



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

Case Reference : **LON/00AE/OC9/2023/0043**

Property : **3 Shirley Court, Buck Lane,
London, NW9 0QD**

Applicant : **Daejan Properties Limited**

Representative : **Wallace LLP, Solicitors**

Respondent : **Nicholas Thomas**

Representative : **Gattas Denfield LLP**

Type of Application : **Section 91 of the Leasehold
Reform, Housing and Urban
Development Act 1993**

Tribunal Member : **Tribunal Judge I Mohabir
Mrs S Phillips MRICS**

Date of Decision : **26 June 2023**

DECISION

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 to the Respondent under section 60 of the Act for the grant of a new lease in relation to the property known as 3 Shirley Court, Buck Lane, London, NW9 0QD (“the property”).
2. The Applicant is the leaseholder owner of the property. The Applicant is the freeholder and the competent landlord for the purposes of the Act.
3. On or about 27 January 2022, the Respondent made an application for the grant of a new lease by way of Notice of Claim (“the Notice”) pursuant to the provisions of Chapter II of the Act.
4. On or around 11 April 2022, the Applicant served a Counter-Notice pursuant to Section 45 of the Act (“the Counter-Notice”) admitting the Respondent’s entitlement to the grant of a new lease but without prejudice to the contention that the Notice was invalid.
5. Subsequently, no application was made to the Tribunal within the time limit prescribed by section 48 of the Act and accordingly it was deemed withdrawn pursuant to section 53 of the Act.
6. The costs claimed by the Applicant are legal costs of £3,650 plus VAT, valuation cost of £1,750 plus VAT, Land Registry fee of £78 plus VAT and courier fees of £28 plus VAT, all totalling £6,607.80.
7. The parties were unable to agree the Applicant’s costs and it made an application to the Tribunal seeking a determination of statutory costs payable by the Respondent pursuant to Section 60 of the Act.

Relevant Statutory Provision

8. 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

9. The Tribunal's determination took place on 26 June 2023 and was based solely on the written representations filed by the parties. The Tribunal's approach was to conduct what effectively amounts to a summary assessment of the costs.
10. The challenges made by the Respondent about the reasonableness of the Applicant's are set out in an email from his solicitors to the Applicant's solicitors dated 16 May 2023 and can be summarised as follows:
- (a) the attendance on 11 April 2023 should be disallowed.
- (b) the disbursements claimed for office copy entries should be disallowed on the basis that the Respondent's solicitors provided copies to the Applicant's solicitors.
- (c) the surveyor's fees are excessive.

(d) a letter dated 2 February 2023 was incorrectly served by email.

11. Each of these points is dealt with in turn below.

Attendance on 11 April 2023

12. No particular reason is given by the Respondent for this challenge and it is, therefore, dismissed.

Office Copy Entries

13. The Tribunal found that this disbursement was reasonably incurred by the Applicant. Even though copies of the entries were provided by the Respondent, it is entitled, as a matter of good practice, to satisfy itself that the entries are up to date and accurate and to properly investigate the freehold and leasehold titles. It was, therefore, allowed by the Tribunal.

Surveyor's Fees

14. The Tribunal agreed with the Respondent's submission that the surveyor's fees are excessive. The papers reveal no complex valuation issues in this case. Accordingly, the Tribunal allowed a valuation fee of £1,250 plus VAT to be reasonable.

Letter dated 2 February 2023

15. This submission was not understood by the Tribunal and was dismissed. The Respondent's solicitors appear to complain that it was sent by the Applicant's solicitors by email when the former did not accept service in this way. They then state that it is usual practice to serve by email and post.

Fee Earner & Hourly Rate

16. Although this was not expressly challenged by the Respondent, it is incumbent on the Tribunal to consider these matters when making a determination under section 60(2) of the Act.

17. The majority of the work was carried out by a Partner at an hourly rate of £495 who was assisted by an Assistant Solicitor at an hourly rate of £395. The overall attendance claimed was 7.9 hours by both fee earners.

18. 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.

19. However, this transaction had no complexity and did not proceed in any significant way, as it was a deemed withdrawal. Therefore, the Tribunal concluded that the work did not need to be carried out by a Partner. The Tribunal was satisfied that it could have been carried out by a Grade B fee earner.
20. As to the hourly rate, the Tribunal was satisfied that this should be calculated by reference to the current guideline hourly rates for solicitors. Whilst, the Tribunal notes that the rates are no more than guideline rates, they provide a useful starting point for assessment. In this instance, there are no particular reasons to depart from them.
21. The fact that the grade of fee earner and hourly rates claimed may have been approved in other Tribunal decisions does not provide the Respondent with any assistance in this instance for two main reasons. Firstly, each case is fact specific. Secondly, other Tribunal decisions do not bind this Tribunal and they do not establish a precedent.
22. Therefore, the Tribunal concluded that the appropriate rate for a Grade B fee earner in the London Band 2 area is £300 per hour. The Tribunal found that the attendance of 7.9 hours was excessive and allowed 5 hours as being reasonable. This provides a profit cost figure of £1,500 plus VAT of £300.
23. Allowing for the reduction in the legal and valuation costs above and allowing the disbursements claimed, the total costs payable by the Respondent is £3,427.20.

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).