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

**Case Reference** : **LON/OOBF/OC9/2015/0509**

**Property** : **26 The Maisonettes, Alberta Avenue, Sutton, Surrey SM1 2LQ**

**Applicant** : **Brickfield Properties Limited**

**Representative** : **Wallace LLP**

**Respondent** : **Pritan Paresh Patel**

**Representative** : **Harold Bell & Co**

**Type of Application** : **S60 and 91 Leasehold Reform, Housing and Urban Development Act 1993 (the Act)**

**Tribunal Members** : **Tribunal Judge Dutton**

**Venue of determination** : **10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **17<sup>th</sup> February 2016**

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**DECISION**

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## DECISION

**The Tribunal determines that the sum payable by Mr Patel shall be £2,811.60 representing the costs payable under the provisions of section 60 of the Act.**

### BACKGROUND

1. This application was to consider the costs of the competent landlord Brickfield Properties Limited which are payable by Mr Patel pursuant to section 60 of the Act.
2. The matter came before me for a paper determination on 17<sup>th</sup> February 2016. In the bundle provided for the determination were the Notices served under the Act; the assignment documents; Counter Notice; the application and directions; the Schedule of costs and supporting invoices from Wallace LLP and the parties statements of case.
3. It appears from the papers that Initial Notices had been served in February 2015 but that both were defective, naming as they did Halliard Property Company Limited as the party to whom notice should be given and in one case also failing to give a date by which the Counter-Notice had to be served.
4. In a letter dated 2<sup>nd</sup> April 2015 Wallace LLP (W) wrote to Harold Bell & Co (HB) solicitors it seems for Mr Patel, informing them that Halliard were not the competent landlord and telling them that Brickfield was, although giving no details as to why they held that position. By a subsequent letter dated 14<sup>th</sup> April 2015 W gave more information as to the status of Brickfield and served a Counter-Notice without prejudice to the contentions previously raised. This Counter-Notice also included a draft lease. On 16<sup>th</sup> April 2015, Sinnertons, who acted for Marilyn Carson the original owner, wrote asserting that the letter dated 6<sup>th</sup> March 2015, enclosing the second Initial Notice was valid. However, no further action appears to have been taken following these Notices.

### SUBMISSIONS

5. For Mr Patel HB submit in a document dated 22<sup>nd</sup> January 2016 that the fees claimed are excessive and do not fall within the definition of what is reasonable and proper under s60 of the Act. They accept that the freeholder can instruct who it wishes but that the tenant should not have to pay more than the fees of a competent local firm. It is also suggested that the work could have done by someone of a less qualified/experienced status. They appended to the submission the time summary prepared by W to which they had made some amendments.
6. For Brickfield W filled a lengthy submission setting out in detail the background, the basis of the charging, a general response to the submissions of HB and then a particularised response to the matters

raised in statement of HB. I have considered all that was said but do not consider it is necessary to set out what is contained in this submission.

### THE LAW

7. The law relating to this matter is contained at s60 of the Leasehold Reform, Housing and Urban Development Act 1993. The section is set out at the end of this decision.

### FINDINGS

8. There appears to be no doubt that the two notices served were indeed defective and that as a result were deemed to be withdrawn, no action being taken on them by the tenant. As a result Mr Patel has responsibility to meet the costs of Brickfield and to pay those on the basis of the provisions of s60 of the Act. I have borne those provisions in mind when reaching my decision.
9. I will firstly address the hourly rate point. It is my finding that Brickfield are entitled to instruct the solicitor they usually appoint for this type of work, which is W. Brickfield do so aware that they will have to meet the rates charged. W have acted for Brickfield for some time according to the submission of W (see para 20). The rates are reasonable given the status of the fee earner and the expertise that W possesses in this field. Accordingly I reject any challenge to the hourly rates claimed, or the level of fee earner. The legislation is indeed complicated, and needs to be handled correctly for the reasons set out in the submission of W. W Have used differing levels of fee earner for different tasks and I find that usage appropriate.
10. HB appears to have reduced the time spent by 1 hour and 12 minutes with a further query as to the need for the preparation of a draft lease. The reasoning is set out in the submission dated 22<sup>nd</sup> January 2016. I have reviewed the schedule of work undertaken and the time spent. I make the following findings:
  - (a) I consider the time spent in considering the original Notice and its replacement to be slightly excessive. They are unremarkable, although incorrect and the errors easily ascertainable for a firm that has acted for Brickfield for some time. In those circumstances I reduce the total time spent in considering the Initial Notices to one hour.
  - (b) As to the draft lease it is my finding that the preparation of same at this stage was unnecessary. The Counter-Notice says "*The new lease should be in the form of the draft annexed hereto being on the same terms and conditions as the existing lease (my highlighting) subject to such modifications as are required by Section 57 of the Act and for a term expiring 90 years after the term date of the existing lease at a peppercorn rent*". I consider that the Landlord's position on this matter could have been reserved without the addition of a draft lease at this stage. If W were firm in their view that the Notices were defective I do not consider it necessary for a draft lease to have been created to

accompany the Counter-Notice and I therefore disallow the time spent of one hour at £300.

(c) The only other reduction I make relates to the time spent on the Counter-Notice. I consider 1.5 hours excessive to produce the document contained within the papers before me. It is just as unremarkable at the Initial Notices and a firm of the experience of W should have been able to deal with same, given the time already spent on reviewing matters, in no more than 45 minutes. I therefore reduce the amount claimed for this element from £630 to £315.

11. Taking these total reductions of £741 gives a sum payable for the solicitor's costs of £1,527 to which £305.40 for VAT needs to be added.
12. I do not consider the time spent by Mr Sharp, the valuer, to be excessive, nor the other disbursement irrecoverable. Indeed the tenant does not challenge them.
13. **Accordingly I determine that the solicitor's costs shall be £1832.40 and with the other disbursement totalling £979.20 the tenant's liability to pay costs under the provisions of s60 is assessed at £2,811.60**

Andrew Dutton  
Andrew Dutton - Tribunal Judge

17<sup>th</sup> February 2016

### **The Relevant Law**

#### **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.