



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

Case Reference : **LON/00BA/OC9/2019/0202**

Properties : **84 Grosvenor Court, London Road,
Morden SM4 5HQ**

Applicant : **Daejan Investments Limited**

Representative : **Wallace LLP**

Respondent : **Stephanie Ann Willson**

Representative : **Griffith Smith Conway Solicitors**

Interested Party : **Tripomen Limited (Intermediate
Landlord)**

Type of Application : **Application for the determination
of reasonable costs pursuant to
sections 60 of the Leasehold
Reform, Housing and Urban
Development Act 1993**

Tribunal Member : **Judge N Hawkes
Miss M Krisko FRICS**

**Date and venue of
paper determination** : **12 November 2019 at 10 Alfred
Place, London WC1E 7LR**

Date of Decision : **13 November 2019**

DECISION

Decision of the Tribunal

The Tribunal determines that the total sum of £2,877.40 (inclusive of VAT) is payable by Respondent in respect of the disputed costs.

Background

1. This is an application under section 91 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the 1993 Act”). The application is for the determination of the costs payable by the Respondent under section 60(1) of the 1993 Act.
2. Neither party has requested an oral hearing. Accordingly, this matter has been determined by way of a paper determination on 12 November 2019.

The law

3. Section 60 of the 1993 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.

4. Drax v Lawn Court Freehold Limited [2010] UKUT 81 (LC) dealt with costs under section 33 of the 1993 Act, rather than section 60, but the principles established in Drax have a direct bearing on the costs payable under section 60.
5. In summary, costs must be reasonable and have been incurred in pursuance of the section 42 notice in connection with the purposes listed in sub-paragraphs 60(1)(a) to (c). The applicant is also protected by section 60(2), which limits the recoverable costs to those that the respondent would be prepared to pay if they were personally liable rather than being paid by the applicant.
6. 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 landlord should explain and substantiate the costs claimed.
7. The Tribunal has had regard to the authorities to which it has been referred and to the parties' written submissions, which will not be set out in full in this determination.

The Tribunal's determination

8. At paragraph 14 of its Statement in Reply, the Applicant contends that the reasonable costs of the work carried out in respect of the claim are £2,026 plus VAT (plus £33 in respect of Land Registry fees and £167.30 plus VAT in respect of courier fees) in connection with the Applicant's legal costs and £1,100 plus VAT in respect of the Applicant's valuer's fees.
9. The Applicant also states that Tripomen, the Intermediate Landlord, contends that its reasonable costs are £300 plus VAT. No Statement of Case has been provided by the Intermediate Landlord.

10. The Applicant's solicitors charge out rates are £475 + VAT per hour increasing to £495 + VAT per hour for a Grade A fee earner, £385 + VAT per hour for an Assistant, and £210 + VAT per hour for a Paralegal. The Respondent submits that the charging rates for Grade A fee earner and an Assistant should not exceed £242 + VAT per hour and that the Paralegal's rate should be reduced to £126 + VAT per hour.
11. Leasehold Enfranchisement is a complex and highly specialist area of law. The Tribunal accepts the Applicant's submissions on this issue and finds that the hourly rates charged by their solicitors are appropriate on the basis that the time spent must reflect the solicitors' high level of experience and expertise.
12. The Respondent's challenge to the time spent appears to be on the basis that the hourly rate of generalist solicitors should be applied. Accordingly, the Tribunal has relied upon the information provided in the determination bundle and upon its knowledge and experience in assessing the reasonableness of the time spent by the Applicant's solicitors.
13. Having carefully considered the nature and complexity of the work undertaken and the level of expertise of the Applicant's solicitors, the Tribunal finds that:
 - a. the time spent in considering the notice of claim on 20.7.18 should be reduced from 0.6 to 0.3 units;
 - b. the time spent drafting the counter notice on 12.9.18 should be reduced from 0.6 units to 0.3 units;
 - c. the time spent in drafting a second letter to the valuer on 12.9.18 should be disallowed (one letter being sufficient);
 - d. the time spent considering the valuation report on 17.9.18 should be reduced from 0.3 units to 0.2 units;
 - e. the time spent finalising the counter notice on 21.12.18 should be reduced from 0.2 units to 0.1 units;
 - f. the time spent preparing an email to the valuer on 13.11.18 should be disallowed.
14. Accordingly, the Tribunal finds that the Applicant's reasonable legal costs total £1,537 plus VAT of £307.40 (£1,844.40).
15. The Tribunal accepts the Respondent's submissions in respect of the Intermediate Landlord's costs. No invoice substantiating the costs claimed has been provided and these fees are disallowed.
16. The Tribunal accepts the Respondent's submission that the valuer's fees are excessive. The Tribunal considers that it would be reasonable to allow in the region of 2.4 hours in respect of work undertaken prior to the inspection at the rate of £200 per hour + VAT, 2 hours of travel time at the rate of £100 per hour + VAT and 0.55 hours at the rate of £200 + VAT for the inspection. Applying these findings, the valuer's

fees would amount to in the region of £790 plus VAT which is in line with the sum of £800 plus VAT which has been offered by the Respondent. The Tribunal finds that it is reasonable to allow the sum of £800 plus VAT (£1,000 in total) in respect of valuer's fees.

17. The Tribunal accepts the Respondent's submission that a same day courier service would not have been required if the counter notice had been served at an earlier stage and, on the limited information available, and the Tribunal is not satisfied that the the fees of a same day courier are reasonable on the facts of this case.
18. The Tribunal finds that the Land Registry fees in the sum of £33 are recoverable.
19. Applying these findings, the Tribunal finds that the total sum payable by the Respondent is £2,877.40 (inclusive of VAT).

Judge Hawkes

13 November 2019

ANNEX - 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.