



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

Case Reference : **BG/LON/00AY/OC9/2020/0030**

Property : **Flat 9 Pasfield Court 6A Cleaver
Street Kennington London SE11
4DY**

Applicant : **Paul Anthony Evans and Katherine
Elizabeth Dufton**

Representative : **Hockfield & Co; Solicitors**

Respondent : **Adil Hanif and Hasseb Hanif**

Representative : **Ronald Fletcher Baker LLP;
Solicitors**

Type of Application : **Assessment of costs under section
60(1) of the Leasehold Reform
Housing and Urban Development
Act 1993 and fees under section 56.**

Tribunal members : **Judge Professor Robert M. Abbey**

Date of Decision : **6 August 2020**

DECISION

The background

1. The Applicant is the long leaseholder of **Flat 9 Pasfield Court 6A Cleaver Street Kennington London SE11 4DY**.
2. The Respondent is the freeholder of the building and the competent landlord for the purposes of the Leasehold Reform, Housing and Urban Development Act 1992 (the “1993 Act”).
3. The leaseholder served a section 42 notice seeking to exercise their right to a lease extension under S48 of the 1993 Act and a Counter notice was served which admitted the right but did not agree the proposed premium. (Eventually a premium was settled at £38,300).

The application

4. By an application dated 23rd February 2020 the leaseholder has now applied for an assessment of the landlord’s costs under section 60(1) of the 1993 Act and surveyor’s fees under section 56.
5. Directions were issued dated 2nd March 2020. Further to those directions a bundle was lodged containing the Respondent’s costs schedule and submissions made on behalf of both parties.
6. Neither party having requested an oral hearing, the application was considered by way of a paper determination.

The Legal costs

7. The costs in issue are limited to legal costs in the sum of £3222 (inclusive of VAT) further legal costs of £1080 (inclusive of VAT) and valuer’s fees of £1020 (Vat inclusive), and total disbursements being land registry fees of £18 together forming the total amount claimed of £5340.

The Respondent’s case

8. The Tribunal was provided with an itemised schedule of the legal fees. This did identify the date of each activity and it did give a description of the activity, the type of fee earner involved, (by reason of the level of the hourly rate) and the time spent and resultant cost. The schedule listed three fee rates of £350 (Grade A), £270 (Grade B) and £250 per hour for a conveyancer.

9. The costs schedule breaks down into various sections but essentially there are three heads of claim under each subsection of section 60 of the Act, being S.60(1) (a) through to (c). Each total item of claim for each subsection will be considered subsequently in this determination.
10. The respondent says that the rates charged are reasonable and properly payable by the applicant. The respondent denies that the charges are excessive or unreasonable or not within the ambit of section 60. The respondent says the premium was agreed at £38,300 and therefore this was a “sizeable” premium. It was therefore proportionate for the respondent to incur the costs and disbursements listed above.
11. It is also said that in this case there was some disagreements between the parties regarding the validity of a notice under section 42 and the possibility of the case being affect as a consequence. The respondent believes that these issues have contributed to the level of costs being claimed in this Tribunal case.
12. Disbursements in the sum of £18 in respect of land registry fees were challenged but the Tribunal is of the view that they were appropriate and necessary given the nature of the transaction and are therefore approved in that amount.
13. With regard to the surveyor/valuer’s fees, the Applicant has confirmed in their statement of case that these are not accepted.

The Applicant’s case

14. The Applicant says that the legal charges are in part excessive and in the Applicant’s application to the tribunal the Applicant would only agree fees of £1118 plus VAT.
15. The Applicant disputes the legal costs on the basis that this was a routine lease extension with no unexpected complications or protracted negotiations. The premium agreed was £38,300. The Applicant also says that there would be limited title investigation and the Tribunal understood this to mean that the lease renewal was by way of precedent documentation that would be straight forward to prepare and or approve.

The tribunal’s decision

16. Dealing firstly with the surveyor’s fees, these fees were charged by Drakesfield Management Limited who describe themselves as residential and commercial property consultants. They operate out of Merton High Street. The charge was £850 and vat of £170 for “*professional fee for carrying out valuation for lease extension pursuant to the Leasehold Reform Act 1993 for the above property*”. No further itemisation or

breakdown was included in the invoice dated 11 December 2019. The applicant says the basis for computing the charge is not identified nor is there any information about the qualifications of the valuer. They say that given the absence of any details and apparent lack of a professional qualification for the respondent's valuer the applicant proposes a figure of £500 plus vat. By way of comparison the applicant says the tenant's valuer, a RICS qualified chartered surveyor, charges the applicant £450 plus VAT.

17. The respondent asserts that the fee of £850 plus VAT is reasonable when the final premium agreed was £38,300. The respondent says that the valuer used was very experienced having more than 30 years in the industry. The respondent says there is no statutory requirement for a valuer with a professional qualification.
18. Having considered all these representations by both parties about the valuation fee, the Tribunal is of the view that the amount charged is not reasonable. The Tribunal considers that a valuer who is not professionally qualified is unlikely to command the same fee level as a valuer that has a professional qualification. Furthermore, the amount of the consideration is not particularly large or exceptional given the nature of the property and that as such the amount of the valuation fee proposed is excessive. The Tribunal noted that in the application the applicant proposed a charge for the valuation of £700 and in the circumstances of this claim the Tribunal agrees this figure. Therefore, the valuation fee for this enfranchisement shall be £700 plus VAT of £140 giving a total of £840.
19. The provisions of section 60 are well known to the parties and the tribunal does not propose to set the legislation out in full. (For reference purposes an extract of the legislation and in particular section 60 is set out in an appendix to this decision along with details of appeal rights in an annex). However, costs under that section are limited to the recovery of reasonable costs of an incidental to any of the following matters, namely: -
 - i. Any investigation reasonably undertaken of the tenant's right to a new lease;
 - ii. Any valuation of the tenant's flat obtained for the purpose of fixing the premium or amount payable by virtue of Schedule 13 in connection with the grant of a new lease under section 56
 - iii. The grant of a new lease under that section.

20. Subsection 2 of section 60 provides that: -

“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”.

21. The Respondent has set charges using hourly rates of £350 (Grade A), £270 (Grade B) and £250 per hour for a conveyancer. The Applicant challenges some work carried out at the higher rate that could have been done by a fee earner charging at the lower rate. The tribunal considers in any event that the rates charged by the higher fee earner falls within the range generally seen by the tribunal in cases of this kind. Accordingly, the charge out rates of £350 £270 and £250 in this case are accepted by the Tribunal. Accordingly, the tribunal accepts the hourly rates mentioned above as being appropriate in the case. Moreover, the Tribunal is satisfied as to the distribution of the work as between these fee earners as being reasonable given the nature of the claim and or transaction
22. The first item of costs are Legal costs recoverable under s.60 (1)(a) and relate to any investigation reasonably undertaken of the tenant's right to a new lease. The total sought in this section amounts to £2675 across two the fee earners (£1215 and £1470) plus VAT. Bearing in mind who was involved and the work described the tribunal was of the view that the amount proposed was excessive and disproportionate. For example, the item listed for 16 October 2019 involves two fee earners and 26 time units. However, the majority of work described relates to a lot of checking of fairly uncomplicated issues. The inclusion of 26 units for this unsophisticated work seems to the Tribunal to be disproportionate and given the nature of the work excessive. Similarly, the same is true of the items listed for 24 October 2019 and 9 December 2019 where for two fee earners the time totals were 22 units and 21 units. The first item related to drafting the counter notice and taking instructions on it. The second item was about considering the s.42 notice and a consideration of whether the notice had been wrongly served. In both cases it seemed to the Tribunal that the time was excessive given the nature of the work and the Tribunal also reflected upon the possibility of the potential for duplication of effort, given the two fee earners and time units involved. In the light of the above Tribunal sets fees as being reasonable for this section in the sum of £2750 plus VAT.
23. Dealing with the second item of costs being legal and valuation costs recoverable under s60(1)(b), this has been dealt with above in paragraphs 16-18 of this decision.
24. The third and final item is recoverable costs under s.60(1)(c) and relates to the grant of a new lease under that section otherwise called by the parties, conveyancing costs. The Tribunal took note of the fact that the lease that was agreed and used in this transaction was not of great length but was a fairly standard lease form of the kind encountered regularly in lease extension cases such as this one. The total sought in this section amounts to £900 plus VAT. Bearing in mind who drafted the lease and how short a document it was, (some seven pages in

length) the tribunal was of the view that the amount proposed was excessive and disproportionate. For example, recording twenty time units for preparing such a limited lease seems to the Tribunal to be excessive. Similarly, five units to prepare what was a very limited completion statement also seemed to the Tribunal to be disproportionate. The Tribunal will therefore allow £750 plus VAT in place of the amount claimed.

25. Accordingly, in the light of the above, the Tribunal approves the following amounts of costs as set out in this decision namely, £2750 and £750 both plus VAT giving a total allowed for the Respondent's costs in the sum of £3500 plus VAT.

Name: Judge Professor Robert
M. Abbey

Date: 6 August 2020

APPENDIX

Leasehold Reform, Housing and Urban Development Act 1993

60 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.

Annex - 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.