

2808



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

Case reference : **LON/00BK/oc9/2013/0061**

Property : **Flat F, 413-419 Harrow Road,
London W9 3NF**

Applicant : **Ms Rosemary McGechie**

Representative : **Garner & Hancock LLP**

Respondent : **John Peter William Biggs**

Representative : **JPC Law**

Type of application : **Costs payable under S.60(1)
Leasehold Reform, Housing and
Urban Development Act 1993**

Tribunal member(s) : **D Banfield FRICS**

**Date and venue of
hearing** : **27/11/2013 at 10 Alfred Place,
London WC1E 7LR**

Date of decision : **27/11/2013**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the following costs are payable by the Applicant.

Valuation fees	£715 plus VAT
Lender's Consent Fee	£250
Legal fees	£1,750 plus VAT
Disbursements;	
£3 office copies	
£27 plus VAT (for personal service of counter notice)	

- (2) The tribunal declines to make an order for costs under Rule 13.

Introduction

1. This is the application by Ms Rosemarie McGeachie (the applicant) for a determination of the costs payable by her under S.60(1) of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act) following the agreement of the premium payable following service of a notice under s. 42 of the Act.

2. Costs have been claimed on behalf of the respondent as follows:

Valuation fees	£715 plus VAT
Lender's Consent Fee	£250
Legal fees	£1,750 plus VAT

Disbursements;

£3 office copies

£27 plus VAT (for personal service of counter notice)

3. Directions were given by the Tribunal, of a standard kind, on 1st October 2013. The respondent was required to submit a schedule of costs sufficient for a summary assessment following which the applicant was to send a statement of case identifying agreed and disputed costs and if

disputed alternative costs with supporting information. Following receipt, the respondent was to send a statement in response

4. The letter dated 11 October 2013 from JPC Law has been taken as the Respondent's case and the letter from Garner & Hancock dated 1 November 2013 has been taken as the Applicant's case. The letter dated 20 November 2013 has been taken as the statement in response.
5. The parties requested a paper determination of the dispute, and accordingly this Decision is made on the basis of the written representations and without any oral hearing involving the parties.

Respondent's Case

6. In written representations dated 11 October the following information was attached;

Copy of the Respondent's Valuation Surveyor's invoice and breakdown.

Office copies of the Freehold Title showing the Respondent's Lender.

Redacted copy letter from Nationwide regarding payment of an administration fee of £250.

Letter of engagement.

Detailed breakdown of work in progress in respect of legal costs.

The following items were referred to in the covering letter but were not enclosed;

Copy email from Applicant agreeing fee subject to reduction of £500.

Copy email from respondent confirming agreement to Applicant's proposal on fee.

7. In calculating the legal costs a total of 87 units were expended at rates of £325 for a partner, £200 for a paralegal and £125 for a trainee solicitor.

Applicant's Case

8. The Applicant's solicitor in his letter of 1 November 2013 says that;
Section 60 of the Act does not allow for a "lenders consent to dealing fee"
"Legal fees of £1,750 plus VAT totally over charged and we suggest a
reasonable fee would be £950 plus VAT"
A copy of an LVT decision on 14 Millers Mead Court was attached.

Decision of the Tribunal

9. It seems that the Applicant does not challenge the valuation fee or disbursements and these items are allowed in full. The Applicant challenges the legal costs but does not elaborate further than to say they are excessive. In the absence of a direct and detailed challenge the Tribunal determines that they are payable in full.
10. The Applicant also submits that the "lender's consent to dealing fee" is not a cost included within s.60. The Tribunal disagrees and considers it helpful to set out the relevant extract from the Act

60, "(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 under that section;*

but this sub-section shall not apply to any costs if on a sale made voluntarily a stipulation that they were to be worn by the purchaser would be void.

- (2) For the purposes of sub-section (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 it was personally liable for all such costs.”

11. It seems apparent that without payment of the fee to the respondent's lender's approval of the new lease would not have been given. Without such approval the lease could not have been granted and as such it may be considered a cost under S 60(1) (c) and is allowed in full.
12. In their letter of 20 November JPC Law set out the difficulties they had encountered due to the Applicant's failure to meet the timetable envisaged in Directions. They further considered that in view of the agreement on costs between the parties it was unnecessary for the matter to come before a Tribunal. They said that additional costs had been incurred and requested an order under Rule 13.
13. For a costs order to be made it is necessary for the Respondent to demonstrate in detail what costs are being claimed. In the absence of such details the Tribunal declines to make such an order.

Chairman: D Banfield FRICS

27 November 2013