



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

Case Reference : LON/00BK/OC9/2014/0026

Property : 36 Stourcliffe Close, Stourcliffe Street, London W1H 5AR

Applicant : Gerard Kouri

Representative : Berlad Graham LLP

Respondent : Portman Estate Nominees (One) Ltd
Portman Estate Nominees (Two) Ltd

Representative : Pemberton Greenish LLP

Type of Application : Costs on extension of lease

Tribunal : Judge Nicol

Date and venue of hearing : 30th July 2014 at 10 Alfred Place,
London WC1E 7LR

Date of Decision : 30th July 2014

DECISION

Decision of the Tribunal

The Tribunal has determined that the following costs, inclusive of VAT, are payable by the Applicant to the Respondents in accordance with section 60 of the Leasehold Reform, Housing and Urban Development Act 1993:

1. Legal costs of £2,745;
2. Valuation costs of £1,440; and
3. Lease plan costs of £252.

Reasons for Decision

1. The Respondents, the freeholders of the subject property, seek to recover costs incurred in responding to the Applicant's request for a new lease in accordance with section 60 of the Leasehold Reform, Housing and Urban Development Act 1993 (set out in the Appendix to this decision):-
 - a) The headlessee's legal costs have been agreed at £400 plus VAT and, not being subject to dispute, are not considered further in this decision.
 - b) WA Ellis valuation fee under s.60(1)(b) of £2,520 inc VAT.
 - c) New lease plans for £252 inc VAT.
 - d) Legal costs under s.60(1)(a) of £2,120.16, inclusive of a courier charge of £4.30 and VAT.
 - e) Legal costs under s.60(1)(c) of £630, inc VAT.
2. The Applicant objects to these fees and has accordingly applied to the Tribunal for a determination as to their payability. His solicitors' submissions start by pointing to the indemnity principle, namely that the Applicant is only responsible for fees genuinely incurred by the Respondents. They assert that this principle cannot be satisfied without seeing the actual invoices.
3. The Respondents have provided their solicitors' invoices but, even if they had not, the Tribunal would not accept the submission that there is no liability at all without them. There is no dispute that fees have been incurred. The Tribunal may look at all the evidence, not just the invoices, to see what they were and to calculate what they should have been in accordance with the principles in section 60.
4. The Applicant challenges the hourly rate of £375 for the Respondents' solicitor, Mr Giles Pemberton of Pemberton Greenish LLP. They point to the guideline rates for summary assessment published in 2010 by the Senior Courts Costs Office which would put at limit of £267 for a solicitor in Pemberton Greenish's postcode.
5. The Tribunal accepts Mr Pemberton's submissions on behalf of the Respondents that he is a senior partner in a specialist firm and 4-year-old court guidance for litigation purposes cannot set a limit to what he may charge or his client may accept. The hourly rate is on the high side but just about within the range which the Tribunal would accept that the Respondents would genuinely be prepared to pay.
6. The Applicant objects to the amount of time Mr Pemberton spent dealing with this matter but has provided no specific objection to the detailed breakdown provided. The Tribunal could not find anything in the breakdown to which any reasonable objection could be taken

although the submission that a junior partner would have taken much longer is not accepted.

7. The Applicant objected to a courier charge of £4.30 on the basis that it should have been regarded as an overhead to be incorporated within the hourly rate. The Respondents have conceded the charge although they do not accept the Applicant's submission.
8. The Respondents have claimed legal costs of £2,287.50 plus VAT, which totals £2,745. This is less than a strict calculation of Mr Pemberton's time multiplied by his hourly rate. The Tribunal is satisfied that it is reasonable and payable.
9. In contrast, the Tribunal finds the valuation fee of £2,100 plus VAT to be extraordinary for a valuation report on one flat in a building with which the valuer is familiar from previous inspections of other flats there. The hourly rate of £300 is not objected to but the breakdown of time appears to include matters which, if they are not double-counting, would be expected to come within other heads, i.e. it is difficult to see how research and the preparation of comparables schedules and excel worksheets cannot be included within the "preparation and submission of our report". The Respondents point to other tenants having accepted such fees but there is no way of knowing why they did so.
10. The Tribunal is satisfied that the Respondents, if personally liable for the valuation fees, would have paid no more than £1,200 plus VAT (£1,440 in total), which equates to around four hours' work.
11. The Applicant has objected to the cost of preparing new lease plans on the bald assertion, unsupported by any evidence, that the plans did not differ materially from those in the old lease. The Respondents replied that the plans were drafted by a draughtsman at Cluttons. In the circumstances, the Tribunal is satisfied that the charge of £252 inclusive of VAT is reasonable.
12. The Applicant asserted that VAT should not be recoverable but the Tribunal cannot accept this submission. All relevant fees were subject to VAT and so part of the costs for which the Respondents would otherwise have been liable.

Name: NK Nicol

Date: 30th July 2014

Appendix of relevant legislation

Leasehold Reform, Housing and Urban Development Act 1993

Section 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) 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.