FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AP/OC9/2019/0145**
Property	**:**	**18 Caroline Close London N10 1DT**
Applicant	**:**	**Sinclair Garden Investments (Kensington) Limited**
Representative	**:**	**PDC Law**
Respondent	**:**	**Mr Jason Keens**
Representative	**:**	**Keebles LLP**
Type of application	**:**	**Application for determination of reasonable costs**
Tribunal member(s)	**:**	**Ms M W Daley (Tribunal Judge)** **Mr Duncan Jagger MRICS (Valuer Member)**
Date and venue of paper hearing	**:**	**20 August 2019** **10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**20 August 2019**

DECISION

Decisions of the Tribunal

(1) The Tribunal determines that the costs payable by the Respondent to the Applicant, pursuant to sections 60(1) and (3) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act"), is £581.50 (Five hundred and eighty One pound and fifty pence), including VAT.

The application

1. The Applicant seeks a determination of the amount of costs payable by the Respondent pursuant to sections 60(1) and (3) of the 1993 Act.

2. The application was received by the Tribunal on 17 June 2019 and directions were issued on 24 June 2019. The directions included provision that the case be allocated to the paper track, to be determined upon the basis of written representations. Neither of the parties has objected to this allocation or requested an oral hearing. The paper determination took place on 20 August 2019.

3. The Applicant filed a schedule of costs and costs submissions in accordance with the directions. The Respondent filed submissions dated 18 July 2019.

4. The relevant legal provisions are set out in the Appendix to this decision.

The background

5. The Applicant is the freeholder of 18 Caroline Close, London N10 1DT ("the premises"). The Respondent is the lessee of ('the Flat').

6. The Respondent served a notice of claim on the Applicant on, 11 May 2018, in which it proposed a premium for a new lease of £31,155.00. It did not propose any 'other amount' pursuant to schedule 13 of the 1993 Act.

7. The Applicant served a counter-notice on 6 July 2018, in which it admitted the claim but proposed a higher premium of £37,741.00. The counter-notice was served without prejudice to the Applicant's contention that the notice of claim was invalid. In their covering letter of the same date, the landlord asserted that the notice is invalid because-: "... the management company is not named in the claim notice and no evidence of service on the management company has

been produced …there is no stated dated by which service of the counter notice is due which invalidates the claim…"

8. The Respondent served a second section 42 Notice on the Applicant on 9 July 2018 and on 18 March 2019 the Applicant wrote to the Respondent asserting that the first notice was deemed withdrawn as no application had been made to the Tribunal in accordance with section 48 of the 1993 Act and the terms of acquisition had not been agreed. The Applicant now seeks to recover costs from the Respondent, pursuant to sections 60(1) and (3) of the 1993 Act.

Evidence and submissions

9. The Respondent in the submissions dated 18 July 2019 submitted that the Applicant was not entitled to costs under section 60 as the section 42 Notice failed to comply with the requirements under section 42(2)b and as such in the circumstances was invalid and of no effect. Therefore it was not-: "7.4.1… [A]notice given under section 42 within the meaning of section 60(1) of the 1993Act so that the costs provisions of that section are not engaged and 7.4.2. The first Notice cannot have (ceased) to have effect within the meaning of Section 60(3) of the 1993 Act because it never had any effect to begin with…"

10. The Respondent cited a number of cases which considered the legal implications of an invalid notices including Sinclair Gardens Investments (Kensington) Limited –v- Poets Chase Freehold Company Limited [2007], Plintal SA and (2) Palveto Properties Inc v(1) 36-48A Edgewood Drive RTM Company Limited and (2) 50-62A Edgewood Drive RTM Company Ltd LRX/16/2007

11. The Respondent in the submissions at paragraph 22 asserted that the reasonable person faced with a notice that they considered to be invalid, would have written to the Respondent's solicitor and invited the party to withdraw the notice and warned that if the notice was not withdrawn the tenant would be liable for further costs. As a secondary point, the Respondent asserts that the Applicant ought not to recover VAT in circumstances were the VAT is recoverable and that the Applicant ought to prove that it is not entitled to recover VAT.

12. In respect, of the quantum of costs the Respondent accepted that the time spent was reasonable in respect of the solicitors costs but submits that the hourly rate of a grade A fee earner should be capped at £200.00 per hour, and in the alternative, that the work could have been undertaken by a Grade C fee earner. At a rate of £146.00 (Hertfordshire).

13. In the Reply dated 26 July 2019, the Applicant stated in paragraph 8 that -: It is the Applicant's case that as soon as the Respondent (Tenant) serves a notice of claim , the liability of costs is triggered in that the Respondent is required to pay the Applicant's (Landlord) reasonable costs following service of the notice. In the submissions, the Applicant asserts that in Plintal the RTM Company was liable for the costs up until the point when the RTM Company ceased to asset that a valid notice of claim had been served, and that the Respondent was liable for the costs up until the counter notice was served.

The Applicant asserts that it is entitled to its costs as it wrote to the Respondent requesting a copy of the letter to the managing agents and evidence of postage and that the letter was provided after the surveyor was instructed and no evidence of postage was provided. The Applicant also asserted that the costs of the solicitor instructing a valuer and considering the report prior to serving the notice were costs which were incidental to the valuation of the tenant's flat and that it was reasonable to use a Grade A fee earner, in reliance on dicta in Sinclair Gardens Investment (Kensington) Ltd –v- Wisbey (2016) UKUT 203. The Applicant further asserted that the firm did not have grade B or C fee earners and that the senior solicitor's fees were justified as he was the director of the firm.

14. The Applicant also asserted that the solicitor was VAT registered, and that VAT was payable by the Applicant.

15. The Tribunal considered all of the documents provided by the Applicant when coming to its decision.

The Tribunal's decision

16. The Tribunal determines that the following costs are payable by the Respondent:

Applicant's legal fees - £575.00

Valuation fee – the costs of the surveyor's fees were disallowed.

Special Delivery - (£6.50)

Grand total - £581.50

Reasons for the Tribunal's decision

17. The Tribunal costs schedule included time spent by the qualified solicitor during the periods between 11 May 2018 to 6 July 2018. All of this work was undertaken up until service of the counter-notice on 6 July 2018 which is recoverable under sections 60(1) or (3).

18. The time claimed for the qualified solicitor is allowed in full, save for the costs in connection with considering the surveyor's report in the sum of £150.00 for reasons that are set out below.

19. This was a straightforward lease extension claim and the Applicant's solicitors specialise in enfranchisement and lease extension claims and the work was suitable for a qualified Solicitor that specialises in this field. The Royal Mail special delivery fee is allowed in full.

20. The Tribunal is not satisfied that the sum claimed for the applicant's valuation fee is reasonable and payable by the Respondent. The Tribunal noted that the Applicant raised two issues concerning the validity of the notice, firstly whether the Respondent had served notice on the management company. The Tribunal accepts that the validity of the notice was dependant on their reply, and that if this had been the only reason to suspect that the notice may have been invalid, that the solicitor would have been justified in instructing a surveyor, however a more fundamental defect was the failure to give a date by which the counter notice ought to have been served as two months from the date of service of the notice was not sufficient as section 42(3) f states that the notice must "specify the date by which the landlord must respond to the notice by giving a counter notice under section 45.

21. Section 60 (2) states-:) 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**

22. The Tribunal consider that in the circumstances the Applicant may well have instructed surveyor's by writing to them however, they would reasonably have delayed, in incurring the full surveyor's cost when faced with a notice which was on the face of it invalid, especially where there was a concern that the notice had not been correctly served. Accordingly, there was no reason to instruct a valuer on 26 June prior to raising an issue concerning the validity of the notice, as a party who was personally liable for the costs would have taken all reasonable steps

to keep the costs down or at the very less reduce the cost to the minimum.

23. The Tribunal has allowed the VAT charged on the Applicant's costs as Vat is payable on the solicitor's fees, if the Applicant is not VAT registered. And the Applicant is able to recover the VAT charged then sum due should be adjusted accordingly.

Name: **Tribunal Judge: Daley** **Date:** **20 August 2019**

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Leasehold Reform, Housing and Urban Development Act

Section 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 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