



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

Case Reference : **JM/LON/00AJ/OC9/2021/0162**

HMCTS code : **P: PAPERREMOTE**

Property : **8 Connell Crescent, London, W5
3BL**

Applicants : **Brickfields Properties Limited**

Representative : **Wallace LLP, Solicitors**

Respondents : **(1) Martin Edward Fryer as
Executor for Gladys Fryer
(2) Profit Estates Limited**

Representative : **Shentons, Solicitors**

Type of Application : **Section 91 of the Leasehold
Reform, Housing and Urban
Development Act 1993**

Tribunal Member : **Tribunal Judge I Mohabir
Mr D Jagger MRICS**

Date of Decision : **1 March 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers, which has been consented to by the parties. The form of remote hearing was P: PAPERREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

Introduction

1. This is an application made by the Applicant under section 91 of the Leasehold Reform, Housing and Urban and Development Act 1993 (as amended) (“the Act”) for a determination of the statutory costs payable by the Respondents under section 60 of the Act for the grant of a new lease in relation to the property known as 8 Connell Crescent, London, W5 3BL (“the property”).
2. The Applicant is the headleasehold owner of premises known as 2-8 (Even) Connell Crescent, London W5 3BL (the Premises) of which the property forms part. The Applicant is the competent landlord for the purposes of the Act.
3. On or about 13 August 2020, the First Respondent made an application for the grant of new Lease by way of Notice of Claim pursuant to the provisions of Chapter II of the Act.
4. The Second Respondent became the registered proprietor of the Flat on 14 September 2020.
5. On or about 9th December 2020 Brickfield served a counter-notice pursuant to Section 42 (2) (a) of the Act accepting the Tenant’s entitlement to the grant of a new lease but without prejudice to the contention that there had been a deemed withdrawal of the Notice because there had not been an assignment of the benefit of the notice of claim as required by Section 43 (3) of the Act.
6. No copy of the Assignment of the Benefit of the Notice had been provided by Messrs SCJ Solicitors who (in so far as the Applicant is aware) acts on behalf of both the First and Second Respondents. On the 30 November 2020 Andrzej Zbigniew Kolouszowski became the current registered proprietor of the property.
7. The Applicant subsequently made enquires of the solicitors acting on behalf of the current proprietor and was informed by Messrs Woodfords Solicitors that their client had not taken benefit of the Notice and it was required to prepare a counter notice.
8. It is the Applicant’s case that (a) no assignment of the benefit of the Notice exists and as such the First Respondent is liable for costs or (b) there has been a valid assignment of the benefit of the Notice and the Second Respondent is liable. The current proprietor is not liable for any costs.

9. On the 7 December 2020 Messrs SJC Solicitors advised that the property had been sold and that the Applicant should make enquiries of the purchaser.
10. The current proprietor's solicitors believe that Messrs SJC Solicitors act on behalf of both Respondents.
11. On 17 September 2021 Messrs SCJ Solicitors advised that they were not acting for the Second Respondent.
12. On 23 March 2021 Brickfield's Solicitors sent an email setting out its position on costs.
13. The statutory costs payable having not been agreed Brickfield's Solicitors made an Application to the Property Chamber seeking determination of statutory costs payable pursuant to Section 60 of the Act.
14. A breakdown of the Applicant's legal costs has been provided pursuant to the Tribunal's Directions. This sets out the level of fee earner, Ms Bone (a Partner), and hourly rate of £495 claimed by her. The total profit costs claimed in the Applicant's statement of case is £3,000 including VAT plus disbursements of £21.60 including VAT and valuer's fees of £840 including VAT. The Tribunal notes that in final statement of costs (at page 81 in the bundle) an additional disbursement of £23.32 including VAT is stated.
15. The Respondents nor their solicitors have engaged in these proceedings.

Relevant Statutory Provision

16. Section 60 of the Act provides:

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.

Decision

17. The Tribunal's determination took place on 1 March 2022 and was based solely on the written representations filed by the Applicant. The Tribunal's approach was to conduct what effectively amounts to a summary assessment of the costs.
18. As stated earlier, this matter relates to the Respondents' costs incurred in what can be described as a "standard" statutory lease extension with no particular complication.

Fee Earner & Hourly Rate

19. Whilst this may have appeared to be a relatively straightforward matter, the Tribunal's view was that this is a highly technical area of law conducted by the Applicant's solicitors with the requisite knowledge and experience in this field of work.
20. However, as stated earlier, this was a relatively straightforward lease extension transaction and, therefore, the Tribunal concluded that the hourly rate of £495 claimed by Ms Bone was not reasonably incurred. The Tribunal was satisfied that the work could have been satisfactorily carried out by a Senior Assistant at an hourly rate of £385 plus VAT.
21. The Tribunal found that the total time of (say) 5.5 hours work carried out in relation to this transaction was reasonable. Therefore, the profit costs allowed

by the Tribunal as being reasonably incurred was £2,117.50 plus VAT of £423.50 making a total of £2,541.

Valuer's Fees

22. The Tribunal considered that the valuation fees of £840 including VAT to be excessive. The valuer did not conduct an inspection of the property and prepared a desktop valuation. Therefore, the Tribunal allowed a valuation fee of £600 plus VAT of £120 totalling £720 as being reasonable.

Disbursements

23. These are allowed as claimed, being £21.60 including VAT for the Land Registry fees and £23.32 including VAT for the courier's fees.

18. Accordingly, the Applicant's statutory legal costs that are recoverable from the Respondents are a total of £3,305.92 including VAT and disbursements.

Tribunal Judge I Mohabir

1 March 2022

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).