FIRST TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**: CAM/00KG/LAC/0002 and CAM/00KG/OC9/0004**
Property	**:167 Conway Gardens, Grays, Essex RM17 6HF & 144 Conway Gardens, Greys, Essex, RM17 6HQ**
Applicant	**: Maura Turner**
Represented by	**: Mark Turner**
Respondent	**: Tulsesense Ltd**
Represented by	**: SA Law**
Date of Application	**:20 September 2019**
Type of Application	**: An application under Section 91(2)(d) of the Leasehold Reform, Housing and Urban Development Act 1993 for a determination of the costs to be paid under either section 33(1) or section 60(1)**
Tribunal member(s)	**: Judge Wayte**
Date	**: 21 January 2020**

DECISION

The tribunal determines that it does not have jurisdiction to consider the "non-statutory" valuation fees paid by the applicant. The application is therefore struck out under Rule 9(2)(a) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber)Rules 2013.

Background

1. This is an application for a determination of costs under section 91(2)(d) of the Act. Under section 60 a claimant leaseholder is required to pay the reasonable costs incurred by the landlord in connection with a claim for a new lease.

2. Directions were first given on this application on 25 September 2019. On 17 October 2019 the landlord's solicitor wrote to the tribunal stating that there was no jurisdiction as costs had been agreed prior to completion. In particular, they relied on an email from Thirsk Winton LLP dated 4 January 2019 which stated: "Your proposed section 60 costs are agreed". In the circumstances they submit there is no dispute for the tribunal to determine.

3. The applications to extend the lease had a rather complicated history in that there had previously been a defective notice and a payment for a valuation for both properties paid directly to the respondent. There is a question as to whether this payment was for a "non-statutory" lease extension and therefore did not fall within the tribunal's jurisdiction or was in respect of the defective notice. There is also a question as to whether a valuation was actually done prior to the invoice dated 20 August 2018 from the respondent's surveyors.

4. In the circumstances and following a telephone case management conference attended by Mr Turner for the applicant and Ms Sevier for the respondent, the tribunal decided to treat the application as one for the determination of the reasonable costs in relation to the defective notice, limited to the issue of whether the applicant is indeed liable for two lots of surveyors' fees. Directions were therefore given on 12 November 2019 for the matter to be determined on the papers on the basis of further submissions, limited to the question of the valuation fees alone.

5. The respondent's submissions were sent to the tribunal on 25 November 2019. The covering letter confirmed that there were in fact no defective notices and only one section 42 notice had been served for each property and one statutory valuation fee paid. Their statement contained a chronology and copy correspondence with the applicant's former solicitors Whiskers which clearly referred to a non-statutory process for which the applicant paid £700 plus vat for each property as a valuation fee.

6. The applicant responded to the respondent's submissions on 17 December 2019. In reality, her response indicates a lack of

understanding with her original solicitor as to the basis on which she intended to extend her leases. While in principle she may have had an argument that she should not have been liable for another full valuation fee when pursuing the statutory route, those fees were agreed on her behalf by Thirsk Winton LLP as set out in paragraph 2 above and therefore cannot be the subject of an application to this tribunal.

7. In the circumstances this dispute is in relation to the cost of the non-statutory valuations and the tribunal has no jurisdiction.

8. It follows that the application must be struck out under Rule 9(2)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 which state that the Tribunal must strike out the whole or a part of the proceedings or case if the Tribunal does not have jurisdiction in relation to the proceedings or case or that part of them.

Name: Judge Wayte **Date:** 21 January 2020

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).