



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

Case Reference : **LON/00BK/OC9/2023/0085**

Property : **48 St James Court, St James's
Road, Croydon, Surrey, CR0 2SF**

Applicant : **Brickfield Properties Limited**

Representative : **Wallace LLP, Solicitors**

Respondents : **(1) Aleksander Sumihin
(2) Marina Sumihina**

Representative : **Hetts, 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 : **17 April 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 Respondents under section 60 of the Act for the grant of a new lease in relation to the property known as 48 St James Court, St James’s Road, Croydon, Surrey, CRO 2SF (“the property”).
2. The factual background to the application is common ground and has, helpfully, been set out by the Applicant in its Reply and can be summarized as follows.
3. The freehold title to the property is held by Daejan Properties Limited. It is subject to a headlease of Flats 38-57, which is held by the Applicant and is, therefore, the competent landlord for the purpose of the Act.
4. The headlease held by the Applicant is subject to a sub-headlease held by Fencott Limited as an intermediate landlord.
5. The Respondents hold a long lease of the property for a term of 99 years from 25 December 1974.
6. On or about 8 September 2020, the Respondents incorrectly served a section 42 notice on Daejan Properties Limited claiming the right to the grant of a new lease (“the first notice”). ON or about 10 November 2020, the Applicant served a counter notice contending, *inter alia*, that the section 42 notice was invalid because it had not been served on the competent landlord in accordance with section 42(2)(a) of the Act.
7. On or about 1 March 2021, the Respondents served a further section 42 notice on the Applicant for the grant of a new lease (“the second notice”). By a counter notice served on or about 12 May 2021, the Applicant admitted the Respondents right to a new lease.
8. Subsequently, the parties were unable to agree all of the terms of the new lease and on or about 2 November 2021, the Respondents made an application to the Tribunal to make a determination of the outstanding terms of acquisition.
9. Apparently, the lease terms were agreed on 1 June 2021. On or about 16 June 2022, the Tribunal determined that the premium payable for the new lease was £54,215. The terms of acquisition were, therefore, deemed agreed by 14 July 2022. For reasons unknown, completion did not take place within the statutory time limit set out in section 48 of the Act and the second notice of claim was deemed withdrawn on 13 November 2022 and the Respondents became liable for the Applicant’s statutory cost under section 60(3) of the Act.
10. The costs claimed by the Applicant in relation to the first notice are:

Profit costs	£2,365 plus VAT
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Valuation fees £900 plus VAT (agreed)

Land Registry fees £48 plus VAT (agreed)

11. The costs claimed by the Applicant in relation to the second notice are:

Profit costs £3,450 plus VAT

Valuation fees £150 plus VAT (agreed)

Land Registry fees £9 plus VAT (agreed)

12. 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 to the Respondents pursuant to Section 60 of the Act.

Relevant Statutory Provision

13. 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

14. The Tribunal's determination took place on 17 April 2024 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 Applicant's costs.
15. In relation to the first notice, the total attendance claimed by the Applicant's solicitors is 5 hours, with the majority of the work being carried out by a Partner at 4 hours in total. The hourly rate claimed for the Partner is £495 and £385 for the Assistant Solicitor respectively.
16. In relation to the second notice, the total attendance claimed by the Applicant's solicitors is 7.8 hours, with all of the work being carried out by a Partner up to the service of the counter notice. Thereafter, the work was variously carried out by Assistant Solicitors at hourly rates of £395 and £325.
17. The valuation costs and the land Registry disbursements incurred in relation to both claim notices are agreed by the Respondents. The only challenge being made by the Respondents is to the quantum of the profit costs claimed by the Applicant's solicitors.
18. In the main, save for a minor number of attendances, the substantive challenge is to the hourly rates claimed by the various fee earners who had conduct of this matter at the Applicant's solicitors.
19. The Respondents submit that there was no complexity of law and/or fact in this transaction and, therefore, the Applicant's solicitors should only be entitled to recover the current guideline hourly rates for Grades A and B within the London 2 band for a firm practicing in the City and Central London. At the time the Respondents' Points of Dispute were prepared, those rates were £373 and £289 respectively. Given that the Tribunal is assessing the Applicant's historic costs, it has not adopted the current hourly rates that came into effect on 1 January 2024. Overall, the Respondents contend for a global figure of £3,975.60 including VAT and disbursements for the first notice and £4,330.80 including VAT and disbursements for the second notice as being the Applicant's reasonable costs.

20. Unsurprisingly, the Applicant submits that the guideline hourly rates are or no application given the specialist nature of leasehold enfranchisement work and refers to a number of earlier Tribunal decisions, which have reflected this. In addition, the Applicant submits that the intention behind section 60 of the Act was to provide a landlord with an indemnity for its (reasonable) costs. In the alternative, the Applicant submits that the London 1 band rate should be applied to its costs.

Hourly Rate

21. As to the hourly rate to be applied overall to both notices, the Tribunal was satisfied that there was no reason to depart from the guideline hourly rates contended for by the Respondents.
22. On any view, this matter was what can be described as “standard” statutory lease extension with no particular complication, which the Applicant’s solicitors routinely deal with and for which existing templates for any documents only require a degree of amendment for each transaction.
23. Whilst the Tribunal accepts that this matter was partly transactional, it was also partly litigious. Therefore, the use of the hourly guideline rates provides a useful and obvious benchmark when the assessment of the Applicant’s costs fall to be assessed.
24. 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. The earlier Tribunal costs decisions in favour of the Applicant and/or his solicitors do not bind this Tribunal nor do they establish a precedent hourly rate(s) to be adopted in other cases where their costs fall to be assessed. There are, of course, cost decisions against the Applicant and/or its solicitors, which the Tribunal has not been referred to. If anything, this range of decisions support the Tribunal’s view that each case is fact specific and costs have to be assessed on that basis.
25. 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 contended for by the Respondents of £373 and £289 respectively for a Grade A and B fee earner in the London 2 band in relation to the work done for both notices.

Specific Attendances

First Notice

26. The Tribunal found that the overall attendance of 5 hours claimed by the Applicant's solicitors was reasonable, save for the attendance on 10 November 2020. The Tribunal accepted the Respondents' submission that the attendance of 0.6 hours for checking and finalising the counter notice was not reasonably incurred and this is reduced to 0.3 hours for the Grade A fee earner or £111.90. The 1 hour attendance claimed for the Grade B fee earner was allowed as claimed, albeit at the reduced hourly rate.

27. Accordingly, the Tribunal found that the Applicant's reasonable costs payable by the Respondents in relation to the first notice are profit costs of £1,669.10 plus VAT of £333.82 totalling £2,002.92. As stated earlier, the valuation costs of £1,080 including VAT and Land Registry fees of £57.60 are agreed. Therefore, the total costs payable in respect of the first notice is £3,140.52.

Second Notice

28. The Tribunal found that the overall attendance claimed by the Applicant's solicitors of 7.8 hours was reasonable given that these represented the substantive costs incurred.

29. The only attendances the Tribunal found not to be within the scope of section 60(1) of the Act, and therefore not reasonably incurred, were on 27 June 2022 and 22 August 2022 in relation to the preparation of the completion statement by an Assistant Solicitor. The attendances totalled 0.3 hours or 18 minutes.

30. The reasonable costs allowed for the Grade A fee earner was 3.3 hours at £373 per hour and 4.2 hours for the Grade B fee earners at £289. The total profit costs payable by the Respondents are £2,444.70 plus VAT of £488.94 totalling £2,933.64. As stated earlier, the valuation costs of £180 including VAT and Land Registry fees of £10.80 are agreed. Therefore, the total costs payable in respect of the second notice is £3,124.44.

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).