



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

**Case reference** : **LON/00AE/OC9/2019/0233**

**Property** : **43b Kilburn Lane London W10 4AE**

**Applicant** : **Ying He**

**Representative** : **Gillhams Solicitors LLP**

**Respondents** : **Abdoola Ebrahim Essa Ayob**

**Representative** : **Ronald Fletcher Baker LLP**

**Type of application** : **Application for determination of reasonable costs**

**Tribunal member(s)** : **Mrs E Flint FRICS**

**Date and venue of paper hearing** : **15 January 2020  
10 Alfred Place, London WC1E 7LR**

**Date of decision** : **15 January 2020**

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**DECISION**

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## **Decisions of the tribunal**

- (1) The tribunal determines that the costs payable by the Respondent to the Applicant, pursuant to 60(1) of the Leasehold Reform, Housing and Urban Development Act 1993 (“the 1993 Act”), are £2,400 (including VAT).

## **The application**

1. The Applicant seeks a determination of the amount of costs payable by the Respondent pursuant to section 60(1) of the 1993 Act.
2. The application was received by the tribunal on 13 November 2019 and directions were issued on 14 November 2019. The directions included provision that the case be allocated to the paper track, to be determined upon the basis of written representations. None of the parties has objected to this allocation or requested an oral hearing. The paper determination took place on 15 January 2020.
3. The Applicant filed a bundle of documents in accordance with the directions that contained copies of the Initial Notice, Counter-Notice, application, directions, costs schedule and supporting invoice and its and the Respondent’s costs submissions.
4. The relevant legal provisions are set out in the Appendix to this decision.

## **The background**

5. The Applicant is the tenant and long lessee of the subject property.
6. The Respondent is the landlord and the freeholder of 43 Kilburn Lane London W10 4AE.
7. On 31 July 2018 the Applicant served an Initial Notice on the Respondent proposing a price of £33,000 (thirty-three thousand pounds) for the grant of a new lease under Section 42 of The Leasehold Reform, Housing and Urban Development Act 1993 (the Act). The Notice proposed number of variations to the lease.
8. On 2<sup>nd</sup> October 2018 the Respondent served a Counter-Notice on the Respondent, admitting the right to acquire a new lease and proposing a price of £45,000 (forty-five thousand pounds).

9. The premium was agreed at £33,700 (thirty-three thousand seven hundred pounds) and valuation fees were agreed at £650 + VAT.

### **Evidence and submissions**

10. The bundle included submissions from the parties, a breakdown of the costs being claimed and the hourly rate of the fee earners, the latter was not disputed.
11. The costs being claimed by the Respondent in the application are set out below:

Legal fees – Section 60(1)(a) £3,000 plus VAT

Section 60(1)(c) £950 plus VAT

Disbursements – £10.45 not disputed

The schedule of costs included within the bundle indicates legal costs of £3,022 plus VAT under S60(1)(a) and £1,275 plus VAT under S60(1)(d).

12. The Applicant made submissions in respect of most of the items claimed. Both parties referred to the decision in Metropolitan Property Realisations v Moss [2013] UKUT 415, the Respondent also relied on Sinclair Gardens Investments (Kensington) Limited v Wisbey. The Tribunal considered all the documents in the bundle when coming to its decision.
13. The Applicant did not dispute the hourly rates of the fee earners but submitted that some of the work could have been undertaken by lower grade fee earners and that the time taken was disproportionately high.
14. The total number of units claimed for investigating the tenant's right to a new lease was equivalent to 11 hours. The time to draft a notice to deduce title and a notice to pay the deposit to include a covering letter was 11 units: the notices were in standard form and not more than half a page long.
15. A further 2 hours was claimed for considering the validity of the Tenant's Notice. The applicant submitted that the hour claimed for considering the valuation report does not fall within Section 60(1)(a) as it does not relate to any investigation reasonably undertaken of the Tenant's right to a new lease and Section 1(b) costs relating to the valuation had already been agreed.

16. Three hours was recorded for drafting of the Counter Notice and a further 5 units to consider the Counter Notice before service. The Counter Notice was in standard form therefore an excessive amount of time was recorded.
17. The applicant proposed that a figure of £490 + VAT representing based on one hour for both a Grade A and grade D rate would be reasonable for the costs under 1(a).
18. It was noted that 51 units were listed for the grant of the new lease. The applicant accepted that a number of amendments were requested to the existing Lease and that most were necessary to remedy defects in the Lease. However, while the Respondent's solicitor provided a draft form of lease. The amendments to incorporate the changes requested by the Applicant were drafted by the Applicant's solicitor.
19. The Applicant proposed a figure of £760 plus VAT for this element of the claim based on 2.5 hours at £300 per hour.
20. The Applicant submitted the costs claimed are not reasonable, are excessive and would not have been incurred if the Respondent had been personally liable for those costs. The sum offered of £1,250 plus VAT was reasonable and proportionate. Moreover, without the Application to the tribunal the Respondent was unwilling to provide a breakdown of the legal costs unless the Applicant undertook to pay for the cost of the time to undertake the breakdown.
21. The Respondent stated that it was reasonable, where no application to determine Section 60 costs had been made, to ask the tenant to cover the costs of providing the breakdown. Once the Directions had been issued they had complied.
22. The amount of costs claimed had been limited under the indemnity principle to £3,000 plus VAT.
23. This is a highly technical area of law and requires in depth analysis at each stage owing to the severe consequences of incorrect. It was submitted that it was entirely reasonable that the landlord should be reimbursed for the time incurred where the premium proposed in the section 45 Notice was £45,000 and there was a question regarding the validity of the signature on the Initial Notice.
24. A trainee solicitor had been used to perform some of the works in order to reduce costs. The Applicant did not explain why it contended that the time regarding deducing title, calculating the deposit, drafting the Notices and covering letters, checking the Tenant's eligibility to extend the lease etc was excessive.

25. It was submitted that there was a question of whether the signature on the Initial Notice was an electronic signature. The fact that the Respondent did not take issue with the potential invalidity of the Notice does not preclude the Respondent from recovering the time to investigate.
26. The applicant also questioned the 8 units to review the Official Copy Entry for the leasehold and freehold titles and the original Lease to ensure that there were no intermediate leasehold titles. The Lease is 12 pages long and dates from 1987 so is in an old format which is more difficult to navigate.
27. The Respondent referred to the Sinclair Gardens decision to support the claim for considering the valuation report. It was stated that the costs were inadvertently included under Section 60(1)(a) when they time ought to have been included under 1(b). The £650 + VAT agreed related specifically to the Surveyor's fee.
28. The Respondent also relied on Sinclair Gardens in relation to the time taken to prepare the Counter Notice.
29. The Respondent denied that £490 + VAT was reasonable for the work undertaken: it would leave the Respondent hugely out of pocket. The fee charged had been reduced from the 51 units in the schedule to 38 units.
30. The Respondent's solicitor prepared the draft Lease taking into consideration the proposed variations in the Initial Notice but did not accept them. The Applicant's solicitor made amendments which required consideration and advice to the client.
31. It is denied that the suggestion that 2.5 hours is reasonable to draft, amend and complete the conveyancing for a lease extension. The amount charged of £950 + VAT is entirely reasonable.
32. It was noted that the Applicant's own legal fees are potentially £500 + VAT more than is being offered to the Respondent.

### **The tribunal's decision**

33. The tribunal determines that the following costs are payable by the Respondent:

Legal fees – £2,000 +plus VAT

**Grand total - £2,400 plus disbursements**

### **Reasons for the tribunal's decision**

34. The Tribunal considers the total time undertaken by the Respondent's solicitors was excessive. It accepts that the time claimed was reduced under the indemnity principle. Nevertheless, the total time claimed remains excessive.
  
35. The Tribunal determines that using a trainee to complete some of the work was appropriate however it should result in a saving: this was not obviously the case as the time claimed together with the time for checking did not appear to result in any saving in costs. As an example of this duplication of time the trainee spent 2 hours drafting the Counter Notice and the partner a further hour considering and amending the Counter Notice.
  
36. The time taken to investigate title, considering the validity of the initial Notice, the valuation report and drafting the various Notices including the Counter Notice and covering letters should be reduced together with the time taken to draft the new lease where it is apparent from the papers that some of the amendments made were merely formatting.

**Name: Evelyn Flint**

**Date: 15 January 2020**

## **Appendix of relevant legislation**

### **Leasehold Reform, Housing and Urban Development Act 1993**

#### **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 a leasehold valuation 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.