



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

<b>Case Reference</b>	:	<b>CAM/42UF/OLR/2019/0032</b>
<b>Property</b>	:	23 Alicia Court, Southgate Street, Bury St Edmunds IP33 2BB
<b>Applicant</b>	:	Carole Anne Cannell
<b>Representative</b>	:	Charles Fraser & Co, solicitors
<b>Respondent</b>	:	Louise Sarah Munro-Smith
<b>Representative</b>	:	Mike Stapleton & Co, Chartered Surveyors
<b>Type of Application</b>	:	Determination terms and costs of acquisition of an extended lease [LRHUDA 1993, s.60]
<b>Tribunal</b>	:	G K Sinclair
<b>Date of decision</b>	:	24 <sup>th</sup> May 2019

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DECISION FOLLOWING A PAPER DETERMINATION (COSTS)

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1. All other issues in dispute having apparently been agreed between the parties, for the reasons which follow the tribunal awards the respondent landlord the net sum of £612 by way of section 60 costs.

**Procedural history**

2. The tenant's section 42 notice of her claim to exercise the right to acquire a new lease of the flat was served on 9<sup>th</sup> August 2018 and the landlord's counter-notice on 30<sup>th</sup> August. This application was received in the tribunal office on 27<sup>th</sup> February 2019 and directions were issued by the Regional Judge on 1<sup>st</sup> March.

3. On costs, direction 1 provided that :  
The Respondent must, by 4.00 pm on 22<sup>nd</sup> March 2019, serve on the Applicant a statement of costs claimed, certified by the solicitor to say that these are the costs contractually payable by the client, setting out (a) the qualification 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.
4. Provision was then made in direction 2 for the applicant to serve a schedule of objections, in the form recommended by CPR Part 47PD (Precedent G), by 5<sup>th</sup> April 2019. The respondent was to reply to those objections by 12<sup>th</sup> April 2019.
5. These directions were not complied with by the required date or at all. The parties have agreed, however, that the issue of costs can be dealt with on paper and without an oral hearing.

#### **Recoverable costs – section 60**

6. The costs recoverable are prescribed by section 60 of the 1993 Act, the material parts of which provide :
  - (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.
  - (...)
  - (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.

#### **Statement of costs**

7. Although the bundle filed with the tribunal office for the purposes of a paper determination includes the initial notice and counternotice, neither of which assist in assessing section 60 costs, the rest is almost entirely an incomplete chain of emails passing between the two sides.

8. No statement of costs (and therefore any schedule of objections) was produced, as directed, but from the correspondence, in particular a brief letter from Mike Stapleton & Co dated 15<sup>th</sup> May 2019 – seven and a half weeks after the date directed for service of a costs schedule – and a response from the applicant’s solicitors dated 16<sup>th</sup> May 2019, the following VAT inclusive costs are identified :
- a. Preparation & service of counternotice. . . . . £720
  - b. Brown & Co [legal fees] : 5 hrs @ £228<sup>1</sup> . . . . . £1140
  - c. Disbursements [LR copies of freehold and leasehold title] . . . . . £15
- £1 875**
9. The applicant’s counter-proposals are :
- a. Valuer’s fees (already paid) . . . . . £850 plus VAT, or £1020
  - b. Legal fees . . . . . £500 plus VAT, or £600
- £1 620**
10. The £850 plus VAT already paid for a valuation appears to have just pre-dated the section 42 notice, at a time when the parties were negotiating an extension outwith the statutory mechanism, such negotiations proving unsuccessful. Mr Stapleton informs the tribunal by letter dated 22<sup>nd</sup> May 2019 that a further valuation fee under the Act has not been claimed, merely £600 plus VAT for investigating the validity of the notice and “to manage the claim.” The applicant’s solicitor has not had the opportunity to respond.

**Discussion and findings**

11. The way in which this claim has been presented is muddled and confused. Had the respondent done what was required by the tribunal’s directions and served a schedule 2 months ago, to which the applicant could raise structured points of objection, then it might have been possible for the tribunal to fathom why exactly £1 020 was paid by the applicant to the respondent’s valuer, and whether or not that should be taken into account for the purposes of section 60.
12. As Mr Stapleton claims to have been managing the claim one might expect the lion’s share of the recoverable costs to be due to his firm, as he will (or should) have obtained a copy of the tenant’s leasehold title, advised on a suitable though not necessarily precise negotiating figure to include in the counternotice, and completed and served it. A full valuation – let alone a formal report – would not be required in order to respond to the section 42 notice.
13. No point seems to be taken concerning the licensed conveyancers’ hourly rate of £228 inc VAT, so the dispute is whether 5 hours as claimed or the 2 hours that the applicant concedes are justified. Each party seems to be taking an extreme position, and the tribunal notes a recent email exchange in which the applicant’s solicitor alleges that the draft lease originally submitted by Brown & Co did not even comply with the Act. (At an earlier stage in these proceedings the same solicitor notified the tribunal that only the issue of recoverable section 60 costs required determination by the tribunal).
14. The usual principle adopted when a court awards costs is that, where there is

<sup>1</sup> Although in his covering letter dated 15<sup>th</sup> May 2019 Mr Stapleton refers to the legal costs as being the slightly lower figure of £1 115 inc VAT

doubt, the benefit of such doubt should be resolved in favour of the paying party.<sup>2</sup> As it was the respondent's duty to file and serve a schedule of costs some two months ago it is lucky to be awarded anything at all, but the tribunal determines as follows :

- a. The work required in order to respond to the tenant's notice is adequately rewarded by the £600 plus VAT claimed, or £720.
- b. The tribunal considers that the 2 hours work said by the applicant to be all that is needed in order to draft a new lease is on the light side. 5 hours is too much. The tribunal awards 4 hours at £228 inc VAT, viz £912
- c. The tenant's registered leasehold title can be obtained for a lot less than £15. There should be no need for the tenant to pay for a copy of the freehold title, and the true cost of the leasehold title can be rolled up with the fee claimed by Mr Stapleton, whose firm filed the counternotice and says that it is managing the claim
- d. The pre-payment is confusing, and appears to be for a complete valuation report. That is not a recoverable cost under the Act, and had this point been raised much sooner then the applicant would have had the chance to produce a proper reply. The tribunal errs in favour of the applicant.

15.	The costs determined are therefore :	
a.	Valuer/manager's costs .....	£720
b.	Fees for new lease (4 hours @ £228 inc VAT) .....	<u>£912</u>
		£1 632
	Less the amount already paid .....	<u>-£1 020</u>
	<b>Net amount payable :</b>	<b>£612</b>

Dated 24<sup>th</sup> May 2019

*Graham Sinclair*

Graham Sinclair  
First-tier Tribunal Judge

<sup>2</sup> CPR 44.3(2)(b)