



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

Case Reference : CHI/43UL/OC9/2015/0021

Property : Flat 4, Allan Court, Lower Street, Haslemere,
Surrey, GU27 2NX

Applicant : Lesley Neophytou

Respondent : Esther Weissbraun

Representative : R A Management Limited

Type of Application : Landlord's Costs – Lease Extension

Tribunal Member : Judge N Jutton

Date of Decision : 11 January 2016

DECISION

1 **INTRODUCTION**

2 The Applicant is the Lessee of Flat 4, Allan Court, Lower Street, Haslemere, Surrey, GU27 2NX (the Property).

3 The Respondent is the Lessor of the Property. The Applicant served a Notice on the Respondent pursuant to section 42 of the Leasehold Reform Housing and Urban Development Act 1993 (the 1993 Act) seeking an extension of her Lease. Negotiations took place and in due course a premium was agreed and the Respondent granted the Applicant an extended Lease.

4 On completion, the Respondent's solicitors produced a Completion Statement which included the professional fees that had been incurred by the Respondent. They were valuer's fees of £550 plus VAT, solicitors' fees of £1690 plus VAT and landlord's managing agents' fees of £350. The Completion Statement also sought to recover arrears of service charge payments of £574.92.

5 On 10 May 2015, the Applicant submitted an application to the Tribunal under section 91(2)(d) of the 1993 Act for a determination of the reasonable costs payable by her pursuant to section 60(1) of the 1993 Act.

6 The Applicant challenged the service charge arrears of £574.92, the legal fees of £1690, and the managing agents' fees of £350.

7 The Applicant has since reached an agreement with the Respondent's solicitors as to the amount of the legal fees. The Applicant also accepts that the arrears of service charge payments of £574.92 do not form part of this application, they may only be considered by the Tribunal following an application under section 27A of the Landlord & Tenant Act 1985.

8 It follows that the only costs in respect of which the Applicant now seeks a determination are the Respondent's managing agents' fees of £350.

9 Directions were made by the Tribunal on 21 October 2015 which provided for the Respondent to file a Statement of Case setting out details of the managing agents' fees of £350, and for the Applicant to file a Statement of Case identifying each item of costs in dispute, the grounds upon which each item was challenged and the determination sought. The Directions also provided for the Applicant to send to the Respondent and to the Tribunal a bundle of documents and made clear that the Tribunal would only consider the documents contained in the bundle.

10 The Directions further provided that the application would be determined on the papers without a hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013 unless a party objected in writing within 28 days of the date of receipt of the Directions. Neither party has objected and therefore the Tribunal has proceeded to determine the application on paper without a hearing.

11 **Documents**

12 The documents before the Tribunal were a bundle of documents comprising the Applicant's application form dated 10 May 2015, the Respondent's solicitor's completion statement, a breakdown of the Respondent's legal costs, copy correspondence between the Applicant and the Respondent's solicitor and with the Tribunal, the Respondent's lease, the Respondent's Statement of Case, and the Applicant's Statement of Case.

13 **The Law**

14 Section 60 of the 1993 Act provides:

60 (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 accordance with the grant of a new lease under section 56;*

(c) *the grant of a new lease under that section;*

but this sub-section 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 sub-section (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.*

15 Section 60(5) provides that a tenant shall not be liable under this section for any costs which a party to any proceedings before the Tribunal incurs in connection with the proceedings, and section 60(6) provides that for the purpose of the section, the 'relevant person' in relation to a claim by a tenant under the particular Chapter of the Act means the landlord, in this case the Respondent.

16 **The Submissions**

17 The Tribunal has carefully considered all the documents submitted to it contained in the bundle. The Respondent's submissions are contained in a one page document prepared by the Respondent's Managing Agents R A Management Limited dated 28 October 2015. Attached to that statement is an invoice from R A Management Limited addressed to the Respondent dated 4 August 2015 for £350. That is stated on the invoice to equate to 2 hours' work at £175 per hour. The invoice states:

“For advising specifically on all matters arising following service of s.42 Notice on: Flat 4, Allan Court, Lower Street, Haslemere, Surrey, GU27 2NX. Dealing with yourself, all professionals; solicitor and valuer. Notice served at £6500/ premium agreed at £13,000. Fee at £350 (2 hours @ £175 p/h)”.

- 18 The Respondent’s Statement of Case sets out brief details of the work carried out under 13 headings and at the end of the Statement of Case, reference is made to the Upper Tribunal Decision in **Columbia House Properties (No.3) Limited v Imperial Hall Freehold Limited** (2015) UKUT 0045 (LC).
- 19 The Applicant’s Statement of Case is in the form of a Schedule. It sets out the grounds upon which the Applicant challenges the Managing Agents’ fees of £350. The grounds in summary are:
- i That the costs claimed are unreasonable.
 - ii That the costs incurred by the Respondent in relation to negotiating the amount of premium or the terms of the lease are not recoverable.
 - iii That R A Management Limited have not been involved in the management of Allan Court since 2012.
 - iv That an application for a lease extension was also made by the owner of Flat 2 Allan Court at the same time. That the Respondent has used the same professional advice for each flat and as such, there is an element of duplication/overcharging.
 - v That consultancy fees (which is how the fees are identified by the Managing Agents in the invoice dated 4 August 2015) are not recoverable. That under section 60, the Respondent may only recover legal fees and valuation costs.
 - vi That the Applicant in practice was left with no choice on completion but to pay the costs demanded.
 - vii That the first time the Applicant was made aware of the costs claimed was only very shortly before completion.
 - viii That on the day of completion, initially the Respondent’s solicitor had offered to hold the sums in dispute in his client account pending a resolution but then on the instructions of the Respondent, changed his mind thereby incurring further legal costs.

20 **The Tribunal’s Decision**

- 21 Section 60 of the 1993 Act seeks to do two things. Firstly, given that the Act confers a right on tenants of leasehold flats to compel their landlord to grant them a new lease, it provides as a matter of basic fairness that a tenant in exercising such rights should reimburse the costs that the landlord necessarily incurs as a consequence.

22 Secondly, to provide some protection for tenants against being required to pay more than is reasonable. The section does not provide an opportunity for the landlord's advisers to charge excessive fees in the expectation that they will be recovered from the tenant.

23 As was put by the Upper Tribunal in **Metropolitan Property Realisations Ltd v John Keith Moss** (2013) UKUT 0415 (LC) at paragraph 11:

"Section 60 therefore provides protection for both landlords and tenants: the landlords against being out of pocket when compelled to grant new interests under the Act, and for tenants against being required to pay more than is reasonable".

The test of reasonableness under section 60(2) has been described as the 'reasonable expectation test'. What would a landlord reasonably expect to pay if it were paying the costs itself?

24 The Applicant refers to an extract from the Leasehold Advisory Service's website which suggests that costs recoverable are limited to legal and valuation costs. That as such, consultancy fees/managing agents' fees are not recoverable. The Respondent refers to the Decision of the Upper Tribunal of **Columbia House Properties (No.3) Limited v Imperial Hall Freehold Limited** (2015).

25 Although the Columbia House Decision related to costs payable under section 33(1) of the 1993 Act, the wording to that section is very similar to that of section 60. Both refer to costs being incurred "*in pursuance*" of the Notice and to "*the reasonable costs and incidental to ...*" the matters then listed in each section.

26 In Columbia House, the Upper Tribunal determined that there was no reason why costs incurred under section 33 of a professional agent whether that be a managing agent, a valuer or a solicitor, should not be recoverable provided that they had been reasonably incurred.

27 It follows that professional fees incurred of R A Management Limited are recoverable from the Applicant subject to the two provisos set out in section 60 of the 1993 Act. Firstly, that such costs fall within or are incidental to those set out in section 60(1)(a)- (c) and secondly, that such costs are reasonable to the extent that they might reasonably be expected to have been incurred by the Respondent if in the circumstances she were personally liable for them.

28 Where any element of the Respondent's Managing Agents' costs are not in respect of or incidental to the matters set out in section 60(1), they are not recoverable. Where there has been a duplication of work on the part of the Managing Agents to that carried out by the Respondent's solicitors, that may not be recoverable. To the extent that work carried out may not have been necessary or where an unreasonable amount of time has been spent, then that may not be recoverable.

29 The fact that the Applicant may have felt that she was put under pressure to pay the costs claimed by the Respondent on completion or face litigation, is not relevant. The fact that the Applicant may have not received an indication of the Respondent's costs until very late in the day is not relevant. The fact that the

Respondent's solicitor/Respondent may have changed their mind as to whether they should retain disputed sums in their solicitor's client account on the day of completion is not relevant. The fact that R A Management limited may not have been involved in the management of Allan Court since 2012 is not relevant. None of these matters go to the question of whether the costs claimed fall within or are incidental the items set out in Section 60 or whether they are reasonable.

30 Bearing in mind the balance of the submissions put forward by the Applicant, the Tribunal has considered below each item of costs as set out in the Respondent's Managing Agents' Statement of Case in turn.

31 The hourly rate claimed by the Respondent's Managing Agents is £175. The Applicant makes no submissions as to whether or not that hourly rate is reasonable or not. In the view of the Tribunal, it is not an unreasonable hourly rate for a London managing agent.

32 The Respondent's Statement of case sets out details of work carried out under 13 Headings.

33 The items of work set out in the Respondent's Statement of Case are as follows:

34 ***"1. Receiving and considering a letter addressed to R A Management from Downs Solicitors LLP dated 7 August 2014 and its enclosures being Notice pursuant to section 42 of the 1993 Act."***

35 In the bundle is a Schedule of legal costs; the costs of the Respondent's Solicitors Greenwood & Co. The second item on that Schedule of costs is 12 minutes (2 units) spent in "*considering copies of s.42 Notice and letter of 07.08.14 from Downs Solicitors LLP ('Downs') to agent*". In the view of the Tribunal, there appears to be a degree of duplication. R A Management Ltd (RA) has spent time considering a letter from the Applicant's solicitors dated 7 August 2014 and the Notice enclosed with it pursuant to section 42 of the 1993 Act. The Respondent's solicitor has done exactly the same thing. It would in the view of the Tribunal be unreasonable for the Applicant to have to pay for the costs of RA carrying out the same work as is then carried out by the Respondent's solicitor? This item is therefore disallowed.

36 ***"2. Seeking and obtaining instructions from client."***

37 Patently RA having received the section 42 Notice need to obtain instructions from their client. It is noteworthy that nowhere in the solicitor's Schedule of costs is reference made to correspondence or telephone conversations or attendances between the solicitor and the Respondent. As such it would appear that instructions from the Respondent were obtained by RA and then passed on to the solicitor. Had RA not obtained instructions from the Respondent, the solicitor would have to have done so direct (thus increasing the solicitors fees). It appears that the solicitor simply received instructions from RA. As such, in the view of the Tribunal, it was reasonable for RA to spend time obtaining instructions from their client.

38 ***“3. Advising the client specifically as to the process.”***

39 It is reasonable in the view of the Tribunal for RA (in the absence of there being any evidence that such work was carried out by the solicitor) to advise the Respondent as to the relevant process.

40 ***“4. Advising the client in respect of obtaining solicitors and a valuer to act for her in responding to the claim.”***

41 Similarly, in the view of the Tribunal it was reasonable for RA to advise the Respondent to appoint solicitors and a valuer to act for her. The Tribunal takes the view that looked at reasonably, items 3 and 4 would have or could have been dealt with in the same letter or in the same conversation.

42 ***“5. Instructing solicitors and supplying documentation to include lease.”***

43 Whilst of course the Respondent could have instructed solicitors and sent to the solicitors a lease direct, it was not unreasonable in the view of the Tribunal for the Respondent to ask RA to do so on her behalf.

44 ***“6. Instructing valuer and supplying documentation to include lease.”***

45 Similarly, in the view of the Tribunal it was not unreasonable for the Respondent to ask RA to carry out this work on her behalf.

46 ***“7. Receiving and considering the valuation report and liaising with the client in respect thereof.”***

47 Having received the valuation report, RA would need to seek the Respondent's instructions.

48 ***“8. Taking her instructions as to a counter offer and instructing solicitors accordingly on her behalf.”***

49 There would appear to be an element of duplication between this item and the previous item. Having received the valuation report, RA would have sought the Respondent's instructions upon the report and at the same time as to the amount of premium to put in the counter Notice. It would be normal practice in the experience of the Tribunal for the valuer to have advised not only as to the premium that should be paid but also as to the sum to be included in the counter Notice. It was not unreasonable for RA to in turn instruct the solicitors on behalf of the Respondent.

50 ***“9. Liaising with the valuer and client as to negotiations and ultimately agreement as to the premium and instructing solicitors on behalf of the freeholder accordingly.”***

51 Section 60 breaks down reasonable costs that may be recovered in to three parts (including costs of and incidental thereto). Section 60(1)(a) refers to investigating the tenant’s right to a new lease. Section 60(1)(b) refers to obtaining a valuation of the tenant’s flat for the purpose of fixing a premium and section 60(1)(c) refers to the grant of a new lease, in essence the conveyancing process. In the view of the Tribunal, works in relation to the negotiation of the terms of the new Lease including the premium are not works carried out which fall under any of the above matters nor is it work carried out incidental to those matters. Further it would be usual in the experience of the Tribunal for negotiations as to the amount of the premium to be conducted by the Respondents valuer and thus included within the valuers fees. An agreement having been reached it would not be unreasonable for RA to instruct the Respondents solicitors accordingly on her behalf.

52 ***“10. Dealing with client and solicitor on matters arising from late notification of application to Tribunal for Vesting Order.”***

53 The Tribunal does not understand what is meant by this. An application for a Vesting Order may be made under section 50 of the 1993 Act. The Tribunal is not told whether an application was made in this case under section 50 or otherwise. The reference is to an application to the Tribunal for a Vesting Order. A tenant is not liable for costs incurred pursuant to any proceedings under chapter II of the 1993 Act before the Tribunal. This item is not allowed.

54 ***“11. Preparing details of arrears for inclusion in the Completion Statement and providing the same to solicitors.”***

55 Section 56(3) of the 1993 Act provides that a tenant is not entitled to require the execution of the new Lease otherwise on tendering to the landlord in addition to the premium for the new Lease and any other amounts payable by reason of schedule 13 of the 1993 Act, the amount so far as ascertained of any sums due and payable by him under the terms of the existing Lease. That would include payments of service charge due under the terms of the Lease and if such sums have not been fully ascertained, it is for the tenant to offer reasonable security for payment of such amount as may afterwards be found to be payable. In all the circumstances, it is therefore not unreasonable for RA to provide to the Respondent’s solicitors, details of any alleged arrears for inclusion in the Completion Statement.

56 ***“12. Responding to Lessee’s solicitor and Lessee’s queries in respect of Completion Statement.”***

57 No details are provided. The Tribunal is not told when the queries were raised. If queries were raised by the Applicant’s solicitor direct with RA, then the assumption is they must be in relation to alleged arrears of service charge payments. Any queries in relation to legal costs would have been directed to the Respondents’ solicitors. They cannot be queries in relation to RA’s fees (the costs

of addressing such queries cannot be included in RA's fees given that RA's fees already appear in the Completion Statement). In the view of the Tribunal, queries in relation to the level of service charges are not queries in relation to the grant of a new lease for the purpose of section 60. Accordingly the Tribunal disallows this time.

58 ***“13. Dealing with unilateral Notice from Land Registry received from client and Applicant.”***

59 Again, no details are given. The assumption is that a Notice was filed with HM Land Registry by the Applicant's solicitors to protect the Applicant. In the view of the Tribunal, dealing with such Notice is a matter reasonably for the Respondent's solicitors, not the Respondent's managing agent.

60 The Respondent was directed by the Tribunal to prepare a Statement setting out details of how the costs of £350 had arisen and the service provided. The Tribunal would have anticipated that in doing so where costs, as would appear from the face of RA's invoice of 4 August 2015, are calculated on a time spent basis that the Respondent would have provided details of time spent in respect of each item of work claimed for. The Respondent has failed to do that.

61 Similarly the Applicant was directed to prepare a Statement identifying each item in dispute, to say why that item was challenged and the amount that the Applicant sought in respect of each item. The Applicant has failed to do so. The Applicant has put her case in general terms. She has not gone through each item of costs claimed by the Respondent, identified whether that item is in dispute and if so said for what reason and the amount in relation to that item which she says would be reasonable. To that extent, neither party with respect to them have assisted the Tribunal.

62 The Tribunal considered making further Directions for the Respondent to provide a breakdown by reference to time spent of each item set out in the Respondent's Statement of case and for the Applicant to respond addressing each individual item. However on balance, in the Tribunal's view it would be disproportionate for it to do so given the sums involved.

63 In all the circumstances, the best that the Tribunal can do is to look at the amount of RA's costs as a whole bearing in mind items allowed and disallowed above and comments made in respect thereof by the Tribunal in this Decision. To then as an expert Tribunal determine what would be a reasonable amount of time for RA to have spent in carrying out such work.

64 RA's invoice of 4 August 2015 seeks costs of £350 for 2 hours' work at £175 per hour. From the papers before it and having considered the submissions made by the parties, the best that the Tribunal can do is to determine that a reasonable amount of time to spend on the work carried out by RA to the extent that the Tribunal allows that work would be 1 hour at £175 per hour.

65 The Tribunal's Decision

66 The Tribunal determines that the reasonable costs payable by the Applicant in relation to the fees of RA Management Ltd are £175.

Dated this 11th day of January 2016

Judge N Jutton

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.