



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

Case reference : **LON/OOBC/OC9/2020/0105**

**HMCTS code
(paper remote)** : **PAPER REMOTE**

Property : **5 Ibrox Court Palmerston Road
Buckhurst Hill Essex IG9 5 LN**

Applicant : **Brickfield Properties Ltd (“the
Landlord”)**

Representatives : **Wallace Solicitors LLP**

Respondent : **Nasser Ahmed Malik and Saira Ali Khan
 (“the tenants”)**

Representatives : **Quality Solicitors Mirza**

Type of application : **For a determination of the statutory
costs under section 60 of the Leasehold
Reform, Housing and Urban
Development Act 1993**

Tribunal members : **Ian B Holdsworth FRICS MCI Arb**

Date of decision : **30th November 2020**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers {PAPER REMOTE}, which has been consented to by the parties. A face-to-face hearing was not held because it was not practical and all issues could be determined in a remote hearing on paper.

The documents referred to are contained in a single bundle prepared by the Applicant, the contents of which I have read and noted.

Decision

Pursuant to section 60(1) of the Leasehold Reform, Housing and Urban Development Act 1993 statutory costs of £3,674.10 inclusive of VAT are payable by the tenants to the landlord for legal fees and £1,020.00 inclusive of VAT for valuer fees.

The application

1. By their application received on 16 July 2020 the landlords sought a determination under section 60(1) of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) of the landlord’s statutory costs incurred in an abortive lease extension claim.
2. Standard directions were issued on 4th September 2020. The directions stated that the application was suitable for determination on the basis of written submissions and without an oral hearing but they informed the parties of their right to request an oral hearing. No such request was received and accordingly we have determined the statutory costs on the basis of the written submissions and other documents included in the comprehensive document bundle that was submitted in accordance with the directions.

Background

3. By an initial notice dated 3rd April 2018 the tenants claimed the right to acquire a new lease of the flat. The initial notice proposed a purchase price of £20,000. The initial notice gave 18th June 2018 as the last day for the service of the landlord’s counter-notice.
4. The landlord’s counter-notice is dated 16th June 2018. The counter-notice admitted the tenants’ claim but proposed a premium price of £65,950.
5. The terms of the new lease were subsequently agreed between the parties at or around 2nd May 2019. The tenants had until 1st September 2019 to complete the new lease. They failed to complete the lease within the statutory timetable and accordingly the Notice of Claim was deemed withdrawn pursuant to the provisions of Section 53(1)(b) of the Act.
6. No agreement in respect of the statutory costs payable by the applicant has subsequently been reached and an application was made to the First Tier Tribunal Property Chamber to seek determination of the statutory costs payable.

7. The relevant legal provisions are set out in the Appendix to this decision.

The claimed costs

8. In response to the Tribunal's directions the landlord's solicitor, Wallace LLP provided a schedule of costs suitable of summary assessment. The schedule is detailed and records the time spent in 6 minute units. All the work was undertaken by a partner, except for a short period spent by an assistant engaged in writing e mails and letters to parties. The paralegal undertook some limited administration. The partner is a Grade A solicitor whose time is charged at £475 plus VAT per hour. The assistant is charged at a rate of £385 per hour and the paralegal is charged at £200 per hour.

9. By the application of the hourly rate to the time spent the schedule seeks to justify the following costs exclusive of VAT:-

Legal fees: £3,600 inclusive of VAT

Courier fees: £32.10 inclusive of VAT

Land Registry fees: £42.00 inclusive of VAT

Valuer fees: £1,020 inclusive of VAT

10. The respondents have submitted a schedule that comments on the different elements of the charges made Wallace Solicitors LLP. They argue that the hourly charging rates are excessive. They refer to the £275 per hour rate charged by the solicitor acting on behalf of tenant. It is explained the partner who dealt with this matter qualified in 1997 and is a Grade A solicitor. The tenants solicitors also claim that excessive time was spent in considering the notice and amending the lease.

11. Quality Solicitors Mirza do not dispute the sum charged for the valuers fees.

12. In summary the costs in dispute are as follows:

- The applicants claim legal fees of £3,600, valuer fees of £1,020, Land Registry fees of £42.00 plus courier fees of £32.10. The total claimed by the applicants with VAT is £4,694.10.
- the respondents in their submission do not specify reasonable legal fees for the section 60 work. The respondents allowable legal fee is therefore estimated from the comments in the text at around £1,600 inclusive of VAT. The valuer fees of £1,020 and Land Registry fees of £42.00 are accepted by the respondents. The total estimated sum with VAT proposed by the respondents is in the order of £2,662.00.

The Tribunal's Determination

13. The applicant has provided a detailed schedule of the work undertaken in responding to the notice. The submission explains how Wallace LLP has acted for the applicant for many years. The basis of the fees charged by the solicitors to their client is by reference to the time spent by the relevant fee earners. The solicitors are based in Central London. A partner in the property litigation department conducted most of the work and charged £475 per hour.
14. We accept that the applicant was entitled to instruct Wallace LLP and that the rates charged are consistent with the usual charge out rates for solicitors in Central London.
15. The respondent disputes that there was a need to carry out all the work that is shown on the schedule. The respondent also claims that the fees charged by the applicants' solicitors are excessive, the seniority of the partner allocated is unreasonable and the time allocated to the matters was excessive.
16. After review of the schedule the work shown is considered appropriate for this complexity of application. It is also determined that the complexity of the tasks required a high skill level commensurate with a senior partner.
17. The respondent does not dispute the sum charged by the valuer.
18. We understand that the respondent does dispute the cost of the courier. The tribunal accepts the need for the use of a courier to serve the time critical Counter Notice and allows this expense.
19. **The tribunal determines the total costs payable by the respondent to the applicant under s 60 (a) including VAT are: (a) Legal fees £ 3,600.00 (b) valuers fees £1,020.00 (c) Land Registry fees £ 42.00 and (d) £32.10 courier fees. This totals £4,694.10.**

Name: Ian B Holdsworth

Date

30 November 2020

Appendix

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.