



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

Case reference : **LON/00AW/0C9/2018/0373**

Property : **Flats 38, 59 and 74 Chesterton Square, London W8 6PH**

Applicants : **(1) Linda, Rebecca and Ester O'Hayon
(2) Ramona Fatima Jane De Gama
(3) Ahmed Muhsin Hussein Latif**

Representative : **Comptons, solicitors**

Respondent : **The Mayor and Burgesses of the Royal Borough of Kensington and Chelsea Bi-borough Lega Services**

Representative : **Bi-borough Legal Services**

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

Tribunal members : **Judge Simon Brilliant
Mr Richard Shaw FRICS**

Date of determination and venue : **17 July 2019 at
10 Alfred Place, London WC1E 7LR**

Date of decision : **17 July 2019**

DECISION

Summary of the tribunal's decision

1. The tribunal determines that the section 60 statutory costs payable by the applicants to the respondent amount to **£1,066.50** plus VAT if payable for legal fees and **£2,472.00** for the valuers' fees including VAT.

Background

2. This is an application brought under section 91(2)(d) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") in respect of Flats 38, 59 and 74 Chesterton Square, London W8 6PJ. The applicants seek a determination of the reasonable costs payable by them under section 60(1) of the Act following service of Notices of Claim to acquire new leases of the flats.

Flat 74

3. The first applicants' leasehold interest in flat 74 is under the terms of a lease dated 17 December 1984 granted for a term of 125 years from 29 September 1982 made between (1) the respondent and (2) David and Linda O'Hayon.
4. On 6 April 2018, the first applicants made a claim to acquire a new lease of flat 74 by way of a notice of claim under section 42 of the Act. The proposed premium was £6,000.
5. On 5 June 2018, the respondent's solicitors served a landlord's counter-notice under section 45 of the Act. In the counter-notice the respondent admitted that the first applicants had, on the relevant date, the right to acquire a new lease of flat 74, but rejected the proposals contained in the tenants' notice of claim and proposed a premium of £12,578. The parties subsequently reached agreement on the premium.

Flat 59

6. The second applicant's leasehold interest in flat 59 is under the terms of a lease dated 5 July 1983 granted for a term of 125 years from 29 September 1982 made between (1) the respondent and (2) Abdul Razak and others.
7. On 26 March 2018, the second applicant made a claim to acquire a new lease of flat 59 by way of a notice of claim under section 42 of the Act. The proposed premium was £6,000.
8. On 5 June 2018, the respondent's solicitors served a landlord's counter-notice under section 45 of the Act. In the counter-notice the respondent admitted that the second applicant had, on the relevant date, the right to acquire a new lease of flat 59, but rejected the proposals contained in the tenants' notice of claim and proposed a premium of £11,155. The parties subsequently reached agreement on the premium.

Flat 38

9. The third applicant's leasehold interest in flat 38 is under the terms of a lease dated 17 August 1992 granted for a term of 125 years from 29 September 1982 made between (1) the respondent and (2) Cheryl Bryce.
10. On 28 March 2018, the third applicant made a claim to acquire a new lease of flat 38 by way of a notice of claim under section 42 of the Act. The proposed premium was £6,000.
11. On 1 June 2018, the respondent's solicitors served a landlord's counter-notice under section 45 of the Act. In the counter-notice the respondent admitted that the third applicant had, on the relevant date, the right to acquire a new lease of flat 38, but rejected the proposals contained in the tenants' notice of claim and proposed a premium of £11,157. The parties subsequently reached agreement on the premium.

12. The respondent seeks the following costs:

	Legal	Valuer
Flat 74	£1,128.50 plus VAT	£1,244.00 including VAT
Flat 59	£1,487.50 plus VAT	£624.00 including VAT
Flat 38	£1,955.50 plus VAT	£624.00 including VAT

The statutory provisions

13. 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.

Directions and the schedule of costs

14. The tribunal issued its standard costs directions on 02 May 2019. The applicants served a witness statement dated 17 June 2019. The respondent provided a costs schedule on 18 June 2019.

15. The tribunal directed that it was content to determine the matter on the papers unless either party requested an oral hearing. No party requested a hearing and the application was determined on the papers on 17 July 2019.

The principles

16. 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 applicants are also protected by section 60(2) which limits recoverable costs to those that the respondent would be prepared to pay if it were using its own money rather than being paid by the applicants.

17. 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 respondent should only receive its costs where it has explained and substantiated them.

18. 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.

The tribunal’s determination and reasons

19. As far as legal costs are concerned, the respondent’s charge out rate is either £85.00, £60.00 or £55.00 per hour. These are modest rates and no objection can be taken to them.

Flat 74

20. We allow 5 hours at £55.00 per hour for considering the s.42 notice, preparing instructions to the valuer, collating documents and preparing the s.45 counter-notice.

21. We disallow 5 hours negotiating the premium. Costs incurred in negotiation are not costs of and incidental to the valuation of the Flat and are not recoverable under section 60(1)(b).

22. We disallow time spent on this litigation. We will allow two hours for reviewing the lease and engrossing documents at £60.00 per hour.

23. Accordingly, we allow legal costs of £395.00.

Flat 59

24. We allow 1 hour 30 minutes at £85.00 per hour for considering the s.42 notice, preparing instructions to the valuer, collating documents and preparing the s.45 counter-notice.

25. We disallow 4 hours negotiating the premium. Costs incurred in negotiation are not costs of and incidental to the valuation of the Flat and are not recoverable under section 60(1)(b).

26. We disallow time spent on this litigation. We will allow two hours for reviewing the lease and engrossing documents at £85.00 per hour.

27. Accordingly, we allow legal costs of £297.50.

Flat 38

28. We allow 2 hours 24 minutes at £85.00 per hour for considering the s.42 notice, preparing instructions to the valuer, collating documents and preparing the s.45 counter-notice.

29. We disallow 1 hour 6 minutes hours negotiating the premium. Costs incurred in negotiation are not costs of and incidental to the valuation of the Flat and are not recoverable under section 60(1)(b).

29. We disallow time spent on this litigation. We will allow two hours for reviewing the lease and engrossing documents at £85.00 per hour.

30. Accordingly, we allow legal costs of £374.00.

31. As far as the valuer's fees are concerned, we consider them reasonable.

Name: Simon Brilliant

Date: 17 July 2019

ANNEX 1 - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.