



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

Case Reference : **LON/00BA/OC9/2024/0101**

Property : **1a Claire Court, 23 Commonside
West, Mitcham, Surrey, CR4 4HA**

Applicant : **Manor Park Properties Limited**

Representative : **Lee Bolton Monier-Williams LLP**

Respondent : **Eastway Properties Limited**

Representative : **Colman Coyle Limited, Solicitors**

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

Tribunal Member : **Tribunal Judge I Mohabir**

Date of Decision : **10 December 2024**

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 1a Claire Court, 23 Commonsides West, Mitcham, Surrey, CR4 4HA (“the property”).
2. The factual background to the application can be summarised as follows.
3. The Applicant is the current leaseholder of the property. The Respondent is the freeholder.
4. By a claim notice served on the Respondent pursuant to section 42 of the Act dated 17 March 2020, Mark David Keep exercised his right to the grant of a new lease in respect of the property (“the first notice”). It appears that Mr Keep was the previous leaseholder.
5. The Respondent served a counter notice dated 4 May 2020 in relation to this notice admitting the right to the grant of a new lease. The premium and lease terms were ultimately agreed by the parties, including the Respondent’s section 60 costs in the sum of £2,500 plus VAT. However, completion did not take place and the first notice was deemed withdrawn. For reasons unknown, the Respondent did not pursue its agreed costs against Mr Keep.
6. By a further section 42 notice dated 7 July 2023, the Applicant exercised the right to the grant of a new lease (“the second notice”). The notice proposed a premium of £10,000 with the new lease to be granted on the same terms as the existing lease subject to the minor statutory modifications required by the Act.
7. The Respondent did not serve a counter notice and expressly agreed the terms proposed in the second notice.
8. However, extensive correspondence then ensued between the respective firms of solicitors with an acrimonious flavour. That correspondence related solely to the issue of whether or not the Applicant’s solicitors had authority from the Applicant to sign the second section 42 notice on his behalf. This remained unresolved until 22 February 2024 when the Respondent’s solicitors conceded the point.
9. However, matters did not end there. The Applicant’s solicitors then insisted on a two week completion timeframe, failing which, a threat was made to issue proceedings seeking a vesting order was made. Indeed, the Applicant’s solicitors went so far as to draft a Part 8 claim form and send it to the Respondent’s solicitors. It seems that completion took place on or about 5 March 2024.

10. The total costs claimed by the Respondent are £9,581.50 plus VAT. This figure is comprised of £2,500 plus VAT representing the agreed costs in relation to the first notice, which is not challenged by the Applicant.
11. In addition, the Respondent claims costs of £7,081 plus VAT in relation to the second notice. A breakdown of these costs and the fee earner hourly rates is found at pages 62-65 in the hearing bundle. It appears that the work was carried out variously carried out by a Partner, a Senior Associate, an Associate and a Trainee Solicitor. In total, approximately just in excess of 23 hours of fee earning time was incurred by the various fee earners.
12. The Applicant contends that total costs of £3,000 plus VAT is reasonable based on the £2,500 agreed in relation to the first notice and costs in the sum of £387.50 in relation to the second notice.
13. The parties were unable to agree the Respondent's costs and the Applicant made this application to the Tribunal seeking a determination of statutory costs payable to the Respondents pursuant to Section 60 of the Act.

Relevant Statutory Provision

14. 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

- 15. The Tribunal's determination took place on 10 December 2024 and was based solely on the written submissions filed by the parties, which it has considered. It is not intended to repeat these here, as they are self-evident. The Tribunal's approach was to conduct what effectively amounts to a summary assessment of the Respondent's costs, as opposed to a detailed assessment.

Costs Reasonably incurred

- 16. The Tribunal found that all of the costs incurred by the Respondent's solicitors engaged in corresponding with the Applicant's solicitors regarding whether the latter had authority to sign the second section 42 notice was entirely unnecessary and, therefore, not reasonably incurred within the meaning of section 60(1)(a) of the Act.
- 17. In the Tribunal's judgement that enquiry by the Respondent's solicitors was not necessary or required. The only requirement in section 42(3) of the Act is for the claim notice to state the name of the person appointed to act on behalf of the tenant in connection with the claim together with an address for service in England and Wales. The second notice clearly satisfied this requirement and it was not open to the Respondent's solicitors to go behind what was stated in the notice to challenge its validity. It follows, that all of the costs incurred in relation to this issue are disallowed.
- 18. The remaining costs claimed by the Respondent are significant. It is important to note that no counter notice had been served by the Respondent and the terms proposed in the second notice were agreed. The Tribunal was, therefore, satisfied that the only work needed to complete this transaction was to investigate the claim notice and the Applicant's title to ensure that it was a qualifying tenant, drafting and approving a precedent lease to be granted on

the statutory terms with minor amendments and preparing for completion. In other words, this was a straightforward transaction with no complication.

19. In the Tribunal's judgement, this work could and should have been undertaken by a single fee earner with the requisite knowledge and experience in this area of work. The Tribunal, therefore, found that the work carried out by the various fee earners at the Respondent's firm of solicitors was not reasonably incurred. The Tribunal was satisfied that the appropriate level of fee earner for this transaction was the Senior Associate (Grade A), Ms Elahi, and that the above work could have been completed in 5 hours of fee earning time.

Hourly Rate

20. As to the hourly rate to be applied, the Tribunal was satisfied that there was no reason to depart from the current published solicitors guideline hourly rates.
21. As stated earlier, on any view, this matter was what can be described as "standard" statutory lease extension with no particular complication, which the Respondent's solicitors routinely deal with.
22. Whilst the Tribunal accepts that this matter was partly transactional, it is also partly quasi-litigious. Therefore, the use of the hourly guideline rates provides a useful and obvious benchmark when the assessment of the Respondent's costs fall to be assessed.
23. In the Tribunal's judgement, there is strong presumption that the hourly guideline rates should be adopted unless there are good reasons to depart from them. Of course, each case is fact specific and has to be considered on a case by case basis.
24. As stated earlier, this case involved no complexity of law and/or fact. Therefore, the Tribunal was satisfied that there was no good reason to depart from the hourly rates for a Grade A in the London 3 band at an hourly rate of £301.
25. Applying this rate to 5 hours of fee earning time provides a figure of £1,505 plus VAT, which are the costs the Tribunal found to be reasonable in relation to the second notice.
26. As stated earlier the costs agreed by the parties in relation to the first notice are £2,500 plus VAT.
27. Accordingly, the total costs payable by the Applicant in relation to the Respondent's overall section 60 costs are £4,005 plus VAT of £801.

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).