



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

Case Reference	: CHI/21UC/OC9/2018/0017 and CHI/21UC/OC9/2018/0018
Property	: Flats 3 and 6 St Brelades, Trinity Place, Eastbourne, East Sussex, BN21 3BT
Applicants	: (1) Adam James Gough (2) Peter Almond
Representative	: Mayo Wynne Baxter LLP Solicitors
Respondent	: Brickfield Properties Limited
Representative	: Wallace LLP Solicitors
Type of Application	: Determination of costs payable, lease extension
Tribunal Member(s)	: Judge N P Jutton
Date of Decision	: 30 January 2019

DECISION

1 **Background**

- 2 On 7 December 2017, the First Applicant Alan James Gough served a Notice pursuant to section 42 of the Leasehold Reform, Housing & Urban Development Act 1993 (the 1993 Act) on the Respondents seeking a statutory lease extension of his lease at Flat 3, St Brelades, Trinity Place, Eastbourne, East Sussex, BN21 3BT (Flat 3). He proposed a premium of £16,000 for a new lease with a statutory term of a further 90 years at a peppercorn rent, but otherwise to be in accordance with sections 56 and 57 of the 1993 Act.
- 3 On 2 March 2018, the Second Applicant, Peter Almond (and one Kathleen Almond) similarly served a Notice pursuant to section 42 of the 1993 Act on the Respondent seeking a statutory lease extension of Flat 6, St Brelades, Trinity Place, Eastbourne, East Sussex, BN21 3BT (Flat 6). The Notice proposed a premium of £12,000 with a statutory term extension of 90 years at a peppercorn rent and otherwise likewise, the terms to be in accordance with sections 56 and 57 of the 1993 Act.
- 4 On 15 February 2018, the Respondent served a counter-Notice pursuant to section 45 of the 1993 Act in respect of Flat 3 proposing a premium of £33,750 for the grant of a new lease. On 11 May 2018, the Respondent served a counter-Notice pursuant to section 45 of the 1993 Act in respect of Flat 6 proposing a premium of £25,986. In both cases the Respondent admitted the Applicant's right to acquire a new lease and in both cases, the counter-Notice had attached to it a draft form of lease.
- 5 In the event, in respect of both Flat 3 and Flat 6, the amount of premium was agreed and a new lease completed in respect of both Flats on 26 October 2018.
- 6 However, agreement has not been reached by either Applicant with the Respondent in respect of the amount of costs that are payable by the Applicants to the Respondent pursuant to section 60 of the 1993 Act. The Applicants therefore apply to the Tribunal for a determination as to the amount of costs payable by them to the Respondent pursuant to section 60.
- 7 Directions were made by the Tribunal in respect of both Flat 3 and Flat 6 on 2 November 2018. The Directions provided in each case for the Respondent to by 30 November 2018 send to the Applicant a Statement setting out full details of the Respondent's claim for costs and for the Applicant to send to the Respondent Points of Dispute by 14 December 2018.
- 8 The Directions provided for the preparation by the Applicants of a Determination Bundle, and for the applications to be dealt with on the papers without a hearing in accordance with rule 31 of the Tribunal Procedure Rules

2013 unless a party objected in writing to the Tribunal within 28 days of receipt of the Directions. None of the parties have objected and accordingly the Tribunal proceeds to make its determination on the papers before it without a hearing.

9 Bundle of Documents

10 There is before the Tribunal a Bundle of documents containing the applications to the Tribunal, the said Directions, a letter from the Respondent's Solicitors to the Tribunal dated 28 November 2018 enclosing a Schedule of Costs and supporting documents, Points of Dispute from the Applicants dated 13 December 2018, Submissions on Costs from the Respondent's Solicitors which are undated but are understood to have been submitted on 20 December 2018, and a Statement from the Applicants in reply thereto dated 3 January 2019. At the end of the Bundle are Schedules of Costs for both Flat 3 and Flat 6 in the form of a Scott Schedule with a column completed by the Respondent, a column completed by the Applicants and a blank column for completion by the Tribunal.

11 Preliminary Issue

12 By a letter to the Tribunal dated 4 January 2019, the Respondent asks that the Statement in Reply of the Applicants dated 3 January 2019 be disregarded by the Tribunal. The Respondent says that the Applicants are not entitled to make further submissions. That if the Tribunal takes into account the Applicants' statement of 3 January 2019 that would be prejudicial to the Respondent because the Respondent would not have the opportunity to respond.

13 By a letter to the Tribunal of the same date from the Applicants' Solicitors, the Applicants say that their Statement in Reply of 3 January 2019 was made in response to the further submissions of the Respondent received on 20 December and that it would be prejudicial to them if they were not allowed to respond thereto.

14 The Tribunal agrees with the Applicants. The Directions of 2 November 2018 provided for the Respondent to submit by 30 November 2018 full details of its claim for costs. The Respondent duly produced details of its claim for costs by a letter from its Solicitors dated 28 November 2018 together with a Schedule of Costs and supporting documents. The Directions then provided for the Applicants to produce any Points of Dispute by 14 December 2018. The Applicants duly produced Points of Dispute dated 13 December 2018.

15 However, thereafter, despite there being no Directions allowing for further submissions, the Respondent produced a far more detailed submission

supported by an Exhibit running to some 100 pages. That was received by the Applicants on 20 December 2018. It contained information and submissions that arguably should and could have been contained in the Respondents letter of 28 November 2018. The Applicants then produced their Statement in Reply dated 3 January 2019. It would be prejudicial in the view of the Tribunal to the Applicants if they were not allowed to do so. The Directions envisaged the Respondent producing details of costs claimed and the Applicants providing Points of Dispute in response. The Respondent in the event produced details of its claim for costs and submissions in two tranches. The Applicants have responded in two tranches. In all the circumstances, in the interests of justice, in light of the further more detailed submissions made by the Respondent on 20 December 2018 it would not be right in the view of the Tribunal to have no regard to the Applicants' Statement in Reply dated 3 January 2019. The Tribunal does have regard thereto and does not accept the Respondent's contention that to do so is prejudicial to it.

16 **The Substantive Application**

17 Section 60 of the 1993 Act provides:

60 (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 accordance with the grant of a new lease under section 56;*

(c) *the grant of a new lease under that section;*

but this sub-section 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 sub-section (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.

18 Section 60 seeks to do two things. Firstly, given that the Act confers a right on tenants of leasehold flats to compel their landlord to grant them a new lease, it provides as a matter of basic fairness that a tenant in exercising such rights should reimburse the costs that the landlord reasonably incurs as a consequence.

19 Secondly, it seeks to provide some protection for tenants against being required to pay more than is reasonable. Section 60 does not provide an opportunity for the landlord's advisers to charge excessive fees in the expectation that they can be recovered from the tenants. As it was put by the Upper Tribunal in **Metropolitan Property Realisations Limited v John Keith Moss** (2013) UK UT 04 15 (LC):

"Section 60 therefore provides protection for both landlords and tenants: the landlords against being out of pocket when compelled to grant new interests under the Act, and for tenants against being required to pay more than is reasonable".

20 The test of reasonableness under section 60(2) has been described as the 'reasonable expectation test'. What would a landlord reasonably expect to pay if he were paying the costs himself?

21 In this case, the Respondent seeks the following costs as set out in the schedule:

Flat 3

Legal fees	2778.75
VAT	555.75
Courier fees	19.11
VAT	3.82
Land Registry fees	39.00
Valuation fees	650.00
VAT	70.00
Total	£4116.43

Flat 6

Legal fees	2671.25
VAT	534.25
Land Registry fees	30.00

Valuation fees	650.00
VAT	70.00
Total	£3955.50

22 The Applicants say that the costs should be as follows:

Flat 3

Legal fees	1001.00
VAT	200.20
Land Registry fees	39.00
Valuer's fees	350.00
VAT	70.00
Total	£1660.20

Flat 6

Legal fees	931.10
VAT	186.22
Land Registry fees	30.00
Valuer's fees	350.00
VAT	70.00
Total	£1567.32

23 Fee Earners and Hourly Rates

24 The hourly rates charged by the Respondent's Solicitors, the Respondent says, are consistent with the usual charge out rates for Solicitors in Central London. The rates charged are £475 per hour for a partner (a grade A fee earner), £495 per hour for a partner in the Respondent's Solicitors' conveyancing department (a grade A fee earner), £365 per hour (rising to £385 in August 2018) for an assistant solicitor (also a grade A fee earner) and £200 per hour for a paralegal.

25 The Respondent says that its Solicitors have acted for it for many years. That they are its choice of Solicitors given the Solicitors' knowledge and capacity to deal with work of this nature. That the provisions of the 1993 Act are complex in nature and that accordingly it is reasonable for partners and senior fee earners to have the conduct of the matter on its behalf. That the 'reasonable expectation' test does not require the Respondent to find the cheapest Solicitors but simply to instruct the Solicitors that it would normally

instruct in such matters if it were bearing the costs itself. That the charge out rates of the Respondent's Solicitors are the rates that it would expect to pay itself if it were paying the costs.

- 26 The Applicants say that the hourly rates charged by the Respondent's Solicitors are not reasonable. The Applicants refer to the Courts Guideline hourly rates for Solicitors and other Fee Earners. The Applicants say that whilst lease extension work is a specialised area, these particular lease extensions were relatively straightforward with no unusual complexities. Further, the Applicants say that in the circumstances of this case much of the work carried out was of an administrative nature and could have been carried out by more junior fee earners. The Applicants do not dispute the Respondent's choice of Solicitors but argue that the hourly rates claimed are not justified.
- 27 Both parties refer to previous decisions of the First Tier Tribunal, some of which involve the Respondent's solicitors, to support their respective cases. Such Decisions are helpful but not binding upon this Tribunal.
- 28 The Court Guideline hourly rates were last reviewed in 2010. They remain a component in the assessment of costs but in the view of the Tribunal, given that it is some 8 years since they were last reviewed, they are not of particularly great assistance. The Applicants provide no evidence otherwise to support their submission that the Respondent's Solicitors' hourly rates are too high, for example evidence of hourly rates charged by other solicitors. Having considered the matter carefully, the Tribunal is of the view that the hourly rates charged by the Respondent's Solicitors, applying the test required by section 60(2), are high but not sufficiently so as to make them unreasonable.
- 29 However, although both parties are of the opinion that this is a complex area of law, these two particular matters appear relatively straightforward. There have been a number of previous statutory lease extensions in respect of other flats at the property. The right of both of the Applicants' to acquire a new lease was not disputed. The Tribunal agrees with the Applicants that much of the work carried out was straightforward and/or of an administrative nature. Given that the Respondent's Solicitors specialise in this area of law, have acted for the Respondent in such matters for many years, and indeed have acted in respect of a number of lease extensions at this property, no doubt a number of letters and documents were in a standard or usual form. In the view of the Tribunal, if the Respondent were liable to pay the costs, it would expect much of the work carried out by its Solicitors to have been performed by a fee earner at below partner level. The Tribunal's assessment of the Respondent's costs in the attached Schedule reflects that view.

30 **Lease**

- 31 The Respondent's Solicitors attached to the section 45 counter-Notices a draft form of lease. In each case, the counter-Notice stated "*The new lease should be in the form of the draft lease annexed hereto being on the same terms and conditions as the existing lease subject to such modifications as are required by section 57 of the Act ...*". In respect of Flat 3, a grade A fee earner in the Respondent's Solicitors' Conveyancing Department spent 30 minutes preparing the new draft lease at the rate of £495 per hour. In respect of Flat 6, 54 minutes are claimed for an assistant solicitor to prepare the draft lease at the rate of £365 per hour. The Applicants say that the lease attached to the counter-Notice was an attempt on the Respondent's part to put in place a brand new form of lease with a large number of changes. That in the event, a short form of lease was subsequently agreed upon (presumably in line with the short form of lease which the Applicants say had previously been agreed for 4 other flats in the block in 2016 and 2017). A copy of the short form of lease for Flat 6 is exhibited to the Applicants' Submissions of 3 January 2019. The Applicants rightly note however that no further time appears to have been charged by the Respondent's Solicitors for the preparation of the short form of lease. In the circumstances, the Applicants say that the total time that should be claimed for drafting the lease in each case should be no more than 3 units.
- 32 The Respondent says that for the purpose of preparing the counter-Notice, it is necessary to review the terms of the existing lease in order to determine the appropriate terms to be contained within the counter-Notice. That the time reasonably taken to undertake that exercise is no greater than that needed to draft a new lease. Indeed in some cases the time spent may be longer than that required to draft a new lease. That as such, the time claimed is not unreasonable.
- 33 The Applicants acknowledge that something should be paid for time spent by the Respondent's solicitors for lease drafting (they suggest 3 units of time for each lease). The Tribunal bears in mind that these are not the first statutory lease extensions for flats at this particular property in respect of which the Respondent's Solicitors have acted for the Respondent. It notes that in the event a short form of lease in a fairly standard form was adopted and not the draft lease attached to the Counter-Notice. It is not clear to the Tribunal why the Respondent's Solicitors did not adopt the short form of lease from the start. Both parties recognise, and the Tribunal agrees, that in drafting a new lease, time is needed to be spent considering the terms of the existing lease and such modifications as might be required by reason of section 57 of the 1993 Act.

34 In the view of the Tribunal the appropriate sum that the Applicants should pay is that which would amount to the reasonable costs of the Respondent's Solicitors to draft in each case a short form lease (to include time spent reviewing the terms of the existing lease). In respect of Flat 3, the Tribunal is of the view that 30 minutes for a senior grade A fee earner to draft a short form lease to include time spent reviewing the existing lease would not be unreasonable. Indeed, it is a relatively short period of time (no doubt reflecting the expertise of the solicitor as is reflected in the hourly rate). Similarly the Tribunal is of the view that in respect of Flat 6, 54 minutes of time for an assistant solicitor to prepare a short form lease to include time reviewing the existing lease would not be unreasonable. The Tribunal determines that the costs claimed for drafting leases for both Flat 3 and Flat 6 are reasonable.

35 **Valuer's Fees**

36 The valuer's fees claimed are £650 plus VAT for each property. (There is some inconsistency because the Respondents submissions and the schedule of costs for each flat claim £650 per flat but the valuer's invoice for Flat 3 exhibited to the Respondents submissions and the email from the valuer dated 28 November 2018 provide for a fee of £600 plus VAT. In the email dated 28 November 2018 the valuer sets out the work that he carried out. He says that his standard fee, whether he acts for a freeholder or a leaseholder, for such matters in Brighton and Hove is £650 plus VAT. That as he did not inspect these two particular flats internally - because he had inspected at least 6 flats in the building in the last few years - he reduced his fees to £600 plus VAT per flat. There also seems to be an error on the Respondents part in the calculation of VAT on valuer's fees in the submissions and in the schedules but nothing turns on that).

37 The Applicants say that the fees claimed are excessive given the duplication of work. The Applicants say that the same valuer has acted on 4 other flats at the property in 2016 and 2017, and he charged £350 plus VAT for each of those matters. That the Respondent would not expect to pay a higher fee if it was personally liable for its costs and that a reasonable fee would be £350 plus VAT per flat.

38 The Respondent says that the fee for Flat 1 was £350 plus VAT because it was an updated valuation. It was only carried out 6 months after an original valuation hence the reduction. However, the Applicants say that the same charge was made for other flats and refer to Flats 2, 12 and 14. It is not known whether the valuations for Flats 2, 12 and 14 were also updated valuations.

- 39 The Applicants attach to their Submissions of 3 January 2019 at exhibit D redacted completion statements for Flats 2, 12 and 14 which show a valuation fee inclusive of VAT of £420 in each case. The redacted completion statements are undated and the Tribunal is conscious that the Respondent has not been allowed the opportunity to respond to these and therefore takes no regard of them.
- 40 In the view of the Tribunal, if the Respondent were liable to pay the valuer's fees, the Respondent would expect a reduction to reflect the fact that firstly the valuer did not carry out an internal inspection, that secondly the valuer was familiar with this property having carried out a number of relatively recent valuations of other flats in the same building, and that thirdly there is clearly an element of duplication in carrying out two valuations at the same time. In the view of the Tribunal, the Respondent, if personally liable for the valuer's fees, would reasonably expect a greater reduction than £50 from the valuer's standard fee of £650. In all the circumstances taking the parties submissions into account in the view of the Tribunal and for the above reasons a reasonable reduction from the valuers standard fee would be to £475 plus VAT (£570) per flat.

41 **The Schedule**

- 42 There is attached to this Decision a Schedule of disputed costs for each flat with a column completed by the Respondent, a column completed by the Applicants, and the Tribunal's Decision in respect of each item set out in the final column.

43 **Summary of Tribunal's Decision**

- 44 The Tribunal determines that the reasonable costs and fees of the Respondent which are payable by the Applicants pursuant to section 60 of the 1993 Act are as follows:

Flat 3 St Brelades Trinity Place Eastbourne East Sussex BN21 3BT

Legal fees	1719.25
VAT	343.85
HM Land Registry fees	39.00
Valuation fees	475.00
VAT	95.00

Total **£2672.10**

Flat 6 St Brelades Trinity Place Eastbourne East Sussex BN21 3BT

Legal fees	1668.25
VAT	333.65
HM Land Registry fees	30.00
Valuation fees	475.00
VAT	95.00
Total	£2601.90

Dated this 30th day of January 2019

Judge N P Jutton

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.