

4500



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference : LON/00AQ/OC9/2017/0052

Property : Second Floor Flat, 12 Ashton Court,
Greenford Road, Harrow,
Middlesex HA1 3QG

Applicant : Brickfield Properties Limited

Representative : Wallace LLP

Respondent : Kieron Anthony Giddins

Representative : -

Type of Application : Determination of Costs to be paid
under S60(1) Leasehold Reform
Housing and Urban Development
Act 1993

Tribunal Members : P M J Casey MRICS

**Date and venue of
Hearing** : 23 May 2017
10 Alfred Place, London WC1E 7LR

Date of Decision : 5 June 2017

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the applicant landlord's costs for which the respondents are liable under the provisions of S60(1) of the Leasehold Reform Housing and Urban Development Act 1993 (the Act) are as follows:

Legal fees	£2,039.50 plus VAT
Land Registry fees	£30
Courier fees	£14.52 including VAT
Valuers fees	£720 including VAT and disbursements

- (2) The tribunal makes the determinations as set out under the various headings in this decision

The application

1. The applicant seeks a determination pursuant to S91(2) of the Act of its reasonable costs under the provisions of S60 of the Act.
2. Following the Tribunal's directions dated 27 February 2017 the applicants' solicitors, Wallace LLP, submitted a hearing bundle to enable the Tribunal to determine the application on the papers. The bundle was considered by the Tribunal on 23 May 2017. Neither the respondent nor his solicitor have communicated with the Tribunal.

Background

3. On 29 March 2016 a notice under S42 of the Act claiming a new lease was served on the applicant landlord by Faith Yavuz Altintas the then long leaseholder of Second Floor Flat, 12 Ashton Court, Greenford Road, Harrow, Middlesex HA1 3QG (the property). On 31 March 2016 the existing leasehold interest in the property was assigned to Kieron Anthony Giddins.
4. Wallace LLP on behalf of the applicant served the landlord's S45 Counter Notice on the lessee c/o Conway and company Solicitors on 7 June 2016. In the letter accompanying the Counter Notice they said that it was served "without prejudice to the contention that the Notice of Claim has been deemed withdrawn pursuant to the provisions of Section 53 (4)(a) 'of the Act' on the basis that there has not been a simultaneous assignment of the lease of the flat with the benefit of the Notice of Claim as required by the provisions of Section 43(3) of the Act. The lease of the flat was allegedly assigned to Kieron Anthony Giddins on 31 March 2016, however no documentation confirming the assignment of the flat and the benefit of the Notice of Claim has been supplied.

Please supply the required assignment documentation (being a copy of the Transfer and the assignment of the benefit of the Notice of Claim) by return to enable the Landlord to consider the position, failing which proceedings seeking a declaration that the Notice of Claim has been deemed withdrawn will be commenced at the County Court”.

5. Correspondence then took place in mid-June with a firm called Ciampa Solicitors acting on behalf of Mr Giddins who claimed that the Notice of Assignment of the Benefit of the Notice of Claim was contained in the transfer document itself but Wallace replied that they could not locate any reference to such. On 30 September they wrote again saying they had had no response and that the Notice of Claim was deemed to be withdrawn. Ciampa replied in early October eventually enclosing a copy of the Transfer with a Rider to the effect that the seller would on exchange of contracts serve a S42 Notice and hereby assigns to the buyer all rights etc of such. Wallace replied on 27 October to say they did not accept there had been a valid assignment of the benefit of the Notice as there must be a contemporaneous assignment of both the lease and the benefit of the Notice which had not happened. In an e-mail of 9 November Ciampa disputed this but no further correspondence is included in the bundle and neither Ciampa nor their client has taken any part in the present proceedings.
6. Clearly no agreement on the applicant’s S60 costs following their claim that the S42 Notice was deemed to be withdrawn was reached and this application was made to the Tribunal.

The law

7. Section 60(1) provides that the Tenant shall be liable for the Landlord’s reasonable costs of and incidental to any of the following matters:
 - (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 the new lease under Section 56;
 - (c) The grant of a new lease under that Section.”

Section 60(2) however provides:

“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.”

While Section 60(3) says:

“Where by virtue of any provision of this Chapter the tenant’s notice ceases to have effect, or is deemed to have been withdrawn then (...) the tenant’s liability under this section for the costs incurred by any person shall be a liability for costs incurred by him down to that time.”

The evidence

8. In the applicant’s statement of case Wallace LLP set out in some detail, in relation to the claim, the date, type and description of the work done and how long it took, the grade of fee earner involved and the hourly charge together with details of disbursements. They also seek to justify the applicant’s choice of solicitor, the grade of solicitor undertaking each task and the charge rate largely by reference to the need for relevant experience when dealing with claims made under complex legislation. They also included and referred to a number of Tribunal decisions in respect of S60 costs where they had acted and these various matters had been challenged.
9. The sums claimed in respect of Wallace’s fees total £2,039.50 plus VAT. The bulk of these costs were incurred between 1 April 2016 when the Notice of Claim was served and 7 June 2016 when the Counter Notice was served which included the landlord’s proposal on the price to be paid and a draft lease containing the terms which they required the new lease to be granted on. A further tranche of work took place between mid-June and early October regarding the deemed withdrawal. All of these sums together with Land Registry fees of £30 and courier fees (service of documents) of £12.10 plus VAT are said in the statement of case to have been reasonably incurred and are payable under the provisions of S60.
10. In respect of the valuer’s fee claimed of £600.00 plus VAT an invoice from Myron Green MRICS detailing the work carried out is included in the bundle.

The decision

11. As Wallace point out in the Statement of Case there has been no response from the respondents and the sums claimed are unchallenged. In such circumstances it is not for the Tribunal to provide such a challenge based on its own views and opinions or experience of other cases. It does however have an obligation to ensure nothing is being claimed which is clearly outside the scope of S60 or that amounts are so excessive as to be patently unreasonable but on a detailed reading of the papers provided there is nothing claimed in this case which can be said

to fall into either category and the sums claimed are determined to be payable in full by the respondents under the provisions of S60 of the Act.

Name: Patrick M J Casey

Date: 5 June 2017

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).