



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

Case Reference : LON/00AG/OC9/2014/0291

Property : 25a Nassington Road
London NW3 2TX

Applicant : Christine Guignabaudet

Representative : GH Canfields LLP

Respondent : Lucy Scott-Moncrieff

Representative : Comptons Solicitors LLP

Type of Application : Costs on extension of lease

Tribunal : Judge Nicol
WR Shaw FRICS

Date of Decision : 25th February 2015

DECISION

Decision of the Tribunal

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

1. Legal costs of £2,535 plus VAT; and
2. Valuation costs of £1,250 plus VAT.

Reasons for Decision

1. The Applicant seeks to recover costs incurred in responding to the Respondent'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). In accordance with the Tribunal's directions, a bundle has been filed containing both parties' submissions and relevant documents and the Tribunal has proceeded to determine the application on those papers, without an oral hearing.
2. The Applicant claims an unusually large sum of £10,209. Her solicitors have indicated that they would be prepared to accept £8,500 but the only breakdown provided has been in a short schedule of costs for the full amount.
3. The first item claimed is fees for three items of work from Robert Pearce QC totalling £3,750 plus VAT. It appears from paragraph 11 of the Respondent's statement of case that his work was principally to address ongoing concerns about the conduct of the parties under the existing lease, in particular by re-drafting the lease, including the provision of new terms.
4. The Tribunal does not doubt that this work was valid work which the Applicant would be prepared to pay for but to include it in an application for costs under section 60 betrays a fundamental misunderstanding about this jurisdiction. Section 60 does not require a lessee to pay actual costs merely because they were coincident with or even prompted by an application for a new lease under the Act. As the Respondent's solicitor has pointed out, the power to vary the terms of the existing lease under section 57 of the Act is strictly limited. The only costs which the Respondent is required to pay are those set out in section 60 insofar as they follow from the exercise required under the Act, including section 57. It would appear that the Applicant took advice with the sensible objective of trying to address at the same time concerns which fell outside the exercise required under the Act but she is not entitled to claim for her costs of so doing.
5. To the extent that counsel provided advice which addressed matters within section 60 of the Act, the Tribunal notes that the Applicant was already advised by a senior and experienced solicitor. A client would not expect to pay for both to address the same issues. The Tribunal is satisfied that the amount of time claimed by the Applicant's solicitor for his work on this case should more than covered the required advice.
6. In the circumstances, the Tribunal disallows the whole of the counsel's fees claimed. The Applicant's solicitor's fees for dealing with counsel, which includes an element of his time, must consequently also be disallowed.

7. The number of letters, 16, sent by the Applicant's top-grade solicitor to his opposite number seems somewhat high and has not been specifically justified. However, it is not possible for the Tribunal to say that it is so high as to be outside the range which a client would reasonably expect to pay if personally liable.

8. The Applicant's solicitor has claimed that, in addition to all phone calls and correspondence, he has worked 7 hours and 42 minutes on this matter. As well as the disallowed time with counsel, it must be remembered that much time was saved which would normally have been spent on a lease extension case because the Respondent withdrew her claim before it got near the final stages. The Tribunal is satisfied that, in such circumstances, a client who was personally liable would not reasonably expect to pay for more than 6 hours' work.

9. The Applicant's solicitor apparently engaged a Costs Consultant who worked for five hours to produce the schedule of costs put before the Tribunal. This is an extraordinary claim. The schedule is short. The amount of time claimed for the Costs Consultant is 65% of the time claimed for the solicitor (other than correspondence), which is wholly disproportionate. The employment of a costs consultant is entirely appropriate in a case which results in a full court trial but not in a fairly simple, aborted matter such as this one. The Tribunal disallows the whole of the Costs Consultant's fees.

10. The legal costs therefore consist of the following with VAT to be added:

(a) Phone calls and correspondence	£935
(b) Solicitor's time	£1,500
(c) Costs of preparing the bill	£100
Total	<u>£2,535</u>

11. The cost of the valuation report is claimed at £1,250 plus VAT. This is higher than normal but did include consideration of an unusual element involving access from a neighbouring flat. It is still on the high side but within a reasonable range and the Tribunal allows it in full.

Name: NK Nicol

Date: 25th February 2015

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.