



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

<b>Case reference</b>	:	<b>LON/00AG/OC9/2018/0255</b>
<b>Property</b>	:	<b>Flats 2, 6, 7, 18, 19, 22, 24, 37 Cresta House 125-133 Finchley Road London NW3 6HT</b>
<b>Applicants</b>	:	<b>Various Leaseholders</b>
<b>Representative</b>	:	<b>Storrar Cowdry Solicitors</b>
<b>Respondent</b>	:	<b>Countryroad Investments Ltd. (Landlord)</b>
<b>Representative</b>	:	<b>Joelson JD LLP</b>
<b>Type of application</b>	:	<b>Section 91(2)(d) of the Leasehold Reform, Housing and Urban Development Act 1993</b>
<b>Tribunal members</b>	:	<b>N. Martindale</b>
<b>Venue</b>	:	<b>10 Alfred Place, London WC1E 7LR</b>
<b>Date of decision</b>	:	<b>13 February 2019</b>

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**DECISION**

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**Tribunal's decision**

1. The Tribunal determines that the Section 60 statutory costs payable by the various leaseholder applicants of the Property is £1000 plus VAT in respect of the landlord's costs obtaining a valuation for each flat, No.s 2, 6, 7, 18, 19, 22, 24, 37 Cresta House: Total £8,000 plus VAT.

## **Background**

2. These eight applications have been treated as one, under section 91(2)(d) of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) in respect of Flats 2, 6, 7, 18, 19, 22, 24, 37 Cresta House 125-133 Finchley Road London NW3 6HT.
3. Though the representative for the tenants listed for flats forming the Property at this building, refer in correspondence to Flat 16, the Tribunal has not received any application in respect of the landlord’s costs of obtaining a valuation of that flat. There is also reference in correspondence to a ‘Penthouse Flat’, which the Tribunal has taken to be reference to Flat 37. Lastly a separate application for a determination of the landlord’s costs of obtaining a valuation for Flat 33 has already been determined by the Tribunal separately.
4. The application is made by the tenants, for the determination of the reasonable costs payable to the landlord under section 60(1) of the Act. It follows service of Notices of Claim on the competent landlord to acquire a new lease for the Property. The freehold title of the Property is subject to a number of occupational long leases. There is apparently an overriding headlease.
5. On 12 March 2018 the applicant leaseholder of Flat 2 made a claim to acquire a new lease of that flat at the Property by way of a notice of claim. Apparently within the time limit for response, the landlord served a counter notice on the tenant, though no copy of this notice was provided to the Tribunal. The Tribunal was not provided with copies of any other notices of claim nor of any counter notices for the other seven flats. However the issue of service of a valid claim notice by each tenant’s representative and a corresponding effective counter notice being served on each by the landlord’s representative is not an issue. It is accepted by both parties that a valuation, was obtained by the landlord for each Flat listed above, at the Property at some cost.
6. It appears that terms to acquire each lease extension were subsequently agreed between the parties and that the premium, other sums and any compensation due; the legal and all other ancillary costs properly due to the landlord following service of the tenant’s notice were agreed in each case.
7. However the reasonable cost due to the landlord in respect of obtaining a valuation of the premium in each case was not agreed. The matters were referred to the Tribunal by way of eight separate applications all dated 24 July 2018. The Tribunal has scheduled and now determines these as one.

## **Directions**

8. Standard directions were issued to both parties on 4 December 2018.
9. The landlord was required to send to the tenant a schedule of costs for a summary assessment. It should identify the basis for charging valuation costs and if by hourly rates detail should be provided of the fee earners, their time spent and the hourly rates applied. The schedule should identify and explain any unusual or complex features of the case. The landlord was also required to provide copies of the invoices submitted to them by the professionals involved.
10. The tenant was to provide a statement of case and any legal submissions identifying with brief reasons the costs disputed, specifying alternative costs considered reasonable and where the tenant is represented details of the hourly rates or other basis for charging applied by its solicitors or valuers in the calculation of their equivalent costs. They were also required to send in details of comparative cost estimates or accounts on which reliance was placed.
11. The applicant tenants were required to provide two copies of the bundle by 29 January 2019 to the Tribunal.
12. The Tribunal received the parties responses to these directions. However on the morning of 13 February 2019, the Tribunal office received an email from the applicants' representative with various attachments. Shortly afterwards on the same day, the Tribunal office received an emailed letter dated 13 February 2019 from the respondent's representative also with various attachments. Both documents were received well outside of the last date for submissions (29 January 2019) and are consequently disregarded for the purposes of this determination and in neither case had their been a prior request for an extension of time.

## **Applicants' Case**

13. The applicants provided one copy of the bundle. The material presented was the same as that already presented in respect of Flat 33. The applicants acknowledged that the respondent had provided copies of invoices ranging from £1,250 plus VAT for flat 33 (separately determined), through the bulk of flats at £1,500, to £1,700 plus VAT for that of the Penthouse at the Property. In the case of other flats higher fees were agreed between the valuer and the landlord with an additional £250 plus VAT for Flat 16 (not the subject of any application) to take account of an abortive inspection visit.
14. The applicants acknowledged that the respondent's case was that these sums were fixed fee charges and the 'industry norm and provide certainty for landlord and tenant'.
15. The applicants maintained that a fixed fee is not the industry norm. The applicant refers to Hague where it is 'reaffirmed that the recoverable

valuers costs should be based on an hourly rate and time spent, rather than on a fixed fee agreement with the Landlord'. The applicant referred the Tribunal to *Fitzgerald v Safflane* (2010) UT, applying *Blendcrown Ltd v Church Commissioners for England* (2000) and to *Sinclair Gardens Investments Kensington) Ltd v Wisbey* (2016) UT which related to legal costs and applied a 20% discount for bulk and in effect repetitive work and where the landlord could reasonably have been expected to negotiate a price reduction.

16. The applicant referred it to their own valuer who considered the costs and an email of 22 January 2019. By comparison the applicant's valuer's fees were £275 plus VAT per flat with an hourly rate applied of £230 per hour. The applicant also included fee 'estimates' from valuers Scrivener Tibbatts and Douglas & Gordon.

### **Respondent's Case**

17. The respondent's case was brief. These were applications made subsequent to Flat 33, for lease extensions and hence valuations in respect of flats at least 2, 6, 7, 16, 18, 19, 22, 24, 33 and 37 Cresta House and had been provided to the landlord at or around the same time.
18. They maintained that the £1500 plus VAT was the standard fee charged by MyLeasehold valuers for all of these flats except for the penthouse at £1700 plus VAT and £1250 for Flat 33. The respondent provided a series of copy invoices prepared by the landlord's valuer in respect of the Property. The respondent landlord maintained that the work was not done by reference to time taken.

### **Statutory provisions**

19. 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

20. 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.
- 21 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.
- 22 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.

## **Determination with Reasons**

- 23 The Tribunal does not accept that only possible reasonable basis for charge for preparation of valuations for the landlord is on an hourly rate. Many valuation fees for valuations for enfranchisement purposes are quoted and billed on a simple fixed basis without specific reference to time taken to prepare the valuation. However the Tribunal is puzzled in that although the landlord maintains the fixed fee approach, a larger sum is required for an apparently larger flat (the penthouse) comparator and presumably the inspection and comparables take slightly longer to undertake; and where additional time (the abortive inspection in one case) has been incurred: They are either on a fixed basis or not.
- 24 The reading of the lease, the inspections, search for comparables, and valuations were apparently prepared by the same firm of valuers at or around the same time as each other at the Property. The Tribunal has regard to the similarity of most of the flats, and thus of much of the work and its timing. It does however acknowledge that it has been carried out to high value flats in a central (albeit not PCL) location. It therefore determines that the reasonable costs of obtaining a valuation for each flat at the Property on these occasions would be £1000 plus VAT, a total of £8,000 plus VAT for the eight numbered flats.

**Name: Neil Martindale**

**Date: 13 February 2019**