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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/38UE/OLR/2017/0142**
Property	:	**16 Foster Road, Abingdon, Oxon OX14 1YN**
Applicant	:	**Mr Mark Skipsey**
Representative	:	**Franklins solicitors**
Respondent	:	**Wallace Properties Limited**
Representative	:	**Stevensons solicitors**
Type of Application	:	**Determination of costs under s60 and s91 Leasehold Reform, Housing and Urban Development Act 1993**
Tribunal Members	:	**Tribunal Judge Dutton** **Mrs S F Redmond BSc (Econ) MRICS**
Date determination	:	**29th November 2017**

DECISION

DECISION

The Tribunal determines that the sum payable by the Applicant in respect of the Respondent's costs under the provisions of section 60 of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act) is £1,438.80 (inclusive) together with the valuation fees of £575 plus VAT.

BACKGROUND

1. This is an application for the determination of the costs payable by the Applicants to the Respondent under the provisions of section 60 of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act). The parties have provided a Points in Dispute schedule which we have completed.
2. In the papers before us we had copies of the Notice and counter-notice and the application. In addition to the Points in Dispute schedule a copy of the Upper Tribunal decision in Sinclair Gardens Investments(Kensington) Limited and Wisbey [2016]UKUT 0203 (LC) was provided. We were not given a final copy of the lease for the property. We did have a copy of the LVT decision in 17 Foster Road dated 31st July 2012, which does not appear to have been the subject of an appeal
3. The legal costs were claimed at £2,149 inclusive of VAT and disbursements. The valuation fees were not challenged and are recorded at £575 plus VAT. The Applicant offered £795.00 being three hours of Mr Stevenson's time, presumably to have VAT added which would give a figure of £954.
4. The application was originally to determine the terms of the lease, but that was agreed. We are not clear on what terms it was agreed but reading between the lines it would seem that the provisions of the lease settled by the Tribunal in 2012 have prevailed.
5. As a result of these agreements the parties requested that the determination of the s60 costs be dealt with on the papers before us which we have done today.

THE LAW

6. The provisions of section 60 are set out in the appendix and have been applied by us in reaching this decision.

FINDINGS

7. We have completed the Points in Dispute which sets out our findings on those matters which are in dispute. We have borne in mind the findings of the Upper Tribunal in the Sinclair Gardens case. It is interesting to note that the Respondent's details of costs closely mirrors those put forward in the Sinclair Gardens case. Whilst the Upper

Tribunal is authority for the principles to be applied each case should be decided on the facts.

8. The totality of the Respondent's costs, do not appear at first flush to be excessive. There is no challenge to the hourly rate sought by Mr Stevenson and the total time spent is 6.7 hours, using 6 minute units, which is the norm. There are some areas where we find that the costs are high or do not fall within the provisions of the Act.
9. There has been little attempt to reach common ground by either party. On the basis of the information before us we find that the costs payable under what is shown as A is £689.00 and under B £500. This gives a total profit costs of £1,189.00, plus VAT of £237.80 and disbursements of £12, giving a total of costs payable under the provisions of s60 of the Act of £1,438.80
11. The parties appear to be alleging that there are costs claims under rule 13 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013. No formal application has been made. We have given an indication of our view at present and drawn the parties attention to the Upper Tribunal case of ***Willow Court Management Company Limited and Alexander [2016] UKUT 0290 (LC)***. If either party wishes to pursue this matter further they must contact the Tribunal within 28 days when directions will be issued.

Andrew Dutton

Tribunal Judge Dutton 29th November 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).

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.

SCHEDULE OF COSTS PRECEDENTS
PRECEDENT G: POINTS OF DISPUTE

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference: CAM/38UE/OLR/2017/0142

B E T W E E N

Mark Skipsey

Applicant

and

Wallace Properties Limited

Respondent

POINTS OF DISPUTE SERVED BY THE RESPONDENT

Point 1 General Point	The Applicant does not object to the claimed charging rate of G.N. Stevenson. However, the Applicant considers the total claimed excessive. The form of Lease on this development was approved by the Tribunal in relation to 17 Foster Road in 2012 Case No. CAM/38UE/OLR/2012/0030. In that case costs were also in dispute and the Tribunal allowed 3.5 hours work. The legal work in relation to 16 Foster Road should have been less because the form of lease had already been approved by the Tribunal.
	Receiving Party's Reply: The decision of the Tribunal in 2012 is not binding on this Tribunal and in any event the law is liable to change by Parliament or a Higher Tribunal and cannot be simply assumed to be static. The 2012 decision is therefore irrelevant as to the costs assessment herein as this present case and property lease needed to be considered on its own merits in accordance with the law as at 2017 (which needed to be consulted) and there has since been a leading decision on solicitors costs by the Upper Tribunal.
	Tribunal Decision: We are not helped by the failure of either party to provide a copy of the completed lease. The decision in 2012 disallowed changes for reasons set out therein. We are not aware of any changes in the law which would suggest that a lease approved for a property at 17 Foster Road would not hold good for this property.

Point 2	**(A) Notice of Claim engaged (45 units)** Comments using the same numbering as the Respondent.
1	Six units are claimed for taking instructions from an experienced investor freeholder. The time is excessive.
	Receiving Party's Reply: Six units are entirely appropriate given the need for all due diligence. Clearly the client is entitled to give full instructions and receive initial advise. This time was approved for this work by the Upper Tribunal in April 2016 where the Landlord was also an experienced Investor – Point 1 on Page 4 of the attached decision [Page 11 hereof]. The case of Sinclair Gardens Investments (Kensington) Limited v Wisbey [2016] UKUT 0203(LC) is attached (hereinafter referred to as Wisbey).
	Tribunal Decision: 6 units seems excessive given the status of the Respondent and the fact that this is one of two transactions taking place together and that there have been other transactions involving properties in close proximity. **We find that 4 units would be correct at a rate of £26.50 per unit giving a total payable for this element of £106**. This is the more so as we have disallowed further correspondence under heading 8 below
2.	One unit would be sufficient to check the office copy entries.
	Receiving Party's Reply: The Office Copy Entries for both the Freehold and the Leasehold needed to be considered together with the Lease and Deed of Variation. 18 mins is entirely reasonable for considering these 4 documents particularly as the Lease is 13 pages long plus plan and there is a Deed of Variation to consider. Again this time was approved by the Upper Tribunal in Wisby – Point 2 on page 4 of the decision [Page 11 hereof].
	Tribunal Decision: The charge of 3 units is reasonable and is allowed. 6 minutes is too short a period to consider the documentation in any meaningful manner. **Allowed £79.50**

3.	Three units is claimed for instructing the valuer. In **Sidewalk Properties Limited v Twin** [2015] UKUT 0122 LC) The Deputy President of the Upper Tribunal stated:- "36. I agree with the appellant that the task of instructing a surveyor is incidental to a valuation. Nevertheless in a case such as this it is an adminstrative rather than a professional task which no doubt relies on the use of standard instructions given to a surveyor who is very familiar with the requirements of statutory valuations under the 1993 Act. Where those adminstrative tasks are entrusted to a solicitor the client would not expect to be charged an additional fee, but would expect the expense to be subsumed instead in the fee payable to the solicitor for his or her own work" Time should not therefore be claimed for instructing the valuer.
	Receiving Party's Reply: This point is conceded
	Tribunal Decision: Nothing is recoverable
4.	One unit per notice should suffice.
	Receiving Party's Reply: 3 units was considered appropriate in Wisbey – Page 4, Item 4 [Page 11 hereof]. 18 minutes is entirely reasonable for this work.
	Tribunal Decision: 18 minutes seems perfectly reasonable for dealing with this aspect. **£79.50 is allowed**
5.	Time excessive.
	Receiving Party's Reply: Wisbey again confirms that the Upper Tribunal consider this time for this work not to be exessive – Page 4 Item 5 of the decision [Page 11 hereof]. Each clause of the notice needed to be considered with reference to the law and the title documents and lease.
	Tribunal Decision: See 6 below

6.	This item should be disallowed completely. It is not clear what needs to be researched when there is already a claim for considering the lease and office copies and considering the validity of the tenants notice.
	Receiving Party's Reply: Wisbey again confirms that the Upper Tribunal considers this time for this work to be reasonable – Page 4 Item 6 of the decision [Page 11 hereof]. Indeed in Wisbey more time was allowed. The work involved inter alia is considering the date of receipt of the notice, the terms of the current lease, and the valuation figure claimed as well as the acquisition date of the Applicant.
	Tribunal Decision: We find that the works at items 5 and 6 would be considered together. Over an hour seems somewhat excessive. An experienced practitioner should be able to deal with this matter in say 45 minutes. **We would allow 8 units giving a figure of £212 for both 5 and 6 combined**
7.	Time excessive. Drafting a Counter Notice is a standard job for an experienced solicitor such as G.N. Stevenson if he is not seeking to introduce additional provisions into the new lease to which there is no legal entitlement.
	Receiving Party's Reply: 18 minutes is entirely reasonable for drafting a counter notice which if incorrect is potentially negligent causing considerable potential loss to the client. Again, this time was approved of by the Upper Tribunal in Wisbey - Page 4 Item 7 [Page 11 hereof].
	Tribunal Decision: We agree with the Respondent's assertions. 4 units seems perfectly reasonable for this step. The applicant does not offer any lesser time. **We allow £106**
8.	The same points apply in relation to the valuation as three above. There was no need to consider service on a third party because there is no third party involved. The letters to the valuer should not have been charged separately. It is not clear why the Respondents solicitor needed to write five letters to his client seeking instructions/updating.
	Receiving Party's Reply: The valuation items are allowable on the authority of the Upper Tribunal in Wisbey – Pages 4/5 Item 8 [Page 11/12 hereof].

	It needed to be considered whether a Third Party needed to be served. 6 minutes is reasonable for this as stated by the Upper Tribunal in Wisbey – Top of Page 5 [Page 12 hereof]. The letters claimed are low in number and five letters to the client is entirely reasonable. Instructions must be sought on all matters and the client as a matter of professional conduct must be kept informed. Again Wisbey Page 5 (top of) [Page 12 hereof] approves of a similar number of letters (9) in number.
	Tribunal Decisions: We do not see the relevance of considering a third party, it must surely have been clear at this stage whether such a character existed. It is clearly necessary for the solicitor to read the valuation report and to liaise with the client and the valuer. **We would allow 4 units in total for this element giving the sum of £106.** We do not consider that the 9 units claimed for correspondence are reasonable. Instructions were taken under heading 1 and 8. We cannot see that more is required which would fall under the section. The same applies to the correspondence with the valuer and the Applicant
(B)	All items claimed under this heading should be disallowed save for preparation of engrossments and attending to completion. As the Tribunal had already approved the form of lease there should be no need to spend time changing it and corresponding about it.
	Receiving Party's Reply: Each case needs to be considered on its merits and the position of the Applicant is untenable. The Applicant assumes that all of the terms of leases in any block of flats must be the same which is patently incorrect. Also, the 2012 Tribunal decision referred to is not binding on this Tribunal. The Applicant has not helped matters in terms of costs or progress by failure to send back until 30th September 2017 the draft lease with amendments. It was sent on 15th March 2017 six months earlier [Page 22 hereof]. Indeed the Applicants solicitors refused to send the same back in their letter of 21st April 2017 [Page 35 hereof]. No response was received to the letter sent to the Applicants solicitors of 30th April 2017 until 30th September 2017 [Page 44 hereof].
	Tribunal Decision: It is unclear how the alleged delays by the Applicant have increased costs. Further we find that it would be good management of the buildings to endeavour to ensure that the leases are the same. The terms of the lease have not been disclosed to us. We are left to assume that the findings of the Tribunal in 2012 would have influenced the parties. 22 units seems on the high side, in addition we find that some of the work could have been undertaken by a lower grade fee earner, for example preparing the engrossments and attending to completion. **Taking the matter in the round we find that the sum of £500 would be a reasonable sum to allow for this aspect**

	The Applicant agrees to the claim to valuation fee of £575.00 plus VAT and the claim for £12.00 in respect of Land Registry costs. Postages should not be a separate item.
	Receiving Party's Reply: The Respondent is entitled to the costs of serving the Counter Notice on the Applicants Solicitors by Special Delivery. If it is not received in time this is almost certainly negligent with heavy potential liability.
	Tribunal Decision: With respect to the parties arguments over such piffling sums does no credit. The position we find is this. The Respondent knows the time scales and should ensure that service is within same. The charge for special delivery should not be passed to the Applicant and is therefore disallowed
	The Applicant offers £795.00 legal fees being three hours work at Mr Stevenson's charging rate of £265.00. The time should have been less than in 2012 firstly because the lease had already been determined and secondly because Mr Stevenson is a more experienced fee earner than the licenced conveyancer who dealt in 2012 so can be expected to take less time to deal.
	Receiving Party's Reply: The time spent by Mr Stevenson is entirely reasonable. Wisbey confirms that an experienced practitioner is entitled to spend this amount of time on the case. The amount offered is far too low and unrealistic. Herewith a 27th September 2017 decision Woodcock v Legion Properties RC/LON/00BJ/OC9 2017/0061. An amount of £2167.50 + VAT was awarded in a similar case by the Tribunal [Pages 37 to 43 hereof] – far higher than is claimed here!
	Tribunal Decision: It is unrealistic to suggest that the time and rates should be less as is suggested by the Applicant. It is reasonable for Mr Stevenson to act and the hourly rate has been agreed. We find that the sum payable by the Applicant is as set out on the decision and reflect the findings we have recorded in this document. We would mention that we are not bound by another First-tier tribunal finding, the more so as according to the decision a number of matters were agreed
Point 3	Application for an order for costs under Rule 13 Tribunal Procedure Rules 2013 and cross application under the same rule.

	The Applicants solicitor spent a total of 3.5hrs on 29th September 2017 dealing with amendments to the draft lease and preparing these costs submissions. Her hourly charging rate is £250.00 plus VAT per hour and she also spent time in March considering the draft lease and reminding the Respondents solicitor that the form of lease had previously been approved by the Tribunal. Application is therefore made by the Applicant under Tribunal Procedure Rules 2013 Rule 13 for an order that the Applicants costs in this respect are met by the Respondent.
	Receiving Party's Reply: As previously explained the Applicants solicitors took over 6 months to return the draft lease with suggested amendments from 15th March 2017 to 30th September 2017 and this is clearly unreasonable. All of the suggested amendments are agreed. There was therefore inordinate delay by the Applicant causing these proceedings to be issued. This is unreasonable under Rule 13(1)b. This claim for costs has no substance whatsoever therefore and should be dismissed. Indeed the Respondent makes an application against the Applicant under Tribunal Procedure Rules 2013 Rule 13 for an order that the Respondents costs in this respect are met by the Applicant. If the Applicants solicitors had responded promptly there is every reason to believe that this Tribunal application would have been unnecessary and indeed the case completed by the end of June 2017. The Principal has spent 2.5 hours to date in connection with these proceedings and the Respondent asks the Tribunal to order reimbursement of 2.5 x £265 (charging total = £662.50 + VAT)
	Tribunal Decision: On the scant information available and bearing in mind the Upper Tribunal guidance in the case of *Willow Court Management Company (1995) Limited v Mrs R Alexander and others under reference [2016]UKUT290(LC).* we would consider that neither party puts forward a persuasive argument that the unreasonable threshold has been reached. If either party wishes to pursue this application they must make formal application and directions will be issued.

Served on **on 12th October 2017 by Stevensons Solicitors on behalf of the Respondent.**

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