



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

**Case reference** : **CAM/00KG/0C9/2019/0001**

**Property** : **41 Nightingale Court, Fleming Court, Fleming Road, Chafford Hundred, Grays RM16 6DD**

**Applicant** : **Rene Ikenna Ejimonyeabala**

**Representative** : **Nigel Broadhead Mynard Solicitors**

**Respondent** : **Freehold Managers (Nominees) Limited**

**Representative** : **Bolt Burdon Solicitors**

**Type of application** : **Determination of costs to be paid under section 60(1) of the Leasehold Reform Housing and Urban Development Act 1993 (“the Act”)**

**Tribunal member(s)** : **Judge Wayte**

**Date of decision** : **15 April 2019**

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**DECISION**

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## **Decision of the tribunal**

- (1) The tribunal determines that the section 60 costs payable by the Applicant are £642 plus VAT where applicable.

## **Background**

1. This is an application for a determination of costs under section 91(2)(d) of the Act. Under section 60 a claimant leaseholder is required to pay the reasonable costs incurred by the landlord in connection with a claim for a new lease. Copies of both statutory provisions are annexed to this decision.
2. The Applicant is the leasehold owner of the flat known as 41 Nightingale Court, Fleming Road, Chafford Hundred, Grays RH16 6DD registered at HM Land Registry under title number EX 720085 (“the Flat”). The Applicant instructed Nigel Broadhead Mynard Solicitors to act on their behalf.
3. The Respondent is the freehold owner of Nightingale Court and is the landlord of the Flat.
4. On 12 June 2018 the Applicant served on the Respondent a notice of claim to exercise the right to acquire a new lease of the Flat pursuant to section 42 of the Act.
5. On 2 August 2018 the Respondent’s solicitor Bolt Burdon replied, inviting the Applicant to withdraw the notice as they were not a qualifying tenant. In particular, the Applicant’s interest had only been registered on 20 June 2016 and therefore the claim notice was served too early: the Applicant only became a qualifying tenant after 2 years from registration.
6. On 13 August 2018, in the absence of a response from the Applicant’s solicitor, Bolt Burdon served a counter notice pursuant to section 45 of the Act, denying the Applicant’s right to a lease extension.
7. On 4 September 2018 Nigel Broadhead Mynard confirmed that the original notice was withdrawn and served a new notice of claim.
8. On 21 December 2018 the Applicant applied to the First Tier Tribunal Property Chamber (Residential Property) for determination of reasonable costs pursuant to section 60 of the Act in respect of the original notice.

9. The tribunal issued directions on 22 February 2019 providing for the landlord to serve a statement of costs, the tenant to serve a schedule of objections and the landlord to reply. Neither party requested an oral hearing and the application was therefore determined on the papers on 15 April 2019.

### **The Applicant's case**

10. The costs claimed were £1,800 plus VAT and disbursements of £90.65 plus VAT, making a total of £2,266.38.
11. The objections raised by the Applicant can be summarised as follows:
  - (i) The rates charged by the partner (£400) and other fee earners (£315 and £360) were excessive. A reduction to £300 and £200 was proposed.
  - (ii) All work was carried out at a senior level and more junior staff could have been used.
  - (iii) The total time of 5 hours was excessive considering that the notice was rejected at an early stage – 2 hours was proposed. Objections were also made as to specific items within the total claim, again on the basis that they were excessive.
  - (iv) The use of a courier to deliver the notice was not justified.

### **The Respondent's case**

12. The Respondent's claim for costs was on the basis of a fixed fee agreed with the client of £1,800 plus VAT. Bolt Burdon stated that the hourly rates (and therefore presumably the breakdown of time in the statement of costs) was for illustration only. Their response to the objections raised by the Applicant can be summarised as follows:
  - (i) Although the rates were provided for illustration purposes only, the hourly rates were reasonable given the exceptional service given to clients in respect of a specialist area of law.
  - (ii) The Respondent relied on the Upper Tribunal's decision in *John Lyon's Charity v Terrace Freehold LLP* (2018) as authority that it is reasonable to use experienced practitioners in these cases.
  - (iii) The notice was not rejected at an early stage. The Applicant was given ample opportunity to withdraw and in the absence of a reply, further investigations had to be carried out and the counter-notice drafted. There was a concession that one of the

timed items appeared excessive (the letter to the Applicant dated 2 August 2018) and therefore the total claim could be reduced by 50 minutes.

- (iv) The only way to ensure that the counter-notice was served on a given day is to use a courier and therefore the fee of £78.65 plus VAT was a justifiable disbursement.

### **The principles**

- 13. The basis for assessing costs in enfranchisement cases was set out in the Upper Tribunal decision of *Drax v Lawn Court Freehold Ltd* [2010] UKUT 81 (LC). Costs must be reasonable, have been incurred in pursuance of the initial notice and in connection with the matters listed in sub-sections 60(1)(a) to (c). Section 60(2) also limits recoverable costs to those that the respondent landlord would be prepared to pay. This was described in *Drax* as a limited test of proportionality. It is not an assessment on the standard or indemnity basis.

### **The tribunal's determination and reasons**

- 14. The respondent is entitled to choose their own legal representative and has apparently agreed a fixed fee of £1,800 plus VAT for this matter. It is not clear whether that fee is in respect of all cases or simply those where there is no right under the Act. This provides the upper limit for the costs. The tribunal's view on the specific objections raised by the Applicant is as follows:
  - (i) Although for illustrative purposes only, the hourly rates are reasonable and in line with the SCCO Guidelines for Central London practices, bearing in mind they have not been updated since 2010.
  - (ii) The tribunal accepts that enfranchisement is of sufficient complexity and importance to require the attention of a senior fee earner, particularly at the initial stage. That said, this should result in a more efficient service as a senior fee earner would be expected to require less time to deal with matters within their expertise.
  - (iii) As set out in the Background section above, the notice was indeed rejected at an early stage and in the circumstances the tribunal does not accept that further investigations were necessary. Even with the concession made during the course of this application, the total time claimed is excessive and the tribunal agrees with the Applicant that 2 hours is reasonable, given that a senior fee earner undertook the work. As the work

was mainly undertaken by Leah Veasey, her charging rate of £315 should be used to calculate the total due.

- (iv) The letter enclosing the counter-notice is headed “First Class” and in the circumstances the courier fee is disallowed. If that is a mistake, the tribunal agrees with the Applicant that it was unnecessary to use a courier to deliver the notice and the cost is excessive.
15. In the circumstances the tribunal determines that the section 60 costs in respect of the original claim notice are £630 in respect of legal costs, plus £12 for the Land Registry fees plus VAT where applicable.

**Name:** Judge Wayte

**Date:** 15 April 2019

### **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

## Annex

### Leasehold Reform, Housing and Urban Development Act 1993

#### **S60.— 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] <sup>1</sup> 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.

#### **S91.— Jurisdiction of tribunals.**

(1) [Any] question arising in relation to any of the matters specified in subsection (2) shall, in default of agreement, be determined by [the appropriate tribunal].

(2) Those matters are—

(a) the terms of acquisition relating to—

(i) any interest which is to be acquired by a nominee purchaser in pursuance of Chapter I, or

(ii) any new lease which is to be granted to a tenant in pursuance of Chapter II,

including in particular any matter which needs to be determined for the purposes of any provision of Schedule 6 or 13;

(b) the terms of any lease which is to be granted in accordance with section 36 and Schedule 9;

- (c) the amount of any payment falling to be made by virtue of section 18(2);
  - (ca) the amount of any compensation payable under section 37A;
  - (cb) the amount of any compensation payable under section 61A;
  - (d) the amount of any costs payable by any person or persons by virtue of any provision of Chapter I or II and, in the case of costs to which section 33(1) or 60(1) applies, the liability of any person or persons by virtue of any such provision to pay any such costs; and
  - (e) the apportionment between two or more persons of any amount (whether of costs or otherwise) payable by virtue of any such provision.
- (9) [The appropriate tribunal] may, when determining the property in which any interest is to be acquired in pursuance of a notice under section 13 or 42, specify in its determination property which is less extensive than that specified in that notice.
- (11) In this section—
- “the nominee purchaser”* and *“the participating tenants”* have the same meaning as in Chapter I;
- “the terms of acquisition”* shall be construed in accordance with section 24(8) or section 48(7), as appropriate
- (12) For the purposes of this section, *“appropriate tribunal”* means—
- (a) in relation to property in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and
  - (b) in relation to property in Wales, a leasehold valuation tribunal.