



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

Case Reference : **LON/00AC/OC9/2020/0006**

Property : **63 Addison Way London NW11 6AR**

Applicant : **Metropolitan Property Realizations Ltd**

Representative : **Wallace LLP**

Respondent : **Aristotelis Papadopoulous**

Representative : **Karam, Missick & Traube LLP**

Type of Application : **Determination of the landlord's recoverable costs on an application under section 60(1) of the Leasehold Reform, Housing and Urban Development Act 1993**

Tribunal Member : **Evelyn Flint FRICS**

Date of Decision : **17 March 2020**

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DECISION

Decisions of the tribunal

The tribunal determines that pursuant to section 60(1) the total sum of ££5,480.50 plus VAT is payable in respect of legal fees and £106.50 disbursements.

Introduction and background

1. This is an application under section 91(2)(d) of the Leasehold, Reform, Housing and Urban Development Act 1993 (the “Act”) to determine the amount of the landlord’s recoverable costs in connection with a claim under section 42 of the Act to exercise the tenant’s right to extend the lease of 63 Addison Way London NW11 6AR (the “Property”).
2. On 1 August 2017 the Respondent, served a notice of claim on the landlord, Metropolitan Realizations Limited (Metropolitan) under section 42 of the Act.
3. Wallace LLP, on behalf of the Applicant, served a counter notice on 30 October 2017 admitting the Respondent’s right to acquire a new lease. On the same date Wallace advised the respondent that the landlord of the garden was the London Borough of Barnet and that the Initial Notice was invalid.
4. A second Initial Notice was served on both Metropolitan and the Mayor and Burgesses of the London Borough of Barnet on 14 November 2017.
5. The Respondent’s solicitors withdrew the first initial notice on or around 14 March 2018.
6. A counter notice on behalf of both Metropolitan and the Mayor and Burgesses of the London Borough of Barnet was served on 29 May 2018.
7. The parties agreed the terms of acquisition on December 7 2019. Completion of the new lease did not take place on or before 9 May 2019, within the required timeframe and therefore the respondent’s notice of Claim was deemed withdrawn pursuant to section 53 of the 1993 Act.
8. On 14 January 2020 the applicant applied for a Determination of Costs payable pursuant to Sections 60 and 91 of the Leasehold Reform Housing and Urban Development Act 1993.

9. The Applicant's solicitor has claimed in respect of the first Notice:
- legal costs of £2,182.50 plus VAT and Land Registry fees of £51 and courier fees of £14 + VAT and
- in respect of the second Notice: legal costs of £4,230.50 + VAT, land registry fees of £78 and courier fees of £19.75 + VAT.
10. The valuation fees have been agreed.
11. The Tribunal issued Directions on 17 January 2020 requiring the landlord to send the following documents to the tenant:
- 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.*
12. A bundle of over 230 pages was provided in accordance with the Directions. On 28 February the Respondent's solicitors sent further submissions on costs stating that "we were served late with the landlord's reply. We received communication but it was defective in the documentation." A request for further Directions to deal with these submissions and the landlord's reply were sought.
13. The applicant's solicitors objected to the additional submissions as there had been no provision for them in the original Directions. However, they replied to the points raised in the late submissions in the event that the Tribunal reviewed the respondent's late submissions.
14. On 5 March the Respondent's solicitors stated that the submissions of 28 February did not raise new issues but sought to deal with additional information which had not been previously supplied. They reiterated that the Applicants were seeking to rely on invoices said to be interim whereas the evidence suggests they were final invoices and service of a final invoice post the Tribunal decision would result in significantly increased overall sums sought.
15. The Tribunal has reviewed the late submissions and the Applicants statement in reply and admits both. To do otherwise would not comply with the overriding objective set out in Rule 3 of The

The costs in issue

16. The landlord has provided a schedule of the costs it says it has properly incurred under section 60(1).
17. Both parties have submitted statements of case as to the costs recoverable under section 60.
18. The Respondent accepted all the elements of the costs in the Applicant's schedule save for the following points:
 - The hourly rates, (as the time spent and items of time were not challenged);
 - Breach of indemnity principle;
 - Costs should be limited to the Applicant's interim invoices for each claim.

The Applicant's evidence

19. The legal fees claimed under section 60(1) are based on the following charge out rates:
 - Grade A: £475 per hour rising to £495 in August 2018.
 - Assistant solicitor: £365 per hour
 - Paralegal: £200 per hour
 - Grade A in Applicant's legal department: £385 per hour.
20. On behalf of the Applicant it was submitted that the Applicant's solicitors have acted for the Applicant for many years and are experienced in enfranchisement matters. It is appropriate for a fee earner with the relevant experience to have conduct of the case. The hourly rates are not unreasonable for Solicitors in Central London. Reference was made to a number of decisions including Daejan Investments Limited v Parkside Limited where it was held that the landlord was not required find the cheapest solicitors but simply to give instructions as it would ordinarily do so.
21. The use of multiple fee earners was a reasonable approach, utilising the varying skills dependant on the task. A schedule itemising the time spent by each fee earner was provided.
22. The Applicant submitted that there had been no breach of the indemnity principle. An interim invoice had been issued following service of a Counter Notice on account of the actual costs incurred at that time and the additional charges for the legal fees and Land Registry were not incurred at that time.

23. In reply to the Respondent's further submissions made in a letter dated 28 February the Applicant submitted that this was not a straightforward case and additional costs were incurred because the Respondent's original solicitor did not make a valid section 42 claim. Moreover, the matter was complicated by the split reversion which required investigating the claim, advising the Landlord and liaising with the other Landlord in respect of their reversionary interest and claim. Subsequently the other Reversioner provided documentation in respect of an adverse possession claim made in respect of land that was formerly part of these premises but was replaced once the adverse possession claim had proceeded.
24. The original solicitors acting for the Respondent were disinstructed. The current solicitors were only engaged after the first Initial Notice was deemed withdrawn.

The Respondent's evidence

25. The freehold is subject to a headlease held by Metropolitan for a term of 1992 years from 25 March 1969. Metropolitan is the competent landlord for the purposes of a new lease application.
26. The Respondent submitted that the schedule presented by the Applicant appeared to include errors and inconsistencies and to be in direct breach of the indemnity principle. The hourly rates and grade of fee earners was excessive and unreasonable for matters of this nature and proposed a fee of £250 per hour.
27. It was submitted that as the Applicant is not entitled to recover the costs of the determination the total amount sought would have been crystallised by 31 October 2017 in respect of the First Notice and by 3 May 2019 in respect of the Second Notice. There can be no reasonable excuse for not submitting the total sums claimed in an accurate format in the Application submitted on 14 January 2020.
28. The Respondent proposed a "blended" hourly rate of £250 on the basis of inappropriate lack of delegation. Reference was made to a number of Tribunal decisions and the level of fees allowed in each case.

First Notice – 1 August 2017

29. On 30 October the Applicant served a Counter Notice accepting the entitlement to the New Lease for the property under Title Number NGL.156242. The Applicant advised that the Notice of Claim was invalid because the garden was held under a different title owned by the local authority. The total fees claimed in the breakdown up to this date is £4,140. It was submitted that this was excessive for the

work undertaken simply identified an error regarding the appropriate landlord.

30. An invoice dated 31 October 2017 which was rendered in the sum of £1,518.00, was said to cover all work for the period 29 August 2017 to 30 October 2017. However, a breakdown of the hours for the same period totalled £3,140.00.
31. The Land Registry fees should be limited to £18 in accordance with the invoice provided. The documents relating to the courier fee of £14 + VAT should not be allowed because it is unclear if this related to the current action.

Second Notice – 14 November 2017

32. The second Notice was served on 14 November 2017. On 30 May 2018 an invoice was rendered in the sum of £3,364.80 made up of legal fees of £2,750 + VAT, Land Registry Fees of £48 and courier fees of £14 + VAT. The breakdown for the period 21 March 2018 to 9 May 2019 is stated to be legal fees £4,230.50, Land Registry Fees of £78 and courier fees of £19.75 + VAT.
33. The Respondent offered legal fees of £2,549.20 + VAT based on an average rate of £250 per hour and £48 Land Registry Fees as per the invoice provided. The courier fees were challenged on the basis that they were an overhead and it was unclear if the bill related to this Application.
34. The Respondent submitted that the maximum recoverable was the amounts shown on the invoice of 30 May 2018 because the actual time spent would be known by the date of the invoice.

Determination

35. The decisions of various tribunals are made on the facts of those cases and the evidence presented to the tribunal; they are useful guides but are not binding. It is clear that the landlord is entitled to use the solicitor of his own choosing and it is not unreasonable to use a firm with acknowledged expertise and experience in this complex field of law to ensure such claims are fully compliant with the Act. The fact that it is a central London firm with commensurate hourly rates is immaterial.
36. Having read all the representations made by both parties the tribunal determines that it was appropriate for a Grade A fee earner to have conducted the case assisted as appropriate by other, less experienced members of the team. The charge out rates are not out

of line with other central London firms with similar expertise and therefore are not unreasonable.

37. As regards the First Notice the partner's time included instructing the valuer and considering the valuation report despite it being clear that the Notice was invalid. The Tribunal is concerned that one hour of the assistant solicitor's fees reviewing various documents and preparing a draft lease (2.2 hours) has been charged at Partner rate which in itself is an overcharge of £130, the work itself was premature in the circumstances of this Application.
38. The total legal fees allowed are as per the invoice dated 31 October 2017: £1,250 + VAT plus disbursements of £18 Land Registry Fees and £14 + VAT courier fees. No breakdown of any work undertaken post the invoice has been provided nor any explanation provided as to why the invoiced amount was insufficient.
39. As regards the second Notice it is accepted that there was additional time incurred in liaising with the other Landlord. The invoice dated 30 May 2018 for legal fees of £2,750 + VAT plus Land Registry fees of £48 and Courier fees of £14+ VAT was rendered after service of the Counter Notice.
40. The breakdown for the period 21 March 2018 to 3 May 2019 shows legal fees of £4,230.50, Land Registry fees of £78 and Courier fees of £21.54. It is not apparent what the additional Land Registry fees relate to and the courier schedule indicates a journey on 29 May 2018 at a cost of £19.75.
41. Wallace submitted that it is their standard practice to issue interim invoices after service of the Counter Notice and agreement of the terms of acquisition. The final invoice being issued following completion of the new lease and/or determination of the costs payable by the Tribunal. The schedule provided included all work undertaken up to 3 May 2019, the Notice of Claim being deemed withdrawn on 9 May 2019.
42. The Tribunal determines that the invoice issued on 30 May 2018 was an interim invoice and that the total fees shown on the breakdown up to 3 May 2019 are payable under the Act.
43. The fees payable are: legal fees £5,480.50 + VAT, Land Registry Fees of £66 and Courier fees of £33.75 + VAT.

Name: Evelyn Flint

Date: 17 March 2020

Costs recoverable under section 60 of the Act

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.

(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 for costs incurred by any person shall be a liability for costs incurred by him down to that time.

(4) A tenant shall not be liable for any costs under this section if the tenant's notice ceases to have effect by virtue of section 47(1) or 55(2).

(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 incurs in connection with the proceedings.

(6) In this section "relevant person", in relation to a claim by a tenant under this Chapter, means the landlord for the purposes of this Chapter, any other landlord (as defined by section 40(4)) or any third party to the tenant's lease.

RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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.