



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

**Case reference** : **LON/00BB/OC9/2018/0345**

**Property** : **49 Station Road, London E12 5BP**

**Applicants** : **Mr S. Khan & Mrs H. Shahsavari**

**Representative** : **Foskett Marr Gadsby & Head LLP**

**Respondent** : **IM Ventures Ltd**

**Representative** : **None**

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

**Tribunal member** : **N. Martindale**

**Date of decision** : **15 January 2019**

**Venue** : **10 Alfred Place, London WC1E 7LR**

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**DECISION**

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**Summary**

- 1. The Tribunal determines that the Section 60 statutory costs payable by the leaseholder of the Property, 49 Station Road London E12 are £2,400.**

## **Background**

2. This is an application under section 91(2)(d) of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) for determination of the reasonable costs incurred by the landlord, under section 60(1) of the Act. It follows service of a Notice of Claim to acquire a new lease.
3. The tenant served a notice of claim dated 10 November 2016 on the landlords to acquire a new lease of the Property, the maisonette on ground first and second floors at 49 Station Road E12. It is unclear whether or when the landlord responded to this by commissioning a valuation and serving counter notice but subsequent correspondence from their valuer in form of an invoice and from their solicitors requiring payment, suggest that it was done and in time. This correspondence also suggests that the tenant declined to take any further part in the process so that they eventually ran out of time to refer the dispute to this Tribunal for determination of the price and other terms of the lease extension claim.
4. On 10 August 2018 the landlords’ representative wrote to the tenants solicitors acting in claim, S S Basi and Co. claiming £2,400 in landlord’s costs. They asked if this sum could be deducted from £2,700 deposit already held by them from the tenant. They also referred to £1,869 “in relation to previous legal fees regarding a Lease extension”. Supporting documents were provided in support of the claim for £2,400, but for the £1,869. In any event the latter sum does not fall to be determined by this Tribunal under S.60.
5. The landlords schedule of costs for the claim were made up of £1,500 legal and £900 valuer; both including VAT. Legal costs at £250 for a licensed conveyancer were: Considering claim 0.5hr; Investigating title 0.5hr; Drafting Counter-Notice 1.5hr; Drafting and agreeing Lease Extension; 10 letters to lessees tenants solicitors each at 6mins: Sub-Total £1,250 plus £250 VAT, £1,500. Valuers costs, standard fee at £750 plus VAT., supported by an invoice from B. Bailey & Co. Ltd.

## **Directions**

6. The Tribunal issued standard Directions dated 12 November 2018. These invited both parties to make representations to the costs application under S.60a. They did not however extend to include claims for other sums which might have been already owing to the landlord by the tenant, nor to arguments for costs under this Tribunal’s Rule 13. The landlord mainly complied with this. The tenant did not and no representations were received by the Tribunal from the tenant.
7. **Statutory provisions**

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

- 8 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.

- 9 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.
- 10 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 with reasons**

- 11 The Tribunal has considered the representations for landlord costs under S.60 and determines that the hourly rate and times taken for the different elements of cost as claimed, are reasonable. The Tribunal also determines that the standard fee for valuation of the Property is reasonable. The Tribunal bases both elements on its knowledge and experience of dealing with such applications, the processes required, the times taken and the hourly recharge rates for the tasks.
- 12 If, in the light of this decision, either party seeks award of costs against the other, for the behaviour of the other, they need to make a separate application for the determination and payment of same under Tribunal Rule 13. Parties are reminded that the bar for award of costs under this Rule, is set high.

**Name: Neil Martindale**

**Date: 15 January 2019**