



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

Case Reference : LON/OOAG/OC9/2017/0183

Property : Flats 4 and 10, 29/31 Adelaide Road, London NW3 3QB

Applicant : Mr T M Guise (flat 4) and Mr R M Ryan (flat 10)

Representative : Barnett Alexander Conway Ingram LLP

Respondent : Fivecourts Limited

Representative : Savills (UK) Limited

Type of Application : Determination of costs under s60 and s91 Leasehold Reform, Housing and Urban Development Act 1993

Tribunal Members : Tribunal Judge Dutton
Mr W R Shaw FRICS

Date determination : 25th October 2017

DECISION

DECISION

The Tribunal determines that the sum payable by the Applicants 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) in relation to the valuer's fees is £1,250 plus VAT for each flat for the reasons set out below

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). It relates only to a challenge to the fees of Savills, which are £2,325 for flat 4 and £2,490 for flat 10. The costs arise from a two applications both seeking lease extensions on terms set out in notices sent to the Respondent, it would seem on 11th May 2016.
2. The Respondent, replying by way of Counter-notices under section 45 of the Act dated 1st July 2016, admitted the Applicants' rights to seek a lease extension but put forward different premiums.
3. By a letter dated 24th August 2017 the Applicants' solicitors put forward submissions on the level of fees charged by Savills. Whilst the rates charged do not appear to be under challenge the time spent is. It is suggested, from discussions with the Applicants' valuer that 4 hours in total would be sufficient to deal with both cases. It is said that the time spent travelling is too great and that the inspections only took 15 minutes per flat. It is said that there was duplication of costs.
4. As further support for a reduction the Applicants say that in respect of flat 6 at the property, Laurence Nesbitt, for the Respondent, had only charged £1,440 plus VAT, this involving a visit to the flat on a Sunday. Using this as a barometer of the correct charge the Applicant offers £1,250 plus VAT for each flat.
5. In response we were provided with what purports to be a time sheet for the fees charged by Savills. This shows the rates and the time spent on each valuation. They are similar, the only difference being an apparent extra 30 minutes for flat 10.
6. In a letter from Savills dated 21st September 2017 they respond to the points raised by the Applicants. It is said that both reports were the subject of peer review by a partner and a charge of £150 for each report is made. This being 30 minutes at the partner rate of £300 per hour.
7. As to the inspection it is said that one hour was perhaps an undercharge and that the inspection was 20 minutes for each flat. An explanation is given as to the time of 4 ½ hours for providing the

report. An additional 30 minutes was spent assessing the rent review but seems only to have been charged for flat 10. We understand that the leases are the same, at least in this regard.

8. Directions were issued by the Tribunal on 4th July 2017 and subsequently amended. There has been compliance and the matter came before us for consideration as a paper determination on 25th October 2017.
9. We were provided with a bundle of papers including the parties submissions, a copy of one notice under S42 and a copy of a Counter Notice under s45, the leases for both flats

THE LAW

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

FINDINGS

11. The only issue before us is the charge of Savills for providing a valuation report. It is not suggested that the costs of such a report are irrecoverable under the Act, nor does there appear to be a challenge to the rates applied by Savills in this case. The issue rests on the time spent. We have noted all that has been said.
10. Considering the schedule of time said to have been spent we consider that the travel and inspection charge to be reasonable. We can accept that it would take about an hour to reach the property and the inspection is said to have been either 15 or 20 minutes. It matters little. If the time is split for travel and the inspection added the total of one hour for each property does not seem unreasonable.
11. As to the time spent on reviewing the lease and peer review we consider those to be reasonable costs. Although the leases appear to be the same they would need to be checked and consideration of the rent review provisions undertaken. It is not unreasonable for the report to be reviewed by partner.
12. We do consider that there has been an element of “over egging the pudding” in respect of the amount of time spent in preparing the report, including the research, calculation and writing of same. There is, we suggest, an element of repetition on these cases. Research for one should be relevant for the other. We were not provided with copies of the reports but suspect there would have been some duplication although we note from the file that there is a disparity in the premiums agreed, which would suggest there was some difference in the valuation elements.
13. We conclude that the Applicants’ suggestion that 4 hours in total for each flat is not far off the mark. We do consider that the review is

reasonable and the time on travel and inspection is acceptable. We noted that a letter from the respondent indicates fees of £2,400 including VAT, for each, slightly different from the fees actually sought by Savills as set out at paragraph 1 above.

14. Doing the best we can on the information provided we conclude that an element of the fees of Savills is beyond that which is recoverable under s60, particularly in relation to s60(2). It seems that Savills are not the only surveyor used by the Respondent. The Applicant has offered £1,250 plus VAT for each flat. We noted the fees said to have been charged by another valuer for assessing flat 6, a piece of 'evidence' which is not challenged by the Respondent. Given our findings on the time spent and considering the fees charged for flat 6, we are satisfied that a fee of £1,250 plus VAT for each property is a reasonable charge for the valuation under s60(1)(b) of the Act.

Andrew Dutton

Tribunal Judge Dutton

25th October 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.