



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

Case reference : **KA/LON/00AK/OC9/2019/0212**

Property : **76 Warwick Road London N18 1RX**

Applicant : **Kabe West Properties Ltd.**

Representative : **Stephen Bluestone**

Respondent : **D J Patel Ltd.**

Representative : **McMillan Williams Solicitors Ltd.**

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

Tribunal members : **N. Martindale**

Date of determination and venue : **18 December 2019
10 Alfred Place, London WC1E 7LR**

Date of decision : **18 December 2019**

DECISION

Summary

The Tribunal determines that the Section 60 statutory costs payable by the leaseholder applicant of the Property, are £ 1645, plus any VAT recoverable.

Background

1. This is an application under section 91(2)(d) of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) in respect of the most recent claim for a lease extension at the Property.
2. The application is made for the determination of the reasonable costs payable by the tenant to the landlord, under section 60(1) of the Act. It follows service of a Notice of Claim to acquire a new lease for this flat. The freehold title at this address is subject to one or more occupational long leases. There is apparently no overriding headlease.
3. By way of a Notice dated 17 October 2018 the applicant made a claim to acquire a new lease of this flat. By way of Counter Notice dated 20 December 2018, the recipient of the notice admitted the entitlement, but made a counter proposal to the value of the premium.
4. It is apparent from the applicant’s representations and correspondence in the bundle that the premium was agreed on or before 13 July 2019 and that the landlord’s surveyors costs were agreed by 18 July 2019 subject to receipt “...of his account” (email from applicant’s representative to respondent’s representative of 18 July 2019). A copy of the landlord’s surveyors account dated 11 July 2018 is included in the bundle.
5. The current application to the Tribunal is over the costs payable to the landlord by the tenant, under S.60 of the Act.

Directions and Schedule of costs

6. The Tribunal issued its standard costs directions on 8 October 2019. These were later amended by further Tribunal directions issued by way of a letter dated 20 November 2019. The original directions (as amended) provided for the landlord to send to the tenant a detailed schedule of costs for summary assessment by 22 October 2019; for the tenant to provide a statement of case in relation to those costs by 29 November 2019, and for the landlord to send any other statement in response by 6 December 2019. It was the applicant tenant’s responsibility to file hearing bundles by 11 December 2019.
7. The Tribunal directed that it was content to determine the matter on the papers unless either party requested an oral hearing. Neither party requested one and the application was determined on the papers in the week commencing 16 December 2019.
8. The Applicant generally complied with the original directions: The Respondent’s initial non-compliance was dealt with earlier by the Tribunal by way of issuance of variations to the timetable.

9. The representations are taken in reverse order. The matter generated a considerable quantity of correspondence which should not have been needed. The disjointed and late nature of the submissions made determination of the case more difficult for the Tribunal than it should have been. Neither party requested an oral hearing.

Respondent's Case

10. The respondent's case is set out in their letter dated 12 November 2019, to the Tribunal. It divides the head of claim for costs into the 3 parts of S.60 (1)(a) (the Notices), (1)(b) (the Valuation), (1)(c) (the Conveyance).
11. Although the applicant now queries the valuer's fee of £600, and offers £300, he had already agreed the £600 in an email exchange on 18 July 2019. The matter is no longer up for determination but, even if it is the figure is reasonable and payable as incurred under S.60 (1)(b).
12. The respondent confirms the agreed hourly rate of £250. Set out in the letter is a detailed schedule of heads of cost and the periods set aside by themselves and by the applicant (derived from their September letter with the application to the Tribunal). Both are dealt with below under the next heading.
13. The respondents total claim for S.60(1)(a-c) is not stated in their November letter to the Tribunal but, is taken from their email of 18 July 2018 to the applicant. These are:
14. S.60(1)(a) £1250 (+VAT); S.60(1)(b) £600 (no VAT); S.60(1)(c) £1000 (+VAT) & disbursements of £160 (+VAT). Total of £3,010 excluding VAT where due.

Applicant's Case

15. The bulk of the applicant's case is made without the benefit of a detailed schedule of costs as set out in his letter dated 26 September 2019 submitted with the S.60 costs application. However, after he has received the respondents case, in his letter dated 13 November 2019, he withdraws his earlier proposed figure of £1,636.98 for S.60 costs. The reasons given is that he ... *"in all the circumstances and by way of a mark of penalty, would only offer half that sum £818.49 in full and final settlement. However I would re-assert that no Order for costs should be made in principle..."*
16. His earlier letter of 25 September 2019 challenges the appropriate hourly rate for the solicitor acting for the landlord. It should be £217 rather than the rate agreed with the client landlord by the solicitor, of £250.
17. The applicant questions (1)(b); the costs for obtaining a valuation of the premium. This should be £300 and not the £600 billed. He cites in

evidence and provides a copy of, the cost of his own valuation from Messrs Prickett and Ellis who charged £300 plus VAT, for the same job. However, he does allow a further 45 mins for the cost of instructing the valuer, even though this is not specifically claimed by the landlord.

18. The applicant then challenges (1)(a) costs.
19. The time spent reviewing office copy entries of the title, the lease and the Notice of Claim. He agrees the 1 hour claimed, but denies the rate. The time then spent 'reviewing papers' from an earlier application is wholly denied as they do not concern this application. 'Reviewing' the valuation report which provides the premium figure should take 30 minutes rather than the 45 claimed. Drafting a counter notice should take 45 minutes rather than the 1 hour claimed. Finally drafting the lease to accompany the counter notice, he offers 1.5 hours, whereas the landlord claims only 1 hour. 2.25 hrs.
20. The applicant then challenges (1)(c) costs.
21. The time spent dealing with proposed amendments to the draft lease, offering 45 minutes rather than the 2 hours claimed. The time spent on completion arrangements should be nil rather than the anticipated 2 hours claimed. On disbursements, while allowing £45 for the costs of obtaining HMLR entries, he does not accept the bank transfer fee, and four other administrative costs of £35, £20, £45 and £25 all plus VAT, regarding them as internal to the firm acting.
22. The Applicant proposed a final total sum of £1636.96 but reduced for the reason stated above to £818.49, for all items under S.60(1)(a-c). These charges are presumably plus VAT where recoverable, but this is not expressly stated.

Law

24. Section 60 of the Act provides:

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.

Principles

25. The proper basis of assessment of costs in enfranchisement cases under the 1993 Act, whether concerned with the purchase of a freehold or the extension of a lease, was set out in the Upper Tribunal decision of *Drax v Lawn Court Freehold Ltd* [2010] UKUT 81 (LC), LRA/58/2009. That decision (which related to the purchase of a freehold and, therefore, costs under section 33 of the Act, but which is equally applicable to a lease extension and costs under section 60) established that costs must be reasonable and have been incurred in pursuance of the initial notice and in connection with the purposes listed in sub-sections [60(1)(a) to (c)]. The applicant tenant is also protected by section 60(2) which limits recoverable costs to those that the respondent landlord would be prepared to pay if it were using its own money rather than being paid by the tenant.
26. In effect, this introduces what was described in *Drax* as a "(limited) test of proportionality of a kind associated with the assessment of costs on the standard basis." It is also the case, as confirmed by *Drax*, that the landlord should only receive its costs where it has explained and substantiated them.
27. It does not follow that this is an assessment of costs on the standard basis (let alone on the indemnity basis). This is not what section 60 says, nor is *Drax* an authority for that proposition. Section 60 is self-contained.

Decision

28. The Tribunal has considered such representations as it received from the parties, following its directions, on the conduct of the application for lease extension and its subsequent implementation by way of surrender and re-grant in relation to S.60 costs.
29. The Tribunal accepts the respondent's stated charge rate of £250/hr for a solicitor of this grade, however reflecting that degree of expertise and experience it correspondingly expects the solicitor to complete their various tasks to the timescales set out by the applicant tenant. The Tribunal notes that the respondent's solicitor did not use a time recording facility.
30. Costs S60(1)(a), dealing with the Notices are 2.25hrs at £250: **£562.50 plus VAT.**
31. Costs S60(1)(b): The respondent's figure had already been agreed by the applicant at £600 conditional on receipt of the bill. This was provided. The figure is a reasonable one for a valuation in any case. **£600 (no VAT).**
32. Costs S60(1)(c): 1.75hrs at £250: £437.50 plus VAT. This includes an hour anticipated as required for the conveyance. In addition, the disbursement claimed at £45 plus VAT (as accepted by the applicant). The other four items are not professional costs, are internal to the business, and cannot be recharged. **£482.50 plus VAT**
33. Lastly, the Tribunal has powers under its Rules, No.13; to award one party's costs in whole or part against the other where, on receipt of a separate formal application, it considers a person has acted unreasonably in bringing defending or conducting proceedings. If in the light of this decision, either party considers that this might apply to the other, then they may make such an application to this Tribunal. However, the parties are advised that the test to be applied to a claim of such unreasonable action, is a high one to meet, in order to succeed.
31. **The Tribunal determines the total costs payable by the applicant to the respondent landlord under S.60(a) are £1645 plus VAT, where recoverable.**

Name: N Martindale

Date: 18 December 2019