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

Case reference : **RC/LON/00AJ/OC9/2017/0306**

Property : **Flat 6, 31 Acacia Road, London W3
6HB**

Applicant : **Mr Andrew John McNally**

Representative : **Hay & Kilner Solicitors**

Respondent : **Mr Ian Wyndham Feltham**

Representative : **Mayo Wynne Baxter Solicitors**

Type of application : **Application for determination of
reasonable costs**

Tribunal member(s) : **Mr Jeremy Donegan (Tribunal
Judge)**

**Date and venue of
paper determination** : **07 February 2018
10 Alfred Place, London WC1E 7LR**

Date of decision : **07 February 2018**

DECISION

Decision of the Tribunal

The Tribunal determines that the costs payable by the applicant pursuant to 60(1) of the Leasehold Reform, Housing and Urban Development Act 1993 ('the 1993 Act') are £2,800.80 (Two Thousand, Eight Hundred Pounds and Eighty Pence) including VAT.

The background

1. These proceedings arise from a statutory lease extension claim for Flat 6, 31 Acacia Road, London W3 6HB ('the Flat'), under the 1993 Act. The applicant is the leaseholder of the Flat and the respondent is the freeholder.
2. The applicant served a section 42 notice of claim on the respondent on 20 September 2016, in which he proposed a premium of £20,385 for a new lease. The respondent served a counter-notice on 15 November 2016, admitting the claim but proposing a higher premium of £28,000.
3. On 08 May 2017 the applicant submitted an application to determine the terms of the new lease. The parties subsequently agreed the premium in the sum of £22,000. However, they have been unable to agree the costs payable to the respondent under section 60 of the 1993 Act.
4. The Tribunal received an application to determine the section 60 costs on 07 December 2017. Directions were issued on 08 December and the application was allocated to the paper track, to be determined without an oral hearing. Neither of the parties has objected to this allocation or requested an oral hearing.
5. The parties exchanged documents in accordance with the directions and the Tribunal was supplied with a bundle of documents that included copies of the application, the respondent's costs schedule, statements of case from both parties and various supporting documents (including previous Tribunal decisions). The Tribunal considered all of the documents in the bundle when deciding the application.
6. The relevant legal provisions are set out in the appendix to this decision.

Submissions

7. The respondent's legal costs were itemised in a detailed schedule spanning the period 22 September 2016 to 29 September 2017. The work was undertaken by three fee earners; Ms Joanna Ironside

(Associated Solicitor Grade C - £205per hour), Ms Rachel Woodbridge (Paralegal Grade D - £140 per hour) and Ms Sinead McGeady (Paralegal Grade D - £140 per hour). They are employed by Mayo Wynne Baxter Solicitors ('MWB'), who are based in Lewes, East Sussex. The total sum claimed for legal costs is £2,125 plus VAT. This represents 9 hours of Ms Ironside's time and a total of 2 hours for Ms Woodbridge and Ms McGeady.

8. In addition, the respondent is claiming a valuation fee of £950 plus £25 disbursements and VAT. This fee was invoiced by myleasehold chartered valuation surveyors ('ML') on 17 October 2016. The invoice was accompanied by a brief schedule, which did not identify the fee earners concerned or their job titles. 1.75 hours was claimed at £150 per hour and 2.5 hours at £285 per hour. ML are based in London W1.
9. The applicant's solicitors commented on the section 60 costs in an undated statement of case. They challenged both the charging rates and the time claimed for legal costs. No alternative figure was proposed for these costs. The applicant's solicitors also challenged the time claimed by myleasehold but not the charging rates or disbursements. They submitted that a reasonable figure for the valuation fee is £650 plus VAT.
10. MWB replied to the applicant's challenges in a statement in response dated 19 January 2018.

The Tribunal's decision

11. The Tribunal determines that the following sums are payable under section 60(1):
 - Legal fees - £1,514.50 plus VAT (total £1,816.80)
 - Valuation fees - £820 plus VAT (total £984.00)

Reasons for the Tribunal's decision

Legal costs

12. The applicant's solicitors submitted that the charging rates were too high and referred to the guideline rates used on summary assessments in the County Court for National Grade 1 (£161ph for Grade C and £118ph for Grade D). The respondent's solicitors pointed out that Ms Ironside is the head of the leasehold enfranchisement team at MWB and completed and managed the transaction without any assistance from a partner. They also pointed out that the rates claimed were substantially below those charged by London solicitors.

13. The Tribunal allows the charging rates claimed. The guideline rates used in the County Court are a guide only and have not been updated since 2010. The rates charged by MWB are reasonable, given the specialist nature of the work involved and the consequences of failing to comply with the statutory timetable in the 1993 Act.
14. The applicant's solicitors made various challenges to the time claimed, which they considered to be excessive and/or irrecoverable under section 60(1). The Tribunal adopted a 'broad-brush' approach when considering these challenges. It accepts that some of the time claimed for investigating the claim and the conveyancing was on the high side. Most of the time claimed for emails should be disallowed, as routine correspondence in is normally irrecoverable between the parties. The Tribunal also disallows the correspondence relating to premium negotiations, as this work is not caught by section 60(1)(a) or (c). The time claimed for agreeing the wording of the new lease is recoverable, to the extent if it reasonable, being costs of and incidental to the grant of the new lease.
15. Looking at the case in the round and using the Judge's knowledge and experience, gained from deciding previous costs cases and professional practice, the Tribunal allows the following legal costs:
 - Ms Ironside - 6.5 hours at £205ph (£1,332.50 plus VAT)
 - Ms Woodridge/Ms McGeady - 1.3 hours at £140ph (£182 plus VAT)

The total sum allowed for legal costs is £1,514.50 plus VAT.

Valuation

16. The respondent is entitled to ML's reasonable fees for preparing a valuation of the Flat with a view to fixing the premium (section 60(1)(b)). It appears that ML charged a fixed fee but then sought to justify that fee with reference to the time spent in preparing the valuation. Their fees on a time cost basis come to £975 plus VAT, which is slightly higher than the sum invoiced (£950 plus VAT). Again, the applicant's solicitors challenged the time claimed; arguing it was excessive and/or irrecoverable.
17. The Tribunal disallows the time claimed for "*Preparing the file*" (0.25 hours at £150ph). This is an administrative task and should form part of ML's overheads, rather than being charged to the respondent. Applying the indemnity principle, the sum claimed for this task (£38) cannot be recovered from the applicant.

18. The Tribunal looked at the remaining valuation costs in the round. Again, using the Judge's knowledge and experience it allows the following sums:

- 1.5 hours at £150ph (£225 plus VAT)
- 2 hours at £285ph (£570 plus VAT)
- Unchallenged disbursements £25 plus VAT

The total sum allowed for the valuation fee is £820 plus VAT.

19. The Tribunal has allowed VAT upon the section 60 costs on the assumption that the respondent is not VAT registered. If this assumption is incorrect and the respondent is able to recover the VAT charged then the sum due should be reduced accordingly.

Name: Tribunal Judge Donegan **Date:** 07 February 2018

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).

Appendix of relevant legislation

Leasehold Reform, Housing and Urban Development Act

Section 60

(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 the appropriate 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.