



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

Case Reference : **BIR/47UE/OC9/2018/0012**

Property : **13a Avon Road, Worcester, WR4 9AF**

Applicant : **Jonathan Grant Whitehead**

Applicant's Representative : **MFG Solicitors**

Respondents : **Anthony David Masterman (1)
Official Receiver's Office as Trustee in (2)
Bankruptcy of Anthony David Masterman**

Respondent's Representative : **TLT Solicitors**

Type of Application : **Application for determination of reasonable costs under sections 60 and 91(2)(d) of the Leasehold Reform and Urban Development Act 1993 (LRHUDA 1993)**

Tribunal : **Tribunal Judge PJ Ellis
V Ward FRICS BSc Hons FRICS**

Date of Decision : **15 August 2019**

DECISION

The sum payable by the Applicant for the Respondent's costs is £1081.00 plus VAT £216.20; Valuer's fee £450.00 plus VAT £90.00

1. This is an application for determination of reasonable costs incurred in connection with a new lease to be paid by a tenant under s60(1) of the Leasehold Reform and Urban Development Act 1993 (the Act).
2. Briefly, the background to this application is that the Applicant issued his claim for a new lease by serving a claim notice under s42 of the Act on 11 October 2017. The landlord's counter notice, admitting the right to acquire a new lease, was served on 7 December 2017. Thereafter the parties agreed terms of the new lease but they were unable to agree what sum is payable by the Applicant to the Respondent by way of costs.
3. An application for determination of the premium for the new lease and determination of the costs payable by the tenant was issued on 1 June 2018. The parties did not pursue the application in so far as the determination of the premium was concerned by reason of their agreement to the premium and other terms of acquisition and that part of the application was struck out on 6 February 2019.
4. On 18 February 2019 the Tribunal issued directions for disposal of the costs issue. Those directions were replaced by revised directions on 9 April 2019. As neither party complied with the directions of 9 April, on 7 June 2019 the Tribunal notified the parties that it was minded to strike out the application unless representations in relation to the proposed striking out were received by 14 June 2019. In the event the Tribunal received a joint bundle of documents relating to the costs claim on 13 June 2019 whereupon the Tribunal set down the application for paper determination at a hearing on 2 August 2019.
5. The bundle of documents is somewhat exiguous. It contains the Respondent's statement of costs with a breakdown but no supporting evidence and the Applicant's response in letter form which erroneously refers to s14(2) Leasehold Reform Act 1967 as the basis of his liability. Other documents in the bundle are the office copy entries, the original lease, the notice and counter notice and an email from the Respondent's solicitors reminding the Applicant that the basis of claim is s60 of the Act.
6. The Tribunal has treated the reference to the Leasehold Reform Act as an error because the Applicant issued this application under the Leasehold Reform and

Urban Development Act 1993 and s60(1) governs the Applicant's liability for costs.

The Statutory Framework

7. S91 of the Act vests the Tribunal with jurisdiction to determine:

(d) the amount of any costs payable by any person or persons by virtue of any provision of Chapter I or II and, in the case of costs to which section 33(1) or 60(1) applies, the liability of any person or persons by virtue of any such provision to pay any such costs.

8. Section 60 of the Act provides:

"(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."

The Decision

9. Generally, there is use of appropriate level of fee earner. However, there are claims for sums which are not allowed under the statutory framework and some excessive claims. The claim for costs and sums allowed are set out in the schedule annexed. The hourly rates claimed are reasonable. Further particulars of the decision are set out in the following paragraphs.

10. Whereas obtaining quotes for valuers is prudent the associated costs are not recoverable although the reasonable cost of the valuer is recoverable.
11. The Tribunal regards the cost of the valuer as too high and allows £450.00 plus Vat for the Valuer and deducts 5 units or £65 from item 2.
12. Item 3 involving reviewing instructions and researching the Act are outside the scope of s60 and £140.00 is deducted.
13. Drafting the counter-notice and items relating to the counter notice and its amendments in the total sum of £316.00 is deducted.
14. Items relating to the drafting of the new lease, its review and amendment include duplication. Item for drafting is reduced to one hour: £130.00. £80.00 for review and amendment is disallowed.
15. The item for research and advising on registration options is not allowed under the statutory framework: £140.00
16. The total deductions from fees is £871.00. Therefore, the sum allowed is £1081.00 plus Vat of £243.80. The sum allowed for the Valuer is £450 plus Vat of £90.00.

Appeal

17. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber) on a matter of law. Any such application must be received within 28 days after these written reasons have been sent to the parties (rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

Tribunal Judge PJ Ellis

Chair