



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

Case Reference : **BIR/00CN/OC6/2016/0044**

Property : **89 Rectory Park Road, Sheldon,
Birmingham, B26 3LH**

Applicant : **Mr Barry William Bodenham by his
attorney Ms Karen Canning**

Representative : **Anthony Brunt & Co. Surveyors &
Valuers**

Respondent : **The executors of the late Davinder
Singh Sokal**

Representative : **Kapoor & Co. Solicitors**

Type of Application : **Application under Section 21(1)(ba)
of the Leasehold Reform Act 1967
for a determination of the
landlord's reasonable costs payable
pursuant to Section 9(4) of the Act.**

Tribunal Members : **Judge S McClure
D Satchwell FRICS**

Date of Decision : **19 July 2017**

DECISION

Decision

1. The Tribunal determines that the reasonable legal costs of the Respondent in dealing with the matters in section 9(4) of the Leasehold Reform Act 1967 are £1400 (plus VAT), together with valuer's fee of £500 (plus VAT) and Land Registry Fee of £6.

Background

2. The Applicant holds the property at 89 Rectory Park Road (the Property) by way of an underlease dated 2 December 1957.
3. By way of letter dated 25 April 2016 the Applicant contacted the Respondent freeholder advising that he wished to purchase the freehold of the Property.
4. On 14 December 2016 the Applicant applied to the Tribunal for a determination of the price payable for the freehold under section 9 of the 1967 Act, and the Respondent's costs payable to the tenant under section 21(1)(ba) of the 1967 Act.
5. On 19 January 2017 the Applicant advised the Tribunal that the parties had agreed the price payable. The Tribunal application proceeded on the single issue of the Respondent's costs.

Submissions and hearing

6. The Tribunal determined the matter on the basis of written submissions from the parties, and oral submissions made at the hearing on 11 July 2017. The written submissions from the Applicant were dated 12 June 2017, and from the Respondent, 15 June 2017. At the hearing, the Applicant was represented by Mr Brunt. The Respondent was represented by Mr Perrin of counsel.
7. At the hearing Mr Perrin conceded that, under section 9(4A) of the 1967 Act, the amended costs schedule dated 7 July 2017 was to be disregarded, as that contained costs that related to the application to the Tribunal. Mr Perrin relied upon the costs schedule dated 19 May 2017, which gave a total costs figure of £2493 plus VAT.
8. Mr Brunt conceded that the hourly rate claimed by the Respondent was reasonable, as was the use of the particular firm of solicitors instructed by the Respondent. Mr Brunt also conceded the £6 disbursement for Land Registry fees.

Reasons

9. The valuer's fee of £675 plus VAT comprised a valuation fee of £500, and a fee of £175 for matters largely relating to a Notice in Reply. Mr Brunt disputed the £175, referring the Tribunal to *Hague on Leasehold Enfranchisement* which stated that the freeholder's costs of preparing and serving the Notice in Reply are not covered by section 9. Mr Perrin submitted they were covered. He did not refer the Tribunal to any authority. The Tribunal accepts the submissions of Mr Brunt based on the authority of *Hague*, and disallows costs relating to the Notice in Reply. The Tribunal allows a sum of £500 plus VAT for the valuation fee.
10. Section 9(4) of the Act provides that only costs incurred in pursuance of the notice shall be borne by the leaseholder. Mr Brunt submitted that work carried out prior to the notice was not work incurred in pursuance of the notice. Mr Perrin submitted that it was. Neither party referred the Tribunal to any authority on the point, but relied upon the wording of section 9(4). The Tribunal determined that the work carried out between 25 April 2016 and the service of the notice on 21 June 2016 does not come within section 9(4). The Tribunal finds that this work was not incurred in pursuance of the notice but was, largely, done to see if agreement could be reached and so avoid the service of the notice. That work is disallowed. That work comprised 4 letters and 30 minutes of work on the file.
11. The Tribunal finds that the file bundle provided by the Respondent contains work relating to the application to the Tribunal and so disallowed under section 9(4A). This includes work contained within the 19 May 2017 Schedule of Costs. This work is disallowed.
12. The Tribunal finds that, based upon its skill and experience, the usual costs for a straightforward 1967 Act matter are around 3 hours work. Based on an agreed hourly rate of £200, that would come to a fee of £600, not too far off Mr Brunt's proposed amount of £580. However, the Tribunal finds that there were aspects of this matter that were not standard, and give rise to an allowance for additional costs.
13. The use by the Applicant of 3 firms of solicitors has incurred the Respondent's solicitors in significant extra work, such that an increase to the usual level of costs is allowed.
14. The Respondent's solicitors undertook extra work in assisting the Applicant in dealing with an issue relating to the head lease. Such work also entitles the Respondent to an increase to the standard level of costs usually awarded.

15. The Tribunal has to deal with matters in accordance with rule 3 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) rules 2013, which provides that the Tribunal must deal with a case fairly and justly and in ways which are proportionate to the case. Neither party made submissions on particular documents within the Respondent's file bundle, save for Mr Brunt's point on pre-notice work. The Tribunal finds that it would not be proportionate to go through the file on an item by item basis. The Tribunal makes its determination in accordance with rule 3, on an overall view of the case, consideration of the file bundle, and the matters set out at paragraphs 9-14 above.
16. Taking into account the matters set out above, the Tribunal finds that the reasonable costs of the Respondent payable by the Applicant to be 7 hours work at the agreed hourly rate of £200, being £1400.
17. In reaching their determination the Tribunal has had regard to the evidence and submissions of the parties, the relevant law and their own knowledge and experience as an expert Tribunal but not any special or secret knowledge.
18. If either party is dissatisfied with this decision they may apply for permission to appeal to the Upper Tribunal (Lands Chamber). Prior to making such an appeal, an application must be made, in writing, to this Tribunal for permission to appeal. Any such application must be made within 28 days of the issue of this decision.

Name: Judge S McClure

Date: 19 July 2017