



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

Case Reference : **LON/00BF/OC9/2021/0024**

Property : **166 Washington Road, Worcester Park, KT4 8JJ**

Applicant : **Judith Moore**

Respondent : **Melita Dixon**

Type of App. : **Determination of reasonableness of costs**

Tribunal Member : **Judge Shepherd**

Date of Decision : **15th March 2022**

1. In this case the Applicant, Judith Moore, (“The applicant”) is challenging legal costs incurred by the Respondent Melita Dixon (“The Respondent”) in relation to a lease extension obtained by the Applicant of premises at 166 Washington Rd, Worcester Park KT4 8JJ (“The premises”) of which the Respondent is the freeholder.
2. The application ought to have been straightforward but both sides have chosen to use it as a means of attacking the conduct of the other. The majority of their allegations are irrelevant to the application itself. There are numerous documents in the bundle many of which are also irrelevant. The Tribunal is in the invidious position of having to address this dispute without the ability to hear live evidence. This case was always listed as a paper hearing but neither side seems to have acknowledged this. How they expect the tribunal to reach

any affirmative decisions in relation to conduct without hearing live evidence is a mystery. In any event neither side has explained why conduct is relevant to the issue in question namely the costs incurred during the enfranchisement.

3. The Tribunal makes clear here that it does not intend to resolve the disputes in relation to conduct allegations made by both sides because it is largely irrelevant to the issue in question and in any event having read the extensive bundle the Tribunal considers that both parties have behaved badly and if anything their conduct balances out.
4. Accordingly, it is appropriate in this case to ignore the issue of conduct and look solely at the central issue which is the reasonableness of costs incurred by the Respondent during the lease extension process.
5. The Applicant's application originally sought to argue that the Respondent's costs of £4246.80 were unreasonable and a more appropriate figure was £500 plus VAT. She has now adjusted her argument to a more realistic one and has forensically gone through the costs incurred by the Respondent during the enfranchisement process and disputed individual items so that the amount in issue is now the difference between the claimed sum of £4382. 50 and the offered sum of £242 7.50. i.e. £1955.

Brief background

6. Neither side saw the importance of providing the tribunal with a chronology of events although buried within the bundle in the Applicant's submissions is a list of key dates.
 - The tenant's section 42 notice was served on 19 December 2019 suggesting a valuation date at £3250.

- The landlord's section 45 notice was served on 25 February 2020 with the valuation suggested at £6100.
 - An application was made to the FTT to resolve the dispute on 18 August 2020.
 - The lease terms were agreed and there was completion on 7 January 2021.
7. Accordingly, the application to the FTT in relation to the valuation dispute became otiose and the sole remaining issue was the question of costs incurred by the Respondent in carrying out the process of enfranchisement.
8. It is notable that the situation has been complicated by both sides chopping and changing in terms of their instruction of solicitors. It is regrettable that both sides chose to jettison their solicitors prior to this application being considered as the solicitors might have injected some commonsense into the parties. As it is what is a relatively modest dispute in terms of amount at issue has been inflated into a disproportionate use of tribunal time.

The law

9. S.60 of the Leasehold Reform Housing and Urban Development Act 1993 is the relevant provision

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 [the appropriate tribunal]¹ 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.

Determination

10. The Tribunal will use the Scott schedules from page 50 onwards of the bundle. Mercifully some of the costs are agreed. In relation to the items in dispute the tribunal makes the following determinations:

Invoice 4347

11. Item 6-it is agreed that this sum is excessive and the amount allowed is £300

12. Item 7-the sum is reasonable and allowed at £125

13. Item 8-the sum is reasonable and allowed at £125

14, Item 9-this sum of £475 is patently excessive for the work involved which is stated to be reviewing a grant of probate and the validity of notice with a phone call to the client to obtain further details and finalising the section 45 counter notice. The tribunal awards £300

15. Item 10-the Applicant argues that this sum does not fall within section 60 (1) (c) of the Act as the landlord had not provided a draft lease at that stage. This is misguided. It is clear that the Respondent was telephoning her solicitor to discuss the lease terms because the Applicant had proposed different terms and such discussions would fall within the realm of section 60 (1) (c) which is wide enough to cover other matters associated with the grant of a new lease. The fact that a draft lease had not been provided is not determinative. Accordingly, as no offer has been made by the Applicant the Tribunal accepts the sum of £75.

Invoice 5389

16. Item 1 relates to forwarding the section 45 notice to the Respondent. The Applicant says this is not recoverable as it is not within the realm of section 60. The Tribunal accepts that this sum is per se recoverable as part of investigations and allows the £25 claimed.

17. Item 2 is also accepted on the same basis and £25 is allowed.

18. Item 3 is also accepted on the same basis and £25 is allowed.

19. Item 4 is also accepted on the same basis and £50 is allowed.

20. Item 5 is also accepted on the same basis and £50 is allowed.

21. Item 6 is also accepted and £25 is allowed.

22. Item 7 is also accepted £175 is allowed.

23. Item 8 is accepted and £25 is allowed.

24. Item 9 is not accepted because it concerns the recoverability of costs which does not strictly fall within section 60.

25. Item 10 is also not allowed on the same basis as item 9

26. Item 11 is also not allowed on the same basis as item 9

27. Item 12 relates to the grant of the lease therefore the £50 is allowed

28. Item 13 is not allowed on the same basis as item 9 above

29. Item 14 is allowed although it is difficult to see exactly what work was involved. On balance £50 is allowed.

Invoice 5989

30. Item 3 concerns reviewing the lease with advice to the client. Although this does come within section 60 the sum is excessive and £300 is allowed.

31. Item 4 is not allowed it is not clear how this comes within section 60.

32. Item 5 is not allowed as it clearly does not come within section 60.

33. Item 6 does not come within section 60 as it is in relation to these proceedings.

34. Item 7 does not come within section 60 as it involves the proceedings themselves.

35. Item 8 is deducted on the same basis as item 7.

36. Item 9 is deducted on the same basis as item 7.

Invoice 6408

37. Item 11 is deducted on the basis that it involves the proceedings themselves.

38. Item 12 is allowed at £125 as it concerns the grant of a new lease.

39. Item 13 is unclear as to what it involves but on balance the Tribunal will allow the £25.

40. Item 14 is unclear as to what it involves but on balance the Tribunal will allow the £25 claimed.

41. Item 15 is discounted because it involves the proceedings themselves.

Summary

42. The sums allowed for the various invoices are the following:

4347 - £1327.50

5389-£500

5989-£425

6408-£550

Judge Shepherd

15th March 2022

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).