



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

Case Reference : **MAN/00EJ/OC9/2019/0002**

Property : **67 Prebends Field, Durham DH1 1HJ**

Applicant : **Bushcharm Limited**

Respondent : **Derryland Limited**

Type of Application : **Section 60(1) Leasehold Reform, Housing and Urban Development Act 1993 (the “Act”) – for determination regarding reasonable legal costs**

Tribunal Members : **Judge WL Brown
Mr ID Jefferson TD BA BSc FRICS**

Date of Determination : **26 November 2019**

Date of Decision : **6 December 2019**

DECISION

DECISION The Tribunal determines that the total reasonable costs recoverable by the Applicant from the Respondent pursuant to Section 60(1) of the Act, including VAT and disbursements is £1,287.24.

REASONS

The Application

1. The Applicant submitted an application to the Tribunal ('the Application') dated 13 August 2019 seeking the Tribunal's determination pursuant to Section 60(1) of the Act of the reasonable legal costs to be charged by the Applicant of the Respondent.
2. These proceedings follow a decision of the Tribunal dated 2 July 2018 principally as to the premium payable for a statutory lease extension regarding the Property.
3. At issue first was whether costs were currently payable at all. It was not in dispute that the renewal lease had not yet completed. The Applicant argued that the Respondent's application for the renewal lease was deemed withdrawn on 7 December 2018 (see below). It was at issue whether a renewal draft lease capable of completion had been produced by the Applicant reflecting the Tribunal's Decision of 2 July 2018. These matters are a Preliminary Issue for the Tribunal.
4. Following the Tribunal's Directions dated 20 August 2019, a Statement of Case dated 3 September 2019 was submitted on behalf of the Applicant and a Statement of Case dated 17 September 2017 in response was submitted by the Respondent. For the Applicant a supplementary statement was presented dated 30 September 2019. Although there was no direction permitting a supplementary statement the Tribunal granted permission for its admission. This was because the Respondent first raised in its statement matters that have led to the need for determination of the Preliminary Issue and hence it was in the interests of justice that the Tribunal had the Applicant's representations on those points.
5. The Applicant's Statements of Case came from Mr Glenn Nigel Stevenson of Stevensons Solicitors, who had conduct of the Respondent Landlord's response to the Applicant Tenant's notice of claim concerning the grant of a new lease. The Respondent's Statement of Case was submitted by Mr Andrew Craig, a Director of the Respondent.

The Law

6. Section 60 of the Act states:

“(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.

(3) Where by virtue of any provision of this Chapter the tenant's Notice ceases to have effect or is deemed to have been withdrawn at any time then (subject to subsection 4) the tenant's liability under this section of costs incurred by any person shall be a liability for any costs incurred by him up to that time.

.....

(5) A tenant shall not be liable under this section for any costs which a party to any proceedings under this Chapter before a tribunal incurs in connection with the proceedings.

.....

Also relevant are:

Section 48, which states:

Applications where terms in dispute or failure to enter into new lease.

(1) Where the landlord has given the tenant—

- (a) a counter-notice under section 45 which complies with the requirement set out in subsection (2)(a) of that section, or*

- (b) *a further counter-notice required by or by virtue of section 46(4) or section 47(4) or (5), but any of the terms of acquisition remain in dispute at the end of the period of two months beginning with the date when the counter-notice or further counter-notice was so given, a leasehold valuation tribunal may, on the application of either the tenant or the landlord, determine the matters in dispute.*
- (2) *Any application under subsection (1) must be made not later than the end of the period of six months beginning with the date on which the counter-notice or further counter-notice was given to the tenant.*
- (3) *Where—*
 - (a) *the landlord has given the tenant such a counter-notice or further counter-notice as is mentioned in subsection (1)(a) or (b), and*
 - (b) *all the terms of acquisition have been either agreed between those persons or determined by a leasehold valuation tribunal under subsection (1),*

but a new lease has not been entered into in pursuance of the tenant's notice by the end of the appropriate period specified in subsection (6), the court may, on the application of either the tenant or the landlord, make such order as it thinks fit with respect to the performance or discharge of any obligations arising out of that notice.
- (4) *Any such order may provide for the tenant's notice to be deemed to have been withdrawn at the end of the appropriate period specified in subsection (6).*
- (5) *Any application for an order under subsection (3) must be made not later than the end of the period of two months beginning immediately after the end of the appropriate period specified in subsection (6).*
- (6) *For the purposes of this section the appropriate period is—*
 - (a) *where all of the terms of acquisition have been agreed between the tenant and the landlord, the period of two months beginning with the date when those terms were finally so agreed; or*
 - (b) *where all or any of those terms have been determined by a tribunal under subsection (1)—*
 - (i) *the period of two months beginning with the date when the decision of the tribunal under subsection (1) becomes final, or*

(ii) *such other period as may have been fixed by the tribunal when making its determination.*

(7) *In this Chapter “the terms of acquisition”, in relation to a claim by a tenant under this Chapter, means the terms on which the tenant is to acquire a new lease of his flat, whether they relate to the terms to be contained in the lease or to the premium or any other amount payable by virtue of Schedule 13 in connection with the grant of the lease, or otherwise.”*

And

Section 53 which states:

“(1) *Where—*

(a) *in a case to which subsection (1) of section 48 applies, no application under that subsection is made within the period specified in subsection (2) of that section, or*

(b) *in a case to which subsection (3) of that section applies, no application for an order under that subsection is made within the period specified in subsection (5) of that section,*

the tenant’s notice shall be deemed to have been withdrawn at the end of the period referred to in paragraph (a) or (b) above (as the case may be).”

7. The Tribunal is able to determine the reasonable costs payable by the Respondent for work undertaken for the Applicant in connection with the granting of a new lease and any investigation relating to it, but excluding any costs concerning the proceedings before this Tribunal.
8. For clarity, the Tribunal here will summarise the parties’ positions and provide its determination, with reasons, on the Preliminary Issue. It then will summarise the parties’ cases on the quantification of costs and its determination.

The Preliminary Issue

9. The Applicant’s position was that its costs became payable by the Respondent because the application for a new Lease by the Applicant was deemed withdrawn on 7 December 2018. This was the consequence of Section 53(1)b of the Act because the Applicant failed to make any Application to the Court under Section 48(3) of the Act within the appropriate time.
10. The Respondent stated that it had informed the Applicant that the lease extension can be completed immediately that a lease is provided in accordance with the terms dictated by the Tribunal. As the Applicant had refused to provide a lease in accordance with the Tribunal’s decision the

Respondent contended that the Applicant is not at this time entitled to its costs as per s.60 of the Act. The matter cannot be deemed to be withdrawn on 7 December 2018 as the Applicant has never produced a lease capable of completion. The Respondent requested that the Tribunal instruct the Applicant to produce a compliant lease within 28 days and that the Respondent completes the extension within 28 days of receipt of a lease.

Decision on the Preliminary Issue

11. Where parties to a lease extension are unable to agree certain terms for the extension an application may be made to the Tribunal for determination as to the terms – s.48(1). The time limit for an application under subsection (1) on these facts is six months from the Tribunal’s determination – ss.48(3) and (6) – and there is deemed withdrawal of the originating Notice (for the lease extension) – s.53(1), effectively ending the right to apply further to the Tribunal as to certain terms, which on the facts was 7 December 2018. No application was submitted to the Tribunal following its decision of 2 July 2018 within the 6 month period (allowing for its issue to the parties).
12. The Respondent argued that the draft new lease produced to it following the Tribunal’s decision of 2 July 2018 did not comply with that decision, therefore the time limit referred to above did not apply.
13. While the Respondent asked the Tribunal in its statement of case to order the Applicant to provide a draft lease compliant with the decision of 2 July 2018, it identified no power of the Tribunal to so order and nor is the Tribunal aware that it has such a power. It is clear, however, that the Tribunal’s jurisdiction to make decisions concerning terms of the lease extension comes from an application under s.48 of the Act. As no such new application was made within the appropriate 6 month time limit the Tribunal found that the s.53(1) deemed withdrawal of the Respondent’s originating Notice was effective as at 7 December 2018. Therefore the Tribunal found for the Applicant on the Preliminary Issue, meaning its s.60(1) costs are now payable by the Respondent in accordance with the statutory provision.

The Charges

14. The Tribunal received a breakdown of the charges incurred by the Applicant incidental to investigating the Respondent tenant’s right to acquire a new lease, the valuation of that interest and the relevant costs in connection with the grant of the lease. The charges claimed in this case are legal costs set out in a schedule from the Applicant’s Solicitors dated 3 September 2019 of £1,272 plus VAT, Land Registry charges of £12 and postage of £24.00 (including VAT) and the Valuer’s Fees of £575.00 plus VAT. As to the legal costs in connection with the Notice of Claim (section (A) of the schedule), 33 six-minute units of time were claimed. As to the legal costs incurred or estimated to be incurred in connection with the grant of the lease (section (B) of the schedule) 28 six-minute units of time were claimed.

15. The Applicant is a property company which is not registered for VAT. Consequently the VAT payable on the costs incurred by it is recoverable from the Respondent.
16. The Applicant has been charged at the rate of £265 per hour plus VAT for Mr Stevenson, an enfranchisement specialist Solicitor, who undertook all of the work and which sum it was submitted was a reasonable charging rate.
17. The Applicant represented that costs are not unreasonable because the Tribunal or the tenant subjectively consider them to be unreasonable. The test is whether the costs would reasonably have been incurred by the Applicant landlord if paying the costs itself.
18. The Respondent stated that the work does not require the attention of a Solicitor, is mainly of a repetitive nature and that a large percentage could be undertaken by a Licensed Conveyancer. A Solicitor should only be required in a supervisory role. Relying on previous First-tier Tribunal decisions it was asserted that 93% of the minutes allowed by the Tribunal in the case should be charged at the lower rate of £175 per hour and 7% at a higher rate of £250 per hour.
19. The Respondent argued against recovery of costs incurred for the service of a counter notice. It stated that a lessor is only entitled to recover the costs in obtaining advice on the lessee's entitlement to a new lease and the legal work involved in granting a new lease.

Decision on the Costs

20. The costs recoverable are limited to "reasonable costs" under Section 60(1). Reasonable is defined in Section 60(2). Both parties referred the Tribunal to caselaw, as set out in their Statements of Case. Having regard to those cases, the Tribunal identified that the "Wisbey" decision is most relevant and is binding upon the Tribunal. It is a decision of the Upper Tribunal - [2016] UKUT 0203 (LC) – and is authority that the lessor in a lease extension matter, as here, may choose whichever lawyer to instruct; they are not bound to instruct a person of a particular grade of expertise or qualification. Therefore the Tribunal found that the Applicant was not required to find the cheapest solicitors but only to give such instructions as it would ordinarily give if it was going to be bearing the costs of paying for the service itself. The Tribunal found that it was reasonable for Mr Stevenson to have undertaken all of the work in this matter, because Stevensons appears to be a reasonably small firm and the possible alternative lawyer at the practice, an experienced Licensed Conveyancer, was absent at the relevant time. However, there must be a proportionate hourly rate for each stage of the work involved as logically flowing from a reasonable private fee-paying client's instruction. The Tribunal records that the location of the Property in this matter has no bearing on the quality of work or amount of work undertaken by the lawyer for the lessor for work done under the Act.

21. The Tribunal was presented with indications of guideline hourly rates – from £265 to £175. The Tribunal also had the benefit of information within the papers and from its own knowledge, as to the guideline charging rates approved for the County Court. Stevensons Solicitors are located in a National area 2 and the band for Solicitors (and legal executives) with over 8 years’ experience, applicable for Mr Stevenson (band A), is an approved hourly rate of £201. Having regard to that information and using its own expertise to determine reasonableness the Tribunal determined that for work of the type involved the hourly rate in this case should be £201, exclusive of VAT.
22. The next issue for the Tribunal was the extent of the work. The Tribunal considered that the lease in question was of a standard form, in use by a retained client. While the acting representative must check it at various stages of the process, as outlined in the Applicant’s statements of case, a reasonable and experienced lawyer of Mr Stevenson’s expertise would be able to skim read it accurately. The Tribunal found that in this case the amount of time expended – 3 hours 18 minutes – was not reasonable. The Tribunal’s assessment of a reasonable amount of time involved for the work identified in section (A) of the Applicant’s schedule is 2 hours, meaning costs for that element of £402.
23. As to the work identified in section (B) of the Applicant’s schedule the Tribunal found that 1.5 hours was excessive time engaged. This was firstly because the lease was never completed, but also because the content of the draft was not agreed by the Respondent, suggesting some apparent discrepancy between the original lease and the terms of the renewal lease as determined by the Tribunal in its decision of 2 July 2019 (albeit noting that no subsequent application had been made to the Tribunal for determination of any remaining points of dispute). Therefore the Tribunal determined that the time claimed for drafting of the new lease (item 2 in section (B)) is not recoverable. Further, it cannot be ignored that the particular lease is of a standard type and work on it to reflect the Tribunal’s decision on narrow terms would take only a modest amount of lawyer time in any event. Therefore with regard to remaining section (B) time, the Tribunal allowed as reasonable and recoverable item 1 at the 2 units claimed, but reduced the time for item 3 to 1 unit and for item 4 to 3 units, making a total for section (B) of 7 units (42 minutes), meaning costs of £140.70.
24. Taking account of these assessments the legal costs determined as reasonable and recoverable are £542.70. It is clear that that VAT is payable on the cost of services and this must be added as recoverable in the sum of £108.54.
25. Regarding the valuer’s fee of £575.00 no breakdown was provided of the work involved. The Applicant suggested that the sum was “....modest and reasonable” The Respondent suggested a fee of £375.00 was appropriate, based on his own estimate as a Fellow of the RICS, comprising

1.5 hours' work at an hourly rate of £225. It was indicated that the Property is in an area where comparable valuation evidence is readily available. The Tribunal understood that the work of the Applicant's valuer would include a review of the lease and arranging and undertaking attendance at the Property, then completing the statutory valuation exercise. Without reference to a specific hourly rate, it was the Tribunal's determination that the work could be undertaken at a fixed fee and that the reasonable cost would be £500, plus VAT.

26. The disbursements were not in dispute.
27. Therefore the Tribunal determined that the total reasonable costs recoverable by the Applicant from the Respondent pursuant to Section 60(1) of the Act, including VAT and disbursements is £1,287.24.

WL Brown
Tribunal Judge
6 December 2019