



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

Case Reference : LON/00AW/OC9/2016/0134

Property : 107 & 109 Oakwood Court, London,
W14 8JZ

Applicant : Dane Investments Ltd

Representative : Howard Kennedy LLP, Solicitors

Respondent : Brickfield Properties Ltd

Representative : Wallace LLP, Solicitors

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

Tribunal Member : Judge I Mohabir

**Date and venue of
Decision** : 15 June 2016
10 Alfred Place, London WC1E 7LR

DECISION

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 to the Respondent under section 60 of the Act for the grant of a new lease in relation to the properties known as 107 & 109 Oakwood Court, London, W14 8JZ (“the properties”).
2. The Respondent’s entitlement to its costs under section 60(3) of the Act arises in the following way. On 2 July 2015, the Applicant served Notices of Claim on the Respondent to extend the leases of the properties. On 8 September 2015, the Respondent served two separate Counter Notices in respect of each property admitting the Applicant’s right to extend both leases. Attached to each Counter Notice was a draft lease. Save for the property details, both the Counter Notices and the draft leases were identical.
3. Upon receipt of the Counter Notices, the Applicant accepted the Respondent’s proposed premium and made on minor amendment to the draft lease. Subsequently, only one further amendment to the draft leases was made by reinstating a sub-clause. Thereafter, the matter proceeded to completion without any further complication.
4. The total legal costs claimed by the Respondent for each transaction are £2,022 plus VAT and disbursements. The Tribunal is told that the Respondent’s valuer’s fees have been agreed at £500 plus VAT per flat.
5. A breakdown of the Respondent’s legal costs has been provided by its solicitors pursuant to the Tribunal’s Directions. This sets out the level of fee earners and hourly rates claimed in respect of each of them.
6. Both parties have filed written submissions in relation the costs claimed, which have been considered by the Tribunal.

Relevant Statutory Provision

6. 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

7. The Tribunal's determination took place on 15 June 2016 and was based solely on the written representations filed by the parties. The Tribunal's approach was to conduct what effectively amounts to a detailed assessment of the costs.
8. This matter relates to the Respondent's costs incurred in what can be described as a "standard" statutory lease extension with no particular complication revealed on the papers. It is common ground that both transactions were identical, save for the property details. Therefore, undoubtedly, there would have been a high level of duplication in both transactions.

Fee Earner & Hourly Rate

9. 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 mainly conducted by firms of solicitors with the requisite knowledge and experience, of which the Respondent's solicitors are one.
10. Having regard to the technical nature of the work and the location of the firm, the Tribunal considered the use of a Partner assisted an Assistant Solicitor and a Paralegal was appropriate and the relevant hourly rates reasonable.
11. Having considered the Respondent's breakdown of costs found at pages 15-16 and 17-18 of the hearing bundle, the Tribunal determined (by reference to the numbering on the breakdown) that items 1 to 11 inclusive had been reasonably incurred and were reasonable in amount. The Tribunal considered that the use of a Partner was appropriate to ensure that the Claim Notices were valid and that valid Counter Notices were prepared and served. These stages are vital in transactions of this nature, especially having regard to the potential sanctions imposed by the Act for failing to do so. Therefore, for items 1 to 11 inclusive, the Tribunal allowed the sum of £1,278 as being reasonable.
12. However, it appears that the Partner had also prepared the draft leases, which were served with the Counter Notices. As stated earlier, save for some minor amendments, these documents remained as drafted. The Tribunal considered that the further use of a Partner as a fee earner was not necessary. Therefore, the Tribunal allowed the work carried out from items 12 to 27 as being reasonably incurred, but all at the rate of the Assistant Solicitor at £330 per hour. This amounted to 1.9 hours of fee earning time totalling £627. The disbursements (including the agreed valuer's fees) claimed by the Respondent are also allowed.
12. Accordingly, the Applicant's legal costs in relation to 107 Oakwood Court are allowed at £1905 plus VAT of £381 plus total disbursements of £608.10 making a grand total of £2,894.10.
13. However, given the level of duplication in work, the legal costs in relation to 109 Oakwood Court are halved. The legal costs allowed are £952.50 plus VAT at £190.50 plus total disbursements of £618 making a grand total of £1,761.

Judge I Mohabir

15 June 2016