



**First-tier Tribunal
Property Chamber
(Residential Property)**

Case reference	:	CAM/11UE/OLR/2018/0206
Property	:	14A The Highway, Beaconsfield, HP9 1QQ
Applicant	:	Penelope Eaton
Respondent	:	Temptation (Gifts) Ltd. (named as Mike Adams in the application)
Date of Application	:	8th November 2018
Type of Application	:	To determine the costs payable on a lease extension (Section 60 of the Leasehold Reform and Urban Development Act 1993 (“the 1993 Act”))
The Tribunal	:	Bruce Edgington (lawyer chair) Mary Hardman FRICS IRRV (Hons)

DECISION

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1. The reasonable legal costs of the Respondent payable by the Applicant pursuant to Section 60 of the 1993 Act are £1,189.39.
2. The reasonable valuation fee payable by the Applicant is £650.00.
3. Assuming that the Respondent is unable to reclaim the VAT as an input (such matter to be certified by the Respondent’s solicitors or accountants) then VAT is payable by the Applicant at the appropriate rate on both legal fees and the valuation fee.
4. The Application by the Respondent for costs pursuant to rule 13 of the **Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013** (“rule 13”) is refused.

Reasons

Introduction

5. This dispute arises from the service of an Initial Notice seeking a lease extension of the property by the qualifying tenant. In these

circumstances there is a liability on the Applicant to pay the Respondent's reasonable legal and valuation costs.

6. The Tribunal issued a directions Order on the 14th November 2018 timetabling the lease extension case to a final hearing which was due to be determined on a consideration of the papers on or after the 14th December 2018. All matters save for the costs were agreed and the solicitors acting for the Applicant submitted the documents relating to costs only to include the costs schedule, the objections and the Respondent's replies.
7. The application named Mick Adams as the Respondent but it seems clear from the counter notice and the costs objections document that the correct Respondent is Temptation (Gifts) Ltd.

The Law

8. It is accepted by the parties that the Initial Notices were served and therefore Section 60 of the 1993 Act is engaged. For the reasons set out below, the Applicant therefore has to pay the Respondent's reasonable costs of and incidental to:-
 - (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;*
(Section 60(1) of the 1993 Act)
8. What is sometimes known as the 'indemnity principle' applies i.e. the Respondent is not able to recover any more than it would have to pay its own solicitors or valuer in circumstances where there was no liability on anyone else to pay (Section 60(2)). Another way of putting this is to say that any doubt is resolved in the receiving party's favour rather than the paying party.

Legal fees

9. The Respondent has instructed Boyes Turner LLP who are solicitors in Reading. The statement of costs filed sets out the names of the 2 fee earners i.e. a Grade A fee earner claiming £290 per hour and a Grade B fee earner claiming £270 per hour. Quite why 2 fee earners were needed is not set out. The total claimed is £3,308.00 plus VAT and disbursements which is more than the Tribunal would expect for what appears to be the most straightforward lease extension case.
10. The directions ordered the Respondent to serve a statement of costs "setting out (a) the qualifications and experience of the fee earner, (b) a breakdown of the number of hours spent or estimated to be spent, (c) details of letters sent, telephone calls and those anticipated and (d)

details of disbursements to include similar facts as in (a) and (b) above in respect of any valuer's fee claimed".

11. Assuming that the statement of costs is as in the bundle submitted to the Tribunal for this determination, virtually all these details are missing. Furthermore, there is no obvious indication as to who has performed what task which means that the Tribunal cannot calculate how much time was actually spent on each task.
12. The objections to the legal costs are short and are set out as follows:-

(1) Fee earners' charging rates

It is said that they are excessive and that £225 and £200 per hour respectively is reasonable although there is no objection to Grade A and B fee earners being used. The Respondent makes no concession. It is said, without any evidence, that the rates are what solicitors charge in Thames Valley. The Advisory Committee on Civil Costs in 2010 for solicitors practising in the National 1 area, which applies to Reading, recommended courts to award rates of £217 per hour for Grade A and £192 per hour for Grade B fee earners. Clearly there has been inflation since then but it has been relatively modest. Neither solicitor has given any information of assistance which either refers to these rates or the inflation that should be added. Taking the Advisory Committee's figures and inflation into account, the Tribunal's determination is that £250 and £225 per hour are reasonable for Grade A and Grade B fee earners respectively.

(2) Point of Principle under Section 60 of the 1993 Act

This is a general point and will not be dealt with in detail at this stage. Suffice it to say that the Respondent's solicitors have correctly referred the Tribunal to **Sinclair Gardens Investments (Kensington) Ltd. v Wisbey** [2016] UKUT 203 (LC). If the Applicant's solicitors had read that case they would not have raised some of the points. They have not taken into account the fact that the work set out in Section 60 includes work 'of and incidental' to the items set out in the section. Having said that, the Respondent's solicitors have included work connected with negotiations and these proceedings, neither of which are claimable.

(3) Investigating the claim – tasks

It is said that the claim for investigating the title should be no more than £40 plus VAT. The response is that the claim for £150 includes reviewing the tenant's notice as well as investigating the title. £125 is offered as a concession. Taking into account the reduced hourly rates, £100 is allowed.

(4) Grant of new lease

There are 2 objections for dealing with the lease. The Tribunal has considered the Initial Notice and the counter notice and this seems to have been a very straightforward matter where the 1993 Act dictates the lease terms and a Grade A solicitor, i.e. a senior solicitor experienced in the field, should have a template and know exactly

what is needed to update a lease on renewal. £950 has been claimed for preparing and completing the lease i.e. 3.28 hours of a Grade A fee earner's time based on the hourly rates claimed. This is excessive. The Tribunal has not seen the finished document but, in its experience, it should set out the parties, brief recitals to include reference to the 1993 Act process and the original lease plus any updating clauses. These documents are usually no more than 2 sides of A4 although some solicitors do then add the terms of the original lease which are, of course, just copied. Unlike most ordinary conveyancing sale and purchase transactions, no time had to be spent tying this transaction into another. Two hours' time is allowed at £237.50 per hour to include completion (see below as to rates).

(5) See (4)

(6) Valuation costs

It is stated that the Applicant considers that the fee should only be £450 plus VAT because that is what her valuer charged. The response on behalf of the Respondent is that the figure claimed is reasonable and includes 'extensive negotiations with the tenant's agent'. Such negotiations are not claimable. No detailed analysis of the valuer's time is set out in the claim or the objection. The Tribunal's experience is that £650.00 plus VAT per property is a reasonable figure for just preparing the valuation. The full report for these proceedings is not claimable.

(7) The Land Registry fee

Agreed at £6.

Conclusions

13. The Tribunal has considered the objections and the responses and determines as follows. The hourly rates have been difficult to assess because an amount of money has been claimed for each task performed which means that there is no means of knowing which fee earner performed which task and how long it took. Faced with this problem, the Tribunal has determined that the rate claimed is £280 per hour and the rate allowed is £237.50 per hour i.e. half way between the A and B hourly rates respectively.

14. The claim for legal costs is determined as follows:

<u>Item</u>	<u>Claim (£)</u>	<u>Allowed</u>	<u>Reason</u>
Notice and title	150.00	100.00	as above
Deposit	108.00	92.63	reduced rate
Surveyor – valuation	54.00	45.13	“
Counter notice	270.00	228.00	“
Surveyor & App. re: premium	270.00	nil	withdrawn
Terms of acquisition	243.00	206.63	reduced rate
Tribunal application	243.00	nil	not claimable
Correspondence with App. & Tribunal regarding stay	270.00	nil	not claimable
Agreeing & completing lease	950.00	475.00	as above

Compliance with directions	750.00	nil	not claimable
Land Registry fees	6.00	6.00	
TT fee	<u>36.00</u>	<u>36.00</u>	
	<u>3,350.00</u>	<u>1,189.39</u>	

15. As has been said, the valuer’s fee as allowed at £650.00.
16. In its reply to objection 2, the Respondent claims costs under rule 13. It is said that the procedure set out in paragraph 7 of Schedule 2 of the **Leasehold Reform (Collective Enfranchisement and Lease Renewal) Regulations 1993** should have been followed “*rather than incur further unnecessary costs in these proceedings*”.
17. Regrettably, no further information is supplied. Paragraph 7 simply sets out how a new lease is prepared when the terms have been agreed. In the circumstances of this case, rule 13 costs can only be allowed if the Applicant has acted unreasonably in bringing or conducting proceedings. The test is analysed in **Willow Court Management Co. (1985) Ltd. v Alexander and 2 other cases** [2916] UKUT 290 (LC).
18. The 6 month time limit in section 48(2) of the 1993 Act is absolute and was due to expire 2 days after this application was made. The application form says that whilst the premium had been agreed, the Respondent had not submitted the specific updating amendments to the new lease which, if true, meant that all the terms of the new lease had not been agreed and this application must therefore have been made to preserve the Applicant’s rights to a new lease.
19. Thus, it is clear to the Tribunal that, on the evidence as presented, the Applicant has not been guilty of unreasonable behaviour in which case no order for costs can be made under rule 13.

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Bruce Edgington
Regional Judge
14th January 2019

ANNEX - RIGHTS OF APPEAL

- i. 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.
- ii. 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.

- iii. 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.

- iv. 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.