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

Case Reference : **MR/LON/OOBK/OC9/2014/0139**

Property : **Flat 14, 10 Craven Street, London
WC2N 5PE**

Applicant : **Helga Lee**

Representative : **Jacobsen & Co Solicitors**

Respondent : **Anthony Guy Saunders**

Representative : **Farrer & Co**

Type of Application : **Assessment of costs under section
60(1) of the Leasehold Reform
Housing and Urban Development
Act 1993**

Judge : **Sonya O'Sullivan**

Date of Decision : **23 March 2015**

DECISION

The background

1. The Applicant is the long leaseholder of Flat 14, 10 Craven Street, London WC2N 5PE.
2. The Respondent is the freeholder of the building and the competent landlord for the purposes of the Leasehold Reform, Housing and Urban Development Act 1992 (the "1993 Act").
3. The Applicant served a section 42 notice seeking to exercise her right to a lease extension under S48 of the 1993 Act on 14 January 2014. A Counter notice was served which admitted the right but did not agree the proposed premium. The premium was subsequently agreed and the lease granted.

The application

4. The Applicant has now applied for an assessment of the landlord's costs under section 60(1) of the 1993 Act.
5. Directions were made dated 20 January 2015 further to which statements of case were served by both parties. A bundle was lodged on behalf of the Applicant and the Respondent submitted further enclosures by letter dated 6 March 2015.
6. Neither party having requested an oral hearing the application was considered by way of a paper determination on 23 March 2015.
7. The costs before the tribunal were confirmed by letter from Jacobsen & Co to be the Respondent's legal costs in the sum of £5,000 plus VAT.

The Legal costs

8. The total costs are £5,000 plus Vat. The Applicant submits that a charge of £1,950 - £2,500 plus Vat would be reasonable.
9. The Applicant says that the case did not involve any unusual or complex features. It also submits that it was not necessary for all work to be carried out at a rate of £350 per hour. The Applicant suggests that an appropriate charge would be 2 hours at the rate of £350 per hour and a further 5 hours at a lower rate of £250 per hour.
10. The Applicant also submits that the fees should be reduced to take into account the fact that the Respondent's solicitors are also instructed in relation to the grant of a new lease in respect of another two flats in the same building.

11. The Applicant also says that the print out appears to contain costs relating to matters before the tribunal which are irrecoverable. The Respondent says that it has reviewed the print out and that this time amounts to £624.99.
12. The Respondent produced a print out of the time spent. This totalled less than £4,000 plus Vat. The Respondent produced print outs for a similar transaction in relation to Flat 13. It is said that the grant of the new lease in respect of Flat 13 proceeded the most quickly and as a result the time spent on Flat 13 exceeded that spent on Flat 14 by some margin. It is therefore submitted that there has been an economy of scale in the charging. In fact what the Respondent solicitors have done is to share the time spent on the three flats equally so that the flats are all treated equally with a charge of £5,000 plus Vat per flat.
13. The charging rate applied throughout was £350 per hour. Save for two entries all of the work was carried out by Helen Sculthorpe, a managing associate. The Respondent says that both solicitors who worked on this matter are solicitors in the enfranchisement department and that the charge out rate is reasonable. It is said that a junior solicitor did work on the matter in relation to one of the other flats and that her time and the supervisory time of £350 per hour is reasonable.
14. The Respondent agrees that on the whole the case did not involve any unusual features; the legal title is complex as there are two intermediate landlords which involved complex drafting. In addition as there are 15 flats in the building it is said that it was important to have all leases drafted on the same terms.

The Tribunal's decision

15. The provisions of section 60 are well known to the parties and the tribunal does not propose to set the legislation out in full. However costs under that section are limited to the recovery of reasonable costs of an incidental to any of the following matters, namely:-
 - i. Any investigation reasonably undertaken of the tenant's right to a new lease;
 - ii. Any valuation of the tenant's flat obtained for the purpose of fixing the premium or amount payable by virtue of Schedule 13 in connection with the grant of a new lease under section 56
 - iii. The grant of a new lease under that section.
16. Subsection 2 of section 60 provides that *"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”.

17. The tribunal considers that the rate charged by both fee earners at £350 plus Vat per hour falls within the range generally adopted by the tribunal in cases of this kind. However the tribunal would expect that as the work was carried out only by senior solicitors the time spent would be less than would have been recorded by a more junior fee earner.
18. The tribunal is in some difficulty given that the Respondent has produced a print out in support of the charges which totals less than the time charged. The tribunal understands the reasoning given by the Respondent's solicitors in this regard. In principle in matters such as these it agrees that the time charged should properly take into account any time spent in relation to other similar transactions so as to avoid duplication and ensure fairness of charging to the leaseholders. In this case the charges included on the print out of £3,965 plus Vat has been increased to £5,000 plus Vat to take account of charges incurred earlier in relation to Flat 13. However the Respondent has failed to go on to account meaningfully for those further charges which the tribunal would have expected in such circumstances. It is not for the tribunal to go through the print out provided in relation to Flat 13 to try and identify which of those charges might have been applied to Flat 14 nor does it have the print outs in respect of all three flats so that it can look at the charges in the round. Without that detail it cannot consider whether the costs in question fall within section 60 or are reasonable. Likewise the Applicant is in a difficult position as she cannot fully understand what she has been charged. The tribunal considers therefore that it has no option in these circumstances but to take as its starting point the total included in the print out as time spent in relation to this matter alone in the total sum of £3,965 plus Vat.
19. From this initial total it deducts the sum of £624.99 which relates to time incurred in connection with the proceedings before the tribunal which is not recoverable under section 60 leaving the adjusted sum of £3,340.01.
20. The tribunal went on to consider the print out itself. Of particular concern are two items on the print out. On 21 February 2014 0.8 hours of time is charged in the total cost of £204.17 is marked only as “General”. There is no explanation of the work carried out on this date. This item predates the initial client care letter. Given the lack of any explanation for this entry this item is disallowed. There is a further entry marked as “General” with no explanation of what work was carried out on 16 December 2014 at a cost of £93.75, again given the lack of any detail this item is disallowed. This leaves an adjusted total of £3,041.55.
21. The Applicant argues generally that the time spent is excessive. The view of the tribunal having taken all the matters set out in the parties’

statements into account and having regard to the breakdown provided is that the time spent appears to be excessive for what was a generally straightforward case. It does not consider that the issue of the two intermediate landlords was so complex as to account for the additional time. The tribunal notes that there are multiple entries in which the counter notice is drafted, further considered and amended. It considers the time spent in relation to the drafting and service of the counter notice to be wholly excessive. It is also considered that the time spent in a review of the file on numerous occasions is excessive.

22. The tribunal therefore makes a further adjustment to reflect the excessive time spent in relation to the counter notice and general reviews of this matter and allows the total sum of £2,750 plus Vat.

23. The parties have confirmed that the valuation fee is agreed and the tribunal makes no ruling in this regard.

Name: Sonya O'Sullivan

Date: 23 March 2015