



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

**Case Reference** : **LON/00AZ/OC9/2018/0351**

**Property** : **Ground Floor Flat 57 St Donatts  
Road London SE14 6NU**

**Applicant** : **Maria Baker**

**Representative** : **Bude Nathan Iwanier; Solicitors**

**Respondent** : **Egbert Adolphus Gayle**

**Representative** : **Chancery CS; Solicitors**

**Type of Application** : **Assessment of costs under section  
60(1) of the Leasehold Reform  
Housing and Urban Development  
Act 1993 and fees under section 56.**

**Tribunal members** : **Judge Professor Robert M. Abbey**

**Date of Decision** : **29 January 2019**

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**DECISION**

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## **The background**

1. The Applicant is the long leaseholder of **Ground Floor Flat 57 St Donatts Road London SE14 6NU**.
2. The Respondent is the freeholder of the building and the competent landlord for the purposes of the Leasehold Reform, Housing and Urban Development Act 1992 (the “1993 Act”).
3. The leaseholder served a section 42 notice seeking to exercise her right to a lease extension under S48 of the 1993 Act and a Counter notice was served which admitted the right but did not agree the proposed premium. (Eventually a premium was settled at £24,230).

## **The application**

4. By an application dated 15<sup>th</sup> November 2018 the leaseholder has now applied for an assessment of the landlord’s costs under section 60(1) of the 1993 Act and surveyor’s fees under section 56.
5. Directions were issued dated 20<sup>th</sup> November 2018. Further to those directions a bundle was lodged containing the Respondent’s costs schedule and submissions made on behalf of both parties.
6. Neither party having requested an oral hearing, the application was considered by way of a paper determination.

## **The Legal costs**

7. The costs in issue are limited to legal costs in the sum of £3473.66 (no VAT) and valuer’s fees of £480 (Vat inclusive), and one disbursement being land registry fees of £20 together forming the total amount claimed of £3973.66.

## **The Respondent’s case**

8. The Tribunal was provided with an itemised schedule of the legal fees. This did not identify the date of each activity but it did give a description of the activity, the type of fee earner involved, (by reason of the level of the hourly rate) and the time spent and resultant cost. The schedule listed two fee rates of £250 and £180 per hour.
9. The costs schedule breaks down into five sections but essentially there are three heads of claim under each subsection of section 60 of the Act, being S.60(1) (a)

through to (c). Each total item of claim for each subsection will be considered subsequently in this determination.

10. The respondent says that the rates charged are reasonable and properly payable by the applicant. The respondent denies that the charges are excessive or unreasonable or not within the ambit of section 60.
11. It is also said that in this case there was some major disagreements between the parties regarding the validity of a notice under section 45 and the possibility of a County Court case. The respondent believes that these issues have contributed to the level of costs being claimed in this Tribunal case.
12. Disbursements in the sum of £20 in respect of land registry fees were not challenged and are therefore approved in that amount.
13. With regard to the surveyor/valuer's fees, the Applicant has confirmed in her statement of case that these are accepted and therefore the tribunal finds that the valuer's fees of £480 inclusive of VAT are reasonable and payable by the applicant.

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

14. The Applicant says that the legal charges are in part excessive and in the Applicant's statement of case the Applicant would only agree fees of £861 plus VAT.
15. The Applicant disputes the legal costs on the basis that this was a routine lease extension with no unexpected complications or protracted negotiations. The premium agreed was £24,230. The Applicant also says that there would be limited title investigation and the lease renewal was by way of precedent documentation that would be straight forward to prepare and or approve.

### **The tribunal's decision**

16. The provisions of section 60 are well known to the parties and the tribunal does not propose to set the legislation out in full. (For reference purposes an extract of the legislation and in particular section 60 is set out in an appendix to this decision along with details of appeal rights in an annex). However costs under that section are limited to the recovery of reasonable costs of an incidental to any of the following matters, namely:-
  - i. Any investigation reasonably undertaken of the tenant's right to a new lease;
  - ii. Any valuation of the tenant's flat obtained for the purpose of fixing the premium or amount payable by virtue of Schedule 13 in connection with the grant of a new lease under section 56
  - iii. The grant of a new lease under that section.

17. Subsection 2 of section 60 provides that: -

*“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”.*

18. The Respondent has set charges using an hourly rate of £250 per hour, (and at a lower hourly rate of £180 per hour.) The Applicant challenges some work carried out at the higher rate that could have been done by a fee earner charging at the lower rate. The tribunal considers in any event that the rates charged by the higher fee earner falls within the range generally seen by the tribunal in cases of this kind. Accordingly, the charge out rates of £250 and £180 in this case are accepted by the Tribunal. Accordingly, the tribunal accepts the hourly rates of £250 and £180 as being appropriate in the case. Moreover, the Tribunal is satisfied as to the distribution of the work as between these two fee earners as being reasonable given the nature of the transaction

19. The first item of costs are entitled “1. Legal costs recoverable under s.60(1)(a)” and relate to any investigation reasonably undertaken of the tenant’s right to a new lease. The Tribunal consider the personal attendance on the landlord to be excessive at 1 hour and also the work on documents of 1 hour and 5 minutes to be excessive too. The Tribunal sets fees as being reasonable for this section in the sum of £465 in place of the amount claimed of £755.83.

20. Dealing with the second item of costs entitled “Legal and valuation costs recoverable under s60(1)(b), this relates to 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. The Applicant says that case law stops the respondent from making substantial claims for this work as the function of a solicitor is administrative rather than undertaking a professional task. The case of *Sidewalk Properties Limited v Twinn* [2015] UKUT 0122 (LC) would tend to support this contention. The Tribunal accepts that a solicitor should be able to make a charge in this regard but considers the amount charged in this case to be disproportionately high bearing in mind the nature of the transaction under consideration. The Tribunal sets fees as being reasonable for this section in the sum of £500 in place of the amount claimed of £1037. The tribunal in particular considered the fees charged for attendances on the landlord to be excessive and disproportionate given that nature of this transaction. Moreover, the requirement for 19 emails involving the valuation seemed to the tribunal to be excessive for such an administrative role.

21. The third item of costs entitled “legal costs recoverable under s.60(1)(b) again relates to 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. The total claimed for this section amounts to £601. The applicant believes that these items do not fall within the limits of section 60(1)(b). The Tribunal accepts that a solicitor should be able to make a charge in this regard but considers the amount charged in this case to be disproportionately high bearing in mind the nature of the transaction under consideration. The Tribunal sets fees as being reasonable for this section in the sum of £250 in place of the amount claimed of £601.

22. The next item is entitled “recoverable costs under s.60(1)(c) and relates to the grant of a new lease under that section. The Tribunal immediately took note of the fact that the lease that was agreed and used in this transaction was prepared by the Applicant. The total sought in this section amounts to £770.83. Bearing in mind who drafted the lease and how short a document it was, (some seven pages in length) the tribunal was of the view that the amount proposed was excessive and disproportionate. The Tribunal will allow £250 in place of the amount claimed.
23. The next item is also entitled “recoverable costs under s.60(1)(c) and relates to the grant of a new lease under that section. However, the amount claimed here is £329 and seems to relate to other work and the Tribunal quotes from the respondent’s schedule of costs “Tenant’s application to Land Valuation Tribunal prior to completion to determine costs at the oral hearing to determine the premium”. On the assumption that this relates to the Tribunal hearing none of these costs can be seen to be within the ambit of S.60(1)(c) as they simply do not relate to the grant of the new lease. Therefore, the Tribunal disallows this item in full.
24. Accordingly, the Tribunal approves the following amounts of costs as listed above namely, £465, £500, £250 and £250, having disallowed the last costs item in full, giving a total allowed for the Respondent’s costs in the sum of £1465.

**Name:** Judge Professor Robert  
M. Abbey

**Date:** 29 January 2019

## **APPENDIX**

### **Leasehold Reform, Housing 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 a leasehold valuation 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.

## **Annex - Rights of Appeal**

1. 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.
2. 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.
3. 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.

4. 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.