 2019. The directions provided for a determination of the statutory costs on the papers unless either party requested an oral hearing. No such request was received and we have made our determination on the basis of the agreed document bundles submitted by the parties.

Background

4. By a claim notice dated 31 October 2018 the tenant claimed the right to a new lease. The initial notice proposed a purchase price of £50,000.
5. The landlord’s counter notice is dated 17 December 2018. The counter notice admitted the tenants’ claim and proposed a purchase price of £114,849. A draft of the proposed new lease is annexed to the claim notice. Although the claim notice states that the draft is in the same form as the existing lease it is apparent that it contains a number of modifications.
6. The parties were unable to agree the price to be paid for the new lease, which was determined by a differently constituted tribunal following a hearing on 13 August 2019. The tribunal determined a price of £71,204 although we understand that the determination may be subject to appeal by the landlord.
7. In terms of the statutory costs this was a straightforward case. The only slightly unusual feature was the assignment of the benefit of the claim notice some 14 days after the claim notice was given.
8. The parties have agreed the valuation fees and disbursements and only the landlord’s legal fees are in dispute.

The landlord's legal fees

9. The landlord claims total legal fees of £4,267 plus VAT. The work was supervised by Samantha Bone who is a partner with Wallace LLP. She was assisted by another partner (Martin Otvos), an assistant solicitor (Shamin Kashem) and a paralegal (Jennifer Nyame). The hourly charging rates applied are £495 for a partner, £385 for an assistant solicitor and £210 for a paralegal.
10. The landlord's submissions state that the overall time claimed is 9.9 hours. However, we are unable to reconcile that time with the table at page 35, which records total time of 9.2 hours. That time also includes estimated future time of 1.8 hours to complete the new lease with the work being undertaken by an assistant solicitor. Doing the best that we can and using the table at page 35 it would appear that the landlord's fees can be summarised as follows:

| Fee earner | Time in hours | Hourly rate (£) | Cost (£) |
|-----------------------------|----------------------|------------------------|------------------|
| Partner Grade A | 4.0 | 495 | 1,980.00 |
| Assistant solicitor Grade A | 4.9 | 385 | 1,886.50 |
| Paralegal | 0.3 | 210 | 63.00 |
| Sub-totals | 9.2 | | £3,929.50 |

The tenant's proposed legal fees

11. The tenant takes issue with both the hourly rates applied and the time spent. Using her own solicitor's hourly rates as a comparator she suggests that the hourly rates claimed should be reduced by 15%.
12. The tenant suggests both that the time spent was excessive and that some of the time claimed cannot be recovered under the statutory provisions although we have difficulty in reconciling some of the proposed reductions with the landlord's fee schedule at pages 33 and 34.
13. The tenant concludes by suggesting that the landlord's fees should be in the region of £1,250-£1,500 plus VAT, which would be more in line with the Upper Tribunal's award in Sinclair Gardens Investments (Kensington) Ltd v Wisbey [2016] UKUT 203 (LC).

Statutory framework

14. The tenant's liability for payment of the Landlords' costs is governed by section 60(1) the relevant provisions of which are as follows:

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.

Reasons for our decision

15. Before turning to the legal fees, we make three preliminary points. The first relates to the time spent by the landlord's solicitors. In assessing a reasonable time to undertake the tasks identified in sections 60(1) we have regard to our considerable experience both as specialist practitioners and more recently as members of this expert tribunal: we can do no other.
16. The second relates to the basis of our assessment. We remind ourselves that we are not assessing fees on either the standard basis or the indemnity basis. The landlords' fees must nevertheless be reasonable and this has been described as a limited test of proportionality.
17. Thirdly this is not a detailed assessment under the Civil Procedure Rules and we have assessed the landlord's fees in the round.
18. We deal firstly with the claimed hourly rates. The hourly charging rates applied by Wallace LLP are higher than those charged by many other specialist firms undertaking enfranchisement work. It is however a truism to say that a landlord is entitled to choose its solicitors. Ms Bone, who supervised the work, is a recognised enfranchisement specialist and Wallace LLP has a reputation as a niche practice in that field. In that contest we are satisfied that a privately paying landlord would accept the claimed hourly rates and that consequently they are recoverable.
19. However, we have considerably more difficulty with both the level of fee earner deployed and the time said to have been spent in completing the tasks identified in section 60(1).

20. It would have been appropriate for Ms Bone to undertake most of the litigation work given the difference between the parties on the price to be paid for the new lease. However, the fees for that work are not recoverable. As far as the recoverable fees are concerned this was a straightforward transaction. It was the simple grant of a new lease that the landlord acknowledged should be in the same form as the existing lease. No more than two hours of Ms Bone's time should have been required with balance of the work being undertaken by an assistant solicitor and paralegal.
21. The total time of 9.2 hours claimed is in any event excessive. With respect, Wallace LLP cannot "have it both ways". It cannot rely on its undoubted reputation and expertise when justifying its hourly rates whilst at the same time spending an excessive amount of time in the completion of the transaction.
22. The new lease could have been completed by a simple surrender and re-grant but the landlord chose to tender a new draft lease with modifications that were apparently challenged and which clearly increased the time spent by both solicitors. It seems that 2.9 hours was spent in drafting and agreeing the lease including incidental emails. We agree with the tenant that that was excessive.
23. Equally we agree with the tenant that the 1.8 hours estimated for completion is excessive given that the new lease has been agreed and the purchase price determined.
24. Standing back, we consider that the allowable time should not have exceeded 8 and we allow legal fees of £2,775 in accordance with the following table: -

| Fee earner | Time in hours | Hourly rate (£) | Cost (£) |
|-----------------------------|----------------------|------------------------|------------------|
| Partner Grade A | 2.0 | 495 | 990.00 |
| Assistant solicitor Grade A | 3.0 | 385 | 1,155.00 |
| Paralegal | 3.0 | 210 | 630.00 |
| Sub-totals | 8.0 | | £2,775.00 |

**Name: Judge Angus
Andrew**

Date: 29 October 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).