



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

Case Reference : BIR/00CN/OC9/2019/0003

Property : 32 Nailers Close, Quinton, Birmingham, B32 3QR

Applicant : Paul Weaver

Representative : Tolhurst Fisher LLP

Respondent : Cavernlodge Limited

Representative : Messrs Stevensons Solicitors

Type of Application : Determination of the landlord's reasonable costs relating to a lease renewal under s.91(2)(d) of The Leasehold Reform Housing & Urban Development Act 1993

Tribunal Members : I.D. Humphries B.Sc.(Est.Man.) FRICS
C. Gell B.Sc. FRICS

Determination : By written representations

Date of Decision : 18 December 2019

DECISION

Introduction

- 1 This is an application by a tenant under section 91(2)(d) of The Leasehold Reform Housing & Urban Development Act 1993 ('the Act'), for the Tribunal to determine the landlord's legal costs and surveyor's fees to prepare a new lease under section 60(1).
- 2 The Respondent is the landlord. The property is known as No.32 Nailers Close, Quinton, Birmingham, B32 3QR, which was let by lease dated 25th April 1983 for 99 years from 29th September 1982.
- 3 On 16th November 2018 the tenant served notice to claim a new lease under section 42 of the Act. The premium was agreed by the parties but the landlord's costs remained outstanding and on 14th March 2019 the tenant applied for a Tribunal determination.
- 4 Directions were issued by a procedural judge on 17th July 2019. Neither party requested a Hearing. The Tribunal was convened on 17th September but the Tribunal wished to bring a similar case to the parties' attention decided in 2017, ref.no. BIR/41UF/OC9/2016/0041, which was sent to the parties with directions that any comments should be received by 4th October 2019. In the course of checking submissions, it was found that a Schedule of Objections to the landlord's claimed costs prepared by the tenant's solicitors had not been received by the Tribunal and the Tribunal requested a copy. The Schedule was received on 8th November and the Tribunal has now considered all the documents before it to arrive at this Decision.

The Law

- 5 The items for which costs can be claimed are listed in section 60 of the Act:

'(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.

...

(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 [now the First-tier Tribunal of the Property Chamber] incurs in connection with the proceedings.'

- 6 By section 91(2)(d) of the Act, any dispute as to the amount of such costs is to be determined by a leasehold valuation tribunal, a jurisdiction now transferred to the First-tier Tribunal Property Chamber.

- 7 It was emphasised in *Wisbey* (see below) at paragraph 30, that landlord's costs 'shall only be regarded as reasonable if and to the extent that costs in respect of such solicitor's services might reasonably be expected to have been incurred by the appellant if the circumstances had been such that the appellant was personally liable for all such costs'.

Costs In Issue

8	<u>Item</u>	<u>Landlord £</u>	<u>Tenant £</u>
	Legal Fees	1,749.00*	1,085.00**
	VAT	20%	
	Land Registry costs	12.00	
	Postage Special/Recorded	12.80	
	Valuation	595.00	
	VAT	20%	

* The landlord's claim for legal fees is itemised in the Respondent's Schedule of Legal Costs sent to the Tribunal.

** The tenant's objections to the claimed costs did not specify exactly how much was proposed by counter-offer but the Tribunal calculate the amount by multiplying the hourly fee offered by the tenant's solicitors by the number of hours they considered reasonable.

The items of claim are summarised below.

Legal Costs

9 Landlord's Submission

Messrs Stevens prepared a detailed schedule of costs broken down into two parts; part (A) detailing costs engaged in the claim and part (B), costs incurred or to be incurred in connection with the new lease. The claim was for 6.6 hours charged at £265 / hour plus VAT.

In support, Stevens referred to the following previous decisions of the First-tier Tribunal and Upper Tribunal:

<i>Sinclair Gardens Investments v Wisbey</i>	[2016] UKUT 0203 (LC)
<i>Metropolitan Property v Moss</i>	[2013] UKUT 0415 (LC)
<i>Re 68 Maud Road London</i>	[2013] UKUT (LC)
<i>Re 72a Bennerley Rd London</i>	RC/LON/00BJ/OC9/2017/0067
<i>Re 60 Long Oaks Court Swansea</i>	LVT/0015/07/18

10 Tenant's Submission

The tenant objected to some elements of the landlord's schedules identified by numbered lines in the landlord's claim for which they offered their own time estimates. This totalled 5.0 hours for which they offered £217 / hour, the CPR rate for a Grade A fee earner in National Grade 1, plus VAT.

11 Tribunal Determination

For ease of reference, the Tribunal determines each the line entry individually in the landlord's Schedule. The costs are determined in units of 6 min in accordance with standard practice based on 10 units / hour.

12 (A) – Notice of Claim Engaged

Point	Description	Tribunal Determination (Units)
1	Attendances on client obtaining instructions and advising.	5 Not contested by tenant.
2	Considering the Lease and Office Copy Entries and other relevant documents.	3 Not contested by tenant.
3	Notices and correspondence regarding deposit.	4 Not contested by tenant.
4	Considering validity of Tenant's Notice.	3 Not contested by tenant.
5	Drafting Counter Notice.	5 Not contested by tenant.
6	Considering valuation (1 unit) discussing same with client (1 unit) and Valuer (2 units)	2 This is a valid item of claim. The landlord claimed 4 units, the tenant offered 2. The Tribunal allows 1 unit for the solicitor to consider the valuation. The Tribunal also allows 1 unit to discuss the valuation with the Valuer. The Tribunal disallows the claim for the landlord's solicitor to discuss the valuation with the client as this is not a matter requiring approval.
7	Letters out to client seeking instructions/updating as to progress, letters out to Tenant's representatives.	5 Not contested by the tenant.
8	Checking file and reporting to client.	4 Not contested by the tenant.
A	Total	31 units

13 (B) – Costs incurred or to be incurred in granting the new lease.

Point	Description	Tribunal Determination (Units)
1	Considering terms of lease for inclusion in Counter-Notice.	2 Not contested by tenant.

2	Drafting new lease incorporating terms of Counter-Notice.	5 Not contested by tenant.
3	Negotiating lease with Applicant's Solicitors.	6 The landlord claimed 9 units as this particular case had taken exceptional time, over and above that normally expected for cases of this type. During the course of discussion the tenant's solicitor had challenged 25 clauses in the contract and proposed 5 riders. By contrast, the tenant's solicitor had offered 4 units. The Tribunal has seen the annotated draft and agrees that more changes were proposed than usual but that a reasonable time input for negotiations would have been 6 units.
4	Prepare engrossments and check - estimated.	2 The landlord claimed 2, the tenant offered none. The Tribunal finds that it would have been reasonable for the landlord's solicitor to have estimated the time taken to prepare engrossments at 2 units.
5	Attend to completion – estimated.	3 The landlord claimed 5. The tenant offered 3. The Tribunal finds the landlord's claim to be excessive.
6	5 letters out – estimated.	5 Not contested by tenant.
7	Checking file and reporting to client - estimated	0 The landlord claimed 5. The tenant rejected this entirely as (1) it was an estimated charge (2) a solicitor of Mr Stevenson's experience over 36 years would not have required to take this long and (3) it was in any case duplication of the claim in line 6 above, covered by a payment for 'letters out'. The Tribunal agrees with the tenant's solicitor that this is duplication of both line (4) that had already allowed for checking engrossments and line (6), the claim for 5 letters out which should have included any correspondence with the client.
B	Total	23 units

14 The Tribunal therefore find the total chargeable time to be 54 units which is the same as determined by the Upper Tribunal in *Wisbey*.

15 Mr Stevenson's claimed hourly rate of £265 is in issue. The tenant's solicitors submit that the rate is inapplicable for the location or experience of the landlord's solicitors and further that the CPR guide for Grade A fee earners in National Grade 1 is £217 per hour plus VAT.

- 16 The Tribunal accepts that Mr Stevenson is experienced in the field and that £265 / hour would be a fair rate for his time as Partner, as found in the previous decision of this Tribunal in 2017 (*46 Melrose Drive*), which involved the same landlord and solicitor.

However, in *Melrose Drive*, a large part of the work had been carried out by a Licensed Conveyancer, Mrs Haynes, at a lower rate and the Tribunal would not have expected a Partner as experienced as Mr Stevenson to have been involved in every aspect of the case.

In submissions, Mr Stevenson said that Mrs Haynes had been absent on maternity leave just before the case but that this was irrelevant as the client was entitled to expect its normal Solicitor to be engaged in the transaction.

The Tribunal rejects this argument as the same client, Cavernlodge, had been prepared to accept his Conveyancer carrying out most of the work in *Melrose Drive*, a similar case.

The Tribunal finds it would have been reasonable for a Conveyancer to have undertaken most of the work subject to some checking and client contact by the Partner. This is claimed to be specialised work but is the type of transaction carried out by many firms on a routine basis and not so specialised that it would require a Partner with 36 years' experience to undertake all aspects of the case. This is especially so where the landlord's firm had previously charged most of the work at Conveyancer's rates in *Melrose Drive* which was acceptable to the client.

- 17 It is noted that while the landlord's solicitors say their clients would have paid these costs themselves had they not been payable by the tenant, there is no evidence that any costs had in fact been paid by Cavernlodge in this case and no evidence that they would have paid them had they been personally liable.
- 18 The Tribunal finds that of the 54 units, it would have been reasonable for a Conveyancer to have been engaged for 50 units and a Partner for 4.
- 19 Accordingly, the Tribunal finds the reasonable legal fee to be:

Partner	4 units = 0.4 hr @ £265/hour	£ 106.00
Assistant	50 units = 5 hrs @ £217/hour	<u>£ 1,085.00</u>
		£ 1,191.00

Surveyor's Fee

- 20 The landlord had instructed Bureau Property Consultants to prepare the valuation for a fee of £595 plus VAT. This was not contested by the tenant and the Tribunal finds it fair and reasonable.

VAT

- 21 The landlord advises that it is not registered for VAT and, consequently, unable to re-claim VAT from HMRC. Accordingly, the Tribunal finds VAT payable at the standard rate.

Disbursements

- 22 The landlord claimed disbursements of £12.00 for Land Registry entries and £12.80 for 'Special/Signed for' Deliveries which the Tribunal finds fair and reasonable.

Summary

23 The Tribunal therefore determines the following costs to be fair and reasonable pursuant to section 91(2)(d) of the Act:

Legal fee	£ 1,191.00
VAT @ 20%	£ 238.20
Valuer's fee	£ 595.00
VAT @ 20%	£ 119.00
Land Registry entries	£ 12.00
Special / Signed For deliveries	£ 12.80

Total	£ 2,168.00

(Two Thousand One Hundred and Sixty Eight Pounds)

I.D. Humphries B.Sc.(Est.Man.) FRICS
Chairman

Date 18 December 2019

Application to the Upper Tribunal/Appeal Provisions

A person wishing to appeal this decision to the Upper Tribunal (Property Chamber) must seek permission to do so by making a written application to the First-tier Tribunal at the Regional Office which has been dealing with the case which application must:

- a. be received by the said office within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
- b. identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

If the application is not received within the 28-day limit, it must include a request for extension of time and the reasons for it not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal.