



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

Case Reference : BIR/00CN/OC9/2016/0039

Property : 4 Burnham Meadow, Hall Green,
Birmingham B28 9JH

Applicant : Mr Stephen James Arnold & Ms
Lorraine Maria Walsh

Representative : Mr Anthony W. Brunt

Respondent : Danesdale Land Limited

Representative : Bonallack & Bishop, Solicitors,
Salisbury

Type of Application : Application under Section 91(2)(d) of
the Leasehold Reform, Housing and
Urban Development Act 1993

Tribunal Members : Judge A.J. Verduyn
Mr S. Berg FRICS

**Date of
Determination** : Paper Determination made on 1st
February 2017

Date of Decision : 27th February 2017

DECISION

1. The Tribunal determines that the reasonable legal costs of the Respondent in dealing with the matters in section 60 of the Leasehold Reform Act 1967 are **£930.20** (plus VAT if applicable) for the lease, other sums having been agreed.

Reasons for Decision

2. The Applicants applied to the Tribunal for a determination of the premium payable for a new lease in respect of the property, pursuant to section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the

1993 Act"). The application was received on 28th November 2016, and it was accompanied by an application for determination of the Respondent's reasonable costs under Section 91(2)(d) of the 1993 Act. The substantive application was resolved by negotiation shortly before the hearing listed on 12th January 2017.

3. The relevant law is set in Section 60 of the 1993 Act:

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 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.

4. The Applicants' submissions and evidence in respect of costs appear in the statement of Mr Anthony Brunt dated 23rd December 2016. Mr Brunt sets out in his statement his many years of professional experience and his professional qualifications, qualifying as a Fellow of the Incorporated society of Valuers in 1980 and becoming a Chartered Surveyor in 2000. He was a member of the Royal Institution of Chartered Surveyors until his resignation in 2015. His statement carries the declaration necessary for expert evidence. In his statement he acknowledges the terms of Section 60 of the 1993 Act as set out above. He contends for legal costs of £575 plus VAT, on the basis of 3 hours time to be spent at £192 per hour, following the case of Brown v Speedwell Estates BIR/00CN/0C9/2016/0030. He warns against the possibility of "secret profits", by which he means overcharging by virtue of the cost being borne by others than the solicitors' client. He suggests the work itself is suitable for a junior member of staff with appropriate supervision by a senior solicitor.
5. The Respondent has submitted a schedule of costs totalling £1,133.20 plus VAT. The work done or to be done is itemised, with 6 minute units ascribed to each item and rates applied depending on fee earner deployed; with rates for Zoe Tibbles, solicitor, of £215, Jennifer Slater, solicitor, of £160, and Dale Bree, paralegal, of £118.
6. The Tribunal considers that the scale of the sum claimed warrants closer attention; it being significantly higher than would ordinarily have been expected for the work required to be done. Precedent, however, is rarely helpful on the assessment of specific costs, since such costs will depend upon the particular nature of the given case and the choice of lawyer made by the Respondent. The Tribunal has carefully considered the schedule having regard to the terms of the 2003 Act, especially Section 60(2), and the submissions of Mr Brunt. The Tribunal does not consider that the costs claimed contain any element of "secret profit" as termed by Mr Brunt. The hourly rates are also unobjectionable, the Tribunal having regard to its own knowledge and experience (but no secret knowledge or information). Not all aspects of the work identified can, however, be properly claimed and some of the time spent falls foul of Section 60(2). This explains why the total claimed appears higher than the Tribunal would have expected.
7. The following deductions are made:

Items	Description	Deduction
1	Time spent opening file, considering notice and requesting deposit and deduction. Excessive at 8 units	(2 units) £23.60
3, 12	Entering diary dates. Excessive as part of internal processes and should not be	(2 units, one at £11.80 and one at £16) £27.80

	charged separately from other matters	
5, 7, 8, 13 (2 units) 14	Reading incoming correspondence. This is accounted for in time allowed for outgoing correspondence and is not a separate head	£112
15, 17, 18	Communication with LH Survs appears excessive	£16
20	Completion tasks also includes some incoming correspondence and a deduction is made accordingly	(2 units) £23.60
	Total Deductions	£203
	Resulting costs, which the Tribunal finds to be recoverable by the Respondent	£930.20

8. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

Judge Dr Anthony Verduyn

Dated 27th February 2017