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

Case Reference : CHI/21UF/OC9/2013/0017

Property : Flat 3 Hawth Valley Court
Surrey Road Seaford
East Sussex BN25 2NF

Applicant : Alexandra Jane Wagstaff

Representative : Mayo Wynne Baxter LLP

Respondent : Sinclair Gardens Investments
(Kensington) Limited

Representatives : P Chevalier & Co, Solicitors
W H Mathews & Co Solicitors

Type of Application : Application for costs under section 91 of
the Leasehold Reform, Housing and
Urban Development Act 1993 ("the Act")

Tribunal Members : Judge RTA Wilson

Date of consideration: 21st March 2014

Date of Decision : 27th March 2014

DECISION

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The Application

1. By an application dated the 23rd December 2013, the Applicant lessee sought, pursuant to Section 91 of the Act, a determination of the costs payable to the Respondent freeholder under Section 60(1) of the Act.
2. The application arose following service by the Applicant of a Notice of Claim under Section 42 of the Act, seeking a new lease of her flat. A new lease has been granted and in such circumstances the Applicant is liable to pay the lessor's reasonable costs pursuant to Section 60(1). The amount of the costs not being agreed, the application was made to the Tribunal.
3. Directions dated 3rd January 2014 gave the parties notice that the Tribunal intended to deal with the matter by way of written representations only, unless either side objected. Neither party having objected the Tribunal has determined this matter on the basis of written representations without an oral hearing.
4. Statements of case and a response with supporting documentation were filed as directed by the Tribunal.
5. There was no inspection of the property.

Summary of Decision

6. The legal costs payable to the Respondent by the Applicant, pursuant to Section 60(1) of the Act, are £1225 + VAT.

The Law and Jurisdiction

7. The relevant parts of the provisions in the Act are as follows:

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) – (6) ...

91. Jurisdiction of tribunals.

(1) Any question arising in relation to any of the matters specified in subsection (2) shall, in default of agreement, be determined by the appropriate tribunal .

(2) Those matters are—

(a) – (c) ...

(d) the amount of any costs payable by any person or persons by virtue of any provision of Chapter I or II and, in the case of costs to which section 33(1) or 60(1) applies, the liability of any person or persons by virtue of any such provision to pay any such costs; and

(e) ...

8. To be reasonable, costs must be reasonably incurred and reasonable in amount.

9. Pursuant to the indemnity principle (which is reflected in the introductory wording of Section 60(1)), a paying party is obliged to indemnify a receiving party only for expenditure actually incurred. Accordingly a party may not recover more than it is actually obliged to pay its advisers.

Determination

10. The Respondent served a Counter-notice admitting that the Applicant had the right to acquire a new lease, but disputing the amount of the proposed premium. Following negotiation the premium was agreed and a new lease completed. On completion the Respondent requested payment of its legal costs in the sum of £2070. This sum was broken down as to £1350 in respect of the notice costs and £720 in respect of the conveyancing costs.

11. The sum of £840 was also requested for a valuation fee, which is not in dispute.

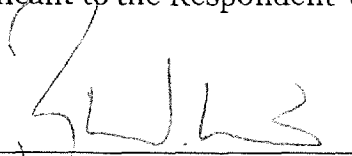
12. The Applicant contends that the hourly charge out rate charged by the Respondents solicitor Mr Chevalier and Mr Chevaliers successor practice WH Mathews & Co of £250 is unreasonable and that the work could and should have been carried out by a less senior fee earner at an hourly rate of no more than £192 plus vat.

13. The Tribunal is satisfied that the Respondent is a client for whom Mr Chevalier has acted on many similar transactions, and the Respondent has clearly accepted in its letter of the 9th January 2014 that it is liable to pay the amount of costs now

being claimed. The hourly rate of £250 is approved throughout, on the basis that Mr Chevalier is a highly experienced specialist in this area of practice, and it is not outside the range of reasonable hourly rates.

14. However the Tribunal accepts that Section 60(2) of the Act requires the Tribunal to consider whether the costs claimed might reasonably have been expected to be incurred by the landlord if he were paying those costs himself. The Tribunal does not consider this factor would affect the hourly rate, but it is a further cross-check after carrying out the Section 60(1) exercise of considering the extent of the work reasonably required on the lease, and how long that work should reasonably take.
15. In respect of costs claimed under Section 60(1) (a) Mr Chevalier's time break down discloses that he spent just over three and a half hours spread over eight different dates and in addition to this time he has charged for nine letters written.
16. The Applicant submits that a reasonable figure for this part of the transaction should be no more than £500 on the grounds that the matter was entirely straight forward with no complicating features and with minimal dispute or negotiation required between the parties.
17. In respect of costs claimed under Section 60(1)(c) Mr Chevalier's time breakdown discloses that he spent nearly two hours spread over five different dates and in addition to this time he has charged for four letters written.
18. The Applicant submits that a reasonable figure for this part of the transaction would be £400 plus VAT given the wholly unexceptional documents involved in the transaction. She points to the fact that the new draft lease was approved as drawn and that no amendments were required.
19. The wording of Section 60 is clear: only reasonable costs can be recovered, and Section 60(2) specifically provides that professional fees will only be reasonable if those costs might reasonably be expected to have been incurred if the person incurring them was personally liable to pay them. The requirements of reasonableness and reasonable expectation bring into play an objective test. CPR concepts referred to at some length by Mr Chevalier, such as the difference between the standard and indemnity bases of assessment, are not referred to in Section 60. However, the Tribunal notes that in the Upper Tribunal (Lands Chamber) decision in *Drax v Lawn Court Freehold Ltd* LRA/58/2009, it was stated (in relation to Section 33(2) which is the enfranchisement case equivalent of Section 60(2)) that the provision "introduces a (limited) test of proportionality of a kind associated with the assessment of costs on the standard basis". Mr Chevalier did not cite this authority but it runs contrary to several of the assertions made in his submissions.
20. The Tribunal accepts that Mr Chevalier is required to take proper care, and that the Respondent is not obliged to shop around for cheaper solicitors. There is also a range of reasonable costs.

21. However there is no evidence to suggest this was not an entirely straightforward lease extension without any complicating features. Although this is a specialised area of practice, an expert such as Mr Chevalier who can justify an hourly rate of £250 working from a suburban office will reasonably be expected to deal with the work efficiently. His experience means that he knows exactly what he has to check and look out for from the outset. Similarly, from long experience, Mr Chevalier's client already understands what is involved. These factors should have reduced the time required on attendances, obtaining instructions and undertaking research.
22. It is unnecessary and disproportionate for the Tribunal to undertake a detailed analysis of each separate item of work/time claimed and comment on each authority cited by the parties. The Tribunal is entitled to rely upon its general collective experience gathered over the years in deciding the amount of time reasonably required to undertake an investigation of the tenants right to acquire a new lease and the valuation of such an interest followed by the conveyancing elements of this straight forward and routine transaction.
23. Having regard to all the evidence and submissions, and bearing in mind the work reasonably required for this wholly unexceptional and routine transaction, the Tribunal broadly accepts the Applicants submissions and determines that the maximum reasonable time for an experienced fee-earner who can justify an hourly rate of £250 to deal with The Section 60(1) (a) costs would be no more than two hours which equates to £500 +VAT. The maximum reasonable time for the Section 60(1)(c) costs for the lease in this case should not exceed a little over one and a half hours or £400 + VAT. The Tribunal determines that the cost of letters written in the sum of £325 should in this case be chargeable in addition to the above sums.
24. These costs do not exceed those, which could reasonably have been expected to be incurred had the Respondent been personally liable to pay them.
25. It follows that the Tribunal determines that the amount of legal costs payable by the Applicant to the Respondent are £1225 plus VAT.



Judge RTA Wilson

Dated: 27th March 2014

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.