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

Case Reference : LON/00AE/OC9/2014/0110

Property : 6 Brewery Close, Sudbury, Middlesex
HA0 2XA

Applicants : Harish Sukhbhai Patel and Indira Harish
Patel

Representative : Richard Nash CEng MIStructE

Respondent : Sinclair Gardens Investments (Kensington)
Ltd

Representative : W H Matthews & Co, solicitors

Type of application : For the determination of the landlord's
recoverable costs (section 60)

Tribunal : Margaret Wilson
Marina Krisko FRICS

Date of decision : 11 November 2014

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Background

1. This is an application for the determination of the landlord's recoverable costs arising out of a notice of claim to acquire a new lease of Flat 6, Brewery Close, Sudbury. The claim under section 42 of the Leasehold Reform, Housing and Urban development Act 1993 ("the Act") was made on or about 18 December 2013, the landlord's counter-notice admitting the right to acquire a new lease but proposing a different premium was given on or about 19 February 2014 and the claim was deemed to have been withdrawn on 19 August 2014, the tenants having failed to apply to the tribunal within the required period.
2. The claim was made two days after a claim was made to acquire a new lease of Flat 31 Brewery Close. Neither the landlord nor the tenant of Flat 31 were the same as those in respect of Flat 6, but the tenants of both flats were represented by Richard Nash CEng MI Struct E and the landlords of both flats were represented by W H Matthews, solicitors, and the valuer instructed in respect of each flat was Geoffrey Holden FRICS of Parsons Son and Basley LLP, chartered surveyors.
3. The claim in relation to 31 Brewery Close was completed on 12 September 2014 and the costs payable in relation to the claim were agreed at £1800, comprising £840 arising out of the notice of claim, £540 for conveyancing and £420 valuation fee. In relation to the 6 Brewery Close the landlord claims £840 in respect of the notice of claim, £300 for conveyancing and £420 valuation fee, a total of £1560, all including VAT. The tenants' representative submits that the costs relating to Flat 6 should be lower because there must have been a large element of duplication in the work carried out on the landlord's behalf.
4. The application is dealt with by way of written submissions and without an oral hearing in accordance with rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

The landlord's case

4. Richard Lawrence, the partner who dealt with both cases on the landlords' behalf, was admitted as a solicitor in 1988 and his hourly charging rate for the work he did in connection with the claim is £250. He confirms that the landlord agrees that it is liable to its advisers pay the costs in full. He describes the work he carried out in relation to the investigation of the tenants' right to a new lease, all of which he submits was incidental to the investigation, and he refers to a number of decisions of the Tribunal's predecessor tribunal, the leasehold valuation tribunal, and of the Upper Tribunal, from which he concludes that the relevant principles were, broadly speaking, that tenants must pay, on an indemnity basis, those costs which the landlord would reasonably expect to pay and that, the costs being payable on an indemnity basis, it was for the tenant to prove with evidence that there was no doubt that the landlord would not pay for the services provided by his legal and valuation advisers.

The tenants' case

5. For the tenants, Mr Nash said that he had previously completed a lease extension in respect of 79 Brewery Close and he confirmed that all the flats in Brewery Close were very similar and that the original leases were in identical terms, for the same period and with the same ground rent. He confirmed that Mr Holden had attributed the same value to Flats 6 and 31 by Mr Holden, and said that virtually identical counter-notices were submitted in respect of both flats, save for the names of the tenants and a difference of £1 in the proposed premium, and that identical draft leases, save for the names of the leaseholders and the management company for each property, had been prepared. In fact, he said, the name of the first landlord was incorrectly duplicated in the second lease which showed that the two cases must have been worked on at the same time. He cited a number of tribunal decisions in which it had been accepted that there ought to be economies of scale in legal and valuation fees with multiple and near identical straightforward cases. While he accepted, reluctantly, that an hourly rate of £250 was not unreasonable, he submitted that a reasonable fee for investigating the tenants' right to a new lease was no more than £125, based on 30 minutes' time taken, and a further £250 in connection with the grant of the new lease. He further submitted that the valuation fee was excessive and that a reasonable valuation fee for each case was no more than £285. He submitted that neither valuation should have taken more than half an hour to complete, and that the inspection could have been carried out by a more junior member of staff at a lower fee than that charged by Mr Holden.

The statutory framework

6. This is contained in section 60 of the Act which provides:

(1) Where a notice is given under section 42, then ... 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 ... ;*
- (c) the grant of a new lease ...*

(2) For the purposes of subsection (1) any costs incurred by a relevant person in respect of any person shall only be regarded as reasonable if and to the extent that costs in respect of such services might reasonably expect to have been incurred by him if the circumstances had been such that he was personally liable for all such costs.

Decision

7. We accept that a landlord is entitled to recover its costs on an indemnity basis and that it thus for the tenant to show that costs which the landlord has incurred are not recoverable, and any doubts as to whether costs were reasonably incurred should be resolved in favour of the receiving party. Nevertheless we are satisfied that where work carried out in respect of one property is duplicated in respect of other properties the client would normally and reasonably expect to receive a deduction from the otherwise reasonable fees, whether for legal or valuation work. We of course bear in mind that the identity of the landlord of Flats 6 and 31 was different and we accept that it is necessary for both the solicitors and the valuer to consider each flat individually. Nevertheless we would expect the landlords to be made aware that the work on each case was being duplicated and we are sure that any reasonable landlord in that position would expect a reduction in the fees. Doing the best we can, we have concluded that a reduction of 10% in the legal and valuation fees charged in respect of 6 Brewery Close should be applied to reflect the element of duplication, and we conclude that the reasonable and recoverable fees are:

- i. under section 60(1)(a), £756;
- ii. under section 60(1)(b), £378;
- iii. under section 60(1)(c), £270.

The total fees payable are thus £1404, including VAT.

Judge: Margaret Wilson