

4291



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

**Case Reference** : **BIR/31UB/OC9/2016/0007**

**Property** : **11 Gimson Avenue, Cosby  
Leicester LE9 1SS**

**Applicants** : **Mr Russell Ashley Askew  
Mrs Varinderjeet Savage**

**Respondent** : **City and Country Properties  
(Midlands) Ltd**

**Representative** : **Wallace LLP, Solicitors**

**Type of Application** : **Application under section 91(2)(d) of  
the Leasehold Reform, Housing &  
Urban Development Act 1993 to  
determine the costs payable under  
section 60 of the Act.**

**Tribunal Members** : **Mrs A J Rawlence MRICS  
Judge D. R. Salter**

**Date of Decision** : **12 September 2016**

---

**DECISION**

---

© CROWN COPYRIGHT 2016

## Decision

1. The Tribunal determines that the reasonable legal costs of the Respondent under section 60 of the Leasehold Reform, Housing and Urban Development Act 1993 are £1,154.80 plus VAT (if applicable) together with postage costs of £29.00.

## Reasons for Decision

### Introduction

2. By Application dated 21 March 2016 received by the Tribunal on 29 March 2016, the Applicants applied to the First-tier Tribunal, Property Chamber for the determination, under section 60 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act"), of the freeholder's reasonable legal costs.
3. The Applicants are the leaseholders of the subject property. They have exercised their rights to seek a new lease under the provisions in Chapter 2, Part 1 of the Act.
4. The Applicants served a Notice of Claim on the Respondent dated 3 November 2014. This Notice (the First Notice) was found to be invalid. The Applicants served a further Notice of Claim (the Second Notice) on 21 December 2014 and this too was found to be invalid. The third Notice of Claim dated 2 January 2015 (the Third Notice) was followed by a Counter-Notice served by the Respondents on 25 February 2015.
5. The Tribunal decision dated 21 December 2015 determined the outstanding terms of acquisition, but not the reasonable costs under section 60 of the Act.
6. Directions were issued on 15 April 2016 and, in compliance with those Directions, the Applicants and the Respondent's Representative, Wallace LLP solicitors, each submitted reports that were sent to the Tribunal on 23 June and 24 June 2016 respectively.
7. The Directions stated that the Tribunal would issue a written determination in accordance with Rule 36 of The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013.

### Matters agreed between the parties before the paper determination

8. The following items were agreed between the parties:

a) Land Registry fees	£18.00
b) Surveyor's fees (inclusive of VAT)	£540.00

## **Matters in dispute between the parties**

9. The Tribunal was advised that the following matters were still in dispute:
  - a) Legal Costs (inclusive of VAT)
  - b) Courier Fees (inclusive of VAT)

## **The Law**

10. The relevant law is set out below:

### **Leasehold Reform and Urban Development Act 1993**

#### **60 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.

### **The Applicants' submissions**

11. The Applicants, following the Tribunal decision BIR/31UB/OLR/2015/0093 instructed their solicitors to complete on the lease extension. A copy of the Completion Statement was provided at page 11 of their bundle.
12. The Applicants stated that the Respondent's solicitors were requesting payment of £3,300 including VAT in fees, and £96.00 including VAT for courier fees. They consider that the legal costs should be nearer £1,200 plus VAT.
13. The Applicants accepted that errors were made in the First and Second Notices. However, they state that in each instance it was a date error and one which 'would not take a skilled lawyer, proficient in lease extension more than 5 minutes to determine'.
14. In addition, the Applicants on page 21 of their bundle felt that the fees in connection with the Third Notice were excessive.
15. The Applicants' bundle (page 23) included a Gmail dated 14 October 2015 sent by Wallace LLP to one of the Applicants, Mr Askew, relating to the legal costs incurred in this case. The Gmail also made reference to legal costs of £1,250 (plus VAT) previously incurred by Wallace LLP and paid by the Applicants that concerned an earlier Notice of Claim which had been served in respect of the property in 2012. Wallace LLP also indicated in the Gmail that its legal fees for lease extension matters were normally in the range of £1,850 - £2,000 (plus VAT), but additional costs had been incurred in this case in relation to the First and Second Notices.
16. Further, the Applicants do not accept the use of courier services for service of the Counter Notices, which totalled £96.00, was appropriate and state that the cost of Royal Mail Special Delivery would have been only £14.50.

### **The Respondent's submissions**

17. The Respondent's representative, Wallace LLP had prepared a hearing bundle which included a submission on costs. In that submission, it was contended that the cost of the legal work carried out in respect of the First and Second Notices was £1,086.00 plus VAT with courier fees of £45 plus VAT. The costs for the Third Notice were £1,374 plus VAT with courier fees of £35 plus VAT.
18. These legal costs were based on the work carried out by the relevant fee earners in Wallace LLP which is based in Central London. Those fee earners included a partner with a charge rate of £420.00 per hour (a Grade A fee earner), an assistant solicitor with a charge rate of £300.00

to £330.00 per hour (also a Grade A fee earner) and a paralegal with a charge rate of £150.00 to £180.00 per hour.

19. Wallace LLP has acted for the Respondent for many years. The rates charged by Wallace LLP were entirely consistent with other Central London firms. It was submitted that it was reasonable that an experienced fee earner should have conducted the matter and performed work on the same.
20. The provisions of the Act are complex and, accordingly, it was necessary for the relevantly experienced fee earner to deal with the following:
  - (i) Consider the tenant's entitlement to a new lease and the validity of the Notice of Claim;
  - (ii) Communicate with the client to obtain information;
  - (iii) Carry out and consider Land Registry searches;
  - (iv) Correspond with the tenant's solicitors;
  - (v) Instruct and correspond with the valuer;
  - (vi) Consider the valuation and take client's instruction;
  - (vii) Prepare and serve the Counter-Notice; and
  - (viii) Prepare and agree a form of new lease.
21. The principles the Tribunal is asked to consider in connection with reasonableness of costs, charge out rates and the use of partners are set out in *Daejan Investments Limited v Parkside 78 Limited (LON/ENF/1005/03) (Daejan)*, *Daejan Investments Limited v Steven Kenneth Twin (LON/00BK/2007/0026)* and *Andrew Allen v Daejan Properties (SB/LON/00AH/OLR/2009/0343)*.
22. Furthermore, Wallace LLP referred the Tribunal to a number of recent decisions of the London LVT (pages 157 to 223 of Wallace LLP's bundle) where its hourly rates and overall legal costs in individual cases had generally been approved.
23. Wallace LLP submitted that in *Daejan* (paragraph 21 above), the Tribunal agreed that enfranchisement was a form of compulsory purchase and, on this basis, provision was made in the Act for the recovery of reasonable professional costs incurred by a landlord. The test of what is reasonable did not turn on what the tenant might reasonably expect their liability to be and, accordingly, a landlord was not required to find the cheapest or cheaper solicitors, but simply to give the instructions it would ordinarily give if it was bearing the costs itself ('the reasonable expectation test').
24. In relation to the courier fees, Wallace LLP stated that there were draconian consequences for failing to serve a Counter-Notice by the date specified in the Notice of Claim. This justified the use of couriers for the service of Counter-Notices and the cost incurred was recoverable under section 60 of the Act. The Tribunal's attention was drawn to the decision of *Daejan Properties Limited and Fencott Limited v Mr and Mrs*

*Gilligan* (LON/00AH/OLR/2012/0020) in which it was confirmed that the recovery of courier fees to effect service of a Counter-Notice was reasonable.

### **The Tribunal's Deliberations**

25. The Tribunal considered the written evidence submitted by the parties. There were discrepancies between the parties as to the legal costs. In the Applicants' bundle, the Applicants referred to a figure of £3,300 inclusive of VAT at 20% (see paragraph 12 above) whereas the Respondent's bundle referred to costs by Wallace LLP at page 66 paragraph 16 of their bundle of £1,086 plus VAT for the First & Second Notices and a further £1,374 plus VAT for the Third Notice. By combining the two figures and adding VAT the Tribunal notes this is a total figure of £2,952.
26. Pages 234 to 238 of the Respondent's bundle sets out the activities and associated legal costs and confirms the figures of £1,086 and £1,374 plus VAT. The Tribunal notes the last two entries on page 235 which relate to the anticipated time to complete the lease extension which may explain the discrepancy between total figures of £3,000 and £2,952.
27. It notes that the Respondent's representative, Wallace LLP, is located in London WI which is London Grade 2 as defined by Senior Courts Costs Office 'Guide to Summary Assessment of Costs', as revised by the Master of the Rolls on 1 October 2014.
28. The Tribunal considered the proposition that work relating to lease extensions is complex in nature and, accordingly, it was necessary for a relevantly experienced fee earner 'to have conduct of the matter and perform work on the same'. However, the Act has been in place since 1993 and in the Tribunal's experience many transactions have been completed without, for example, the employment of a partner at Grade A level. The Tribunal considers that the work undertaken in this case not to be complex.
29. The Tribunal accepts the principle that the Respondent may appoint whomsoever it pleases (and this may be a solicitor outside the region in which the property is located), but it does not accept that this automatically entitles that person to charge at Grade A level for work which can be, and often is, carried out by an assistant at Grade B (4 years post-qualification experience) level. The Tribunal notes that both the partner and the assistant solicitor in this case are Grade A fee earners, albeit at different hourly rates.
30. Further, Wallace LLP referred the Tribunal to various decisions of the London LVT, all of which related to properties in the London area. The Tribunal is not bound by such decisions and finds that they are not particularly persuasive because they considered matters where the value of the transactions was significantly higher and this might justify the

employment of a partner at Grade A rates as opposed to a legally qualified assistant at Grade B rates.

31. In this respect, the Tribunal sought guidance from the County Court rates published by HM Courts Service and the current applicable level for a Grade B solicitor in London 1 is £296.00 per hour. This is the rate the Tribunal finds most appropriate for the carrying out of the work undertaken in this case by both the partner and the assistant solicitor and where Wallace LLP has an acknowledged expertise in the field. The Tribunal finds that the appropriate rate for the work carried out by the paralegal to be £150.00 per hour.
32. The Tribunal turned to the question of courier fees and considered whether the use of an expensive form of service was reasonable and justified in the circumstances. In the case of the first Notice the respondent had two weeks left of the requisite two-month period (albeit with Christmas in between) in which to serve the Counter Notice. In the case of the Third Notice, despite considering the claim in January, the Counter-Notice was not sent until 25 February. In the both cases sending a document by special or recorded delivery would have sufficed.

#### *First and Second Notices*

33. The Tribunal notes that the Applicants had served a Notice of Claim in 2012 and this was decided by the Tribunal decision BIR/31/UB/OLR/2012/0092 on 20 March 2013. At that time, legal costs of £1,250 plus VAT were paid by the Applicants. It follows that Wallace LLP would have been familiar with property (including its title) when the current case began along with the proposed terms of an extension to the current lease.
34. The Tribunal is minded that each of the first two Notices of Claim foundered on a date error i.e. not giving the Respondent at least two months to serve a Counter-Notice. The Tribunal also notes the lapse of time between the receipt of the First Notice on 5 November 2014 and the review that was undertaken to check that the Notice to Claim included all the mandatory requirements of the Act starting on 19 December 2014. With the advent of Bank Holidays it would appear that other activities such as preparing the Counter-Notice and draft lease and engaging the services of a valuer were carried out whilst or even before the review of the Notice of Claim was being undertaken. The initial review of the Notice should have led to the decision that the Notice of Claim was incorrect and the examination of office files would have shown the previous Notice of Claim in 2012; the preparation for the proposed lease extension; the subsequent Tribunal decision in 2013 and the fees paid at that time of £1,250 plus VAT.
35. The Tribunal finds that service a Counter-Notice was not actually necessary but accepts the Respondent's claim (see paragraph 24) that doing so was a prudent course of action to take. This Counter-Notice was

accompanied by a letter informing the Applicant that the Notice was invalid.

36. The Second Notice was then served dated 21 December 2014. On 3 January 2015, this Notice of Claim was deemed invalid. Once the review of the Second Notice had been concluded the Notice would have been deemed to be invalid and a letter sent to the lessees. Given both the First Notice and the 2012 Notice of Claim and Tribunal decision in the latter respect, this second review would have detected the date error in the Second Notice quickly.

### *Third Notice*

37. The Third Notice was dated 2 January 2015 and received by the Respondent on 5 January 2015. The Tribunal considered the schedules put forward by Wallace LLP on pages 234 to 238 of their bundle and noted that this claim was initially considered on 3 January 2015.
38. The Tribunal refers to the costs to complete the lease extension and determines this at 0.6 hrs.
39. Based on the Tribunal's experience of the reasonable time for each process and adjusting the schedule in the light of previous legal work carried out, the Tribunal sets out its determination in Appendix A. The Tribunal has applied the rates per hour as stated in paragraph 31 above.
40. If the Respondent is registered for VAT purposes, it will be able to recover the VAT on those fees because those services will have been supplied to the Respondent, not the Applicants. In such circumstances, VAT will not be payable by the Applicants.
41. The Tribunal determines that the reasonable legal costs of the Respondent under section 60 of the Leasehold Reform, Housing and Urban Development Act 1993 are £1,154.80 plus VAT (if applicable) together with postage costs of £29.00.

### **Appeal Provisions**

42. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making a written application to the First-tier Tribunal at the Regional Office which has been dealing with the case which application must:
  - a. be received by the said office within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
  - b. identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.



43. If the application is not received within the 28-day time limit, it must include a request for an extension of time and the reasons for it not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal.

Anthea J Rawlence  
Chair

Appendix A

Tribunal's Determination of Fees

Date	Process	Fee Earner	Claim Hours	Rate	Amount
	First & Second Claims				
19.12.14	Obtain office copy entries	Paralegal	0.2	150	30.00
19.12.14	Perusal of Notice of Claim	Grade B	0.2	296	59.20
19.12.14	Email to Client	Assistant	0.1	296	29.60
19.12.14	Preparation of Counter-Notice And letter to Applicant regarding invalidity of First Notice	Assistant	0.7	296	207.20
22.12.14	Perusal of Second Notice of Claim	Grade B	0.2	296	59.20
22.12.14	Email to Client	Grade B	0.1	296	29.60
22.12.14	Email to lessee	Grade B	0.1	296	29.60
	Third Claim				
03.01.15	Perusal of Notice of Claim	Assistant	0.1	296	29.60
05.01.15	Email to Client, Lessee & Valuer	Assistant	0.2	296	59.20
12.01.15	Letter to Lessee	Assistant	0.1	296	29.60
19.02.15	Email to Lessee	Assistant	0.1	296	29.60
25.02.15	Prepare Counter Notice & correspondence to client, lessee & Valuer	Assistant	0.5	296	148.00
25.02.15	Reviewing proposed lease	Assistant	0.2	296	59.20
4.09.15	Letter to Lessee	Assistant	0.1	296	29.60
07.09.15	Letter to Client	Assistant	0.1	296	29.60
24.09.15	Email to Lessee	Assistant	0.1	296	29.60
14.10.15	Email to Lessee	Assistant	0.1	296	29.60
18.01.16	Preparing lease engrossments	Assistant	0.2	296	59.20
18.01.16	Letter to Client, Lessee's solicitors	Assistant	0.2	296	59.20
21.01.16	Completion statement	Assistant	0.2	296	59.20
22.01.16	Letter to Lessee's solicitors	Assistant	0.1	296	29.60
17.01.16	Letter to Lessee's representative	Assistant	0.1	296	29.60
07.03.16	Letter to Client	Assistant	0.1	296	29.60
TBC	Further correspondence to complete	Assistant	0.2	296	
TBC	Anticipated time to complete	Assistant	0.4	296	
					1154.8
	Plus VAT (if applicable)				
	Postage costs 2 x £14.50				29.00