FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AK/OLR/2022/0216**
HMCTS code	:	**P: PAPERREMOTE**
Property	:	**First Floor Flat, 16 Whitworth Crescent, Enfield, Middlesex, EN3 6YG**
Applicants	:	**Freehold Managers (Nominees) Limited**
Representative	:	**Bolt Burdon, Solicitors**
Respondent	:	**Shah Mohammed Mizanur Rahman**
Representative	:	**Orme Associates Property Advisers**
Type of Application	:	**Section 91 of the Leasehold Reform, Housing and Urban Development Act 1993**
Tribunal Member	:	**Tribunal Judge I Mohabir** **Mr R Waterhouse MA LLM FRICS**
Date of Decision	:	**1 June 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers, which has been consented to by the parties. The form of remote hearing was P: PAPERREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

Introduction

1. This is an application made by the Applicant under section 91 of the Leasehold Reform, Housing and Urban and Development Act 1993 (as amended) ("the Act") for a determination of the statutory costs payable by the Respondent under section 60 of the Act for the grant of a new lease in relation to the property known as First Floor Flat, 16 Whitworth Crescent, Enfield, Middlesex, EN3 6Y ("the property").

2. The intermediate landlord is Al Rayan Bank Plc. Save for serving a notice of separate representation dated 25 November 2020, it has played no part in this matter. The Applicant is the competent landlord for the purposes of the Act.

3. By a Notice of Claim dated 30 December 2019, the Respondent made an application for the grant of new Lease pursuant to the provisions of Chapter II of the Act.

4. On 3 March 2020 the Applicant served a counter-notice pursuant to Section 45 of the Act accepting the Tenant's entitlement to the grant of a new lease.

5. On 1 September 2020, the Respondent submitted a protective application to the Tribunal pursuant to section 48 of the Act seeking a determination of the terms of the new lease.

6. Eventually, on 5 July 2021 the parties agreed the terms of the new lease. On 5 July 2021, the Applicant's solicitors sent engrossments of the new lease for execution by the parties.

7. The Respondent failed to complete the transaction and failed to make a protective application to the County Court pursuant to section 48 of the Act. Therefore, the Notice of Claim was deemed to have been withdrawn on 5 November 2021.

8. On 31 December 2021, the Applicant's solicitors sent their section 60 costs to the Respondent, which was not responded to. On 28 February 2022, the Applicant's solicitors wrote to the solicitors acting for the intermediate landlord requesting whether it had incurred any costs pursuant to section 60, which was also not responded to. The Tribunal, therefore, proceeds on the basis that no such costs were incurred by the intermediate landlord.

9. On 14 March 2022, the Applicant made this application seeking a determination of the amount the Respondent has to pay in relation to its statutory costs pursuant to section 60 of the Act.

10. On 15 March 2022, the Tribunal issued Directions to the parties in relation to the filing of their evidence. Only the Applicant has complied with the directions and this was the only evidence before the Tribunal. The Respondent has engaged in these proceedings.

11. A breakdown of the Applicant's legal costs has been provided pursuant to the Tribunal's Directions. This sets out the level of fee earner, Ms Joyce Cooper (a Partner), and hourly rate of £360 claimed by her until 1 June 2021, which increased to £400 per hour after that date. The total profit costs claimed in the Applicant's statement of case is £4,383.94 plus VAT of £876.79 plus disbursements of £25.20 including VAT and valuer's fees of £780 including VAT.

Relevant Statutory Provision

12. Section 60 of the Act provides:

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.

Decision

13. The Tribunal's determination took place on 1 June 2022 and was based solely on the written representations filed by the Applicant. The Tribunal's approach was to conduct what effectively amounts to a summary assessment of the costs.

14. As stated earlier, this matter relates to the Applicant's costs incurred in what can be described as a "standard" statutory lease extension with no particular complication. There was no evidence before the Tribunal that the interest of the intermediate landlord created any complex legal and/or valuation issues.

Fee Earner & Hourly Rate

15. Whilst this may have appeared to be a relatively straightforward matter, the Tribunal's view was that this is a highly technical area of law conducted by the Applicant's solicitors with the requisite knowledge and experience in this field of work.

16. However, as stated earlier, this was a relatively straightforward lease extension transaction and, therefore, the Tribunal concluded that the increased hourly rate of £400 claimed by Ms Cooper after 1 June 2021 was not reasonable. Therefore, all of the costs were assessed at an hourly rate of £360.

17. The Tribunal found that the total time of (say) 12 hours fee earning work carried out in relation to this transaction was excessive, especially given that it did not complete. All of the work appears to be have been carried out by Ms Cooper, which involved to a large extent her chasing the Respondent's representative in relation to the statutory deposit and to progress the matter generally. The Tribunal did not consider it reasonable for a Partner to carry out all of this work. It is possible for a firm of the size of the Applicant's solicitors to delegate this routine work to a lower grade of fee earner.

18. Using its own knowledge and experience, the profit costs allowed by the Tribunal as being reasonably incurred were £3,000 plus VAT of £600 making a total of £3,600.

Valuer's Fees

19. The Tribunal considered that the valuation fees of £780 including VAT to be reasonable and were allowed as claimed.

Disbursements

20. These are allowed as claimed, being £21 plus VAT of £4.20 for the Office Copy Entries.

21. Accordingly, the Applicant's statutory legal costs that are recoverable from the Respondent are a total of £4,405.20 including VAT and disbursements.

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).