



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

**Case Reference** : **BIR/00CN/OC9/2019/0004**

**Properties** : **Flat 9 & Garage 6 Jaffray Court, 52 Gravelly Hill North, Erdington, Birmingham, West Midlands B23 6BB**

**Applicant** : **Robert Adrian Ray  
(Executor for Donald James Hackett)**

**Representative** : **Pennycuik Collins**

**Respondent** : **Brickfield Properties Limited**

**Representatives** : **Wallace LLP**

**Date of Application** : **11<sup>th</sup> June 2019**

**Type of Application** : **To determine the costs of the lease extension of the Properties under section 91(2)(d) of the Leasehold Reform, Housing and Urban Development Act 1993**

**Tribunal** : **Judge JR Morris  
Mr N Wint FRICS**

**Date of Decision** : **27<sup>th</sup> January 2020**

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**DECISION**

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## **Decision**

1. The Tribunal determines that the reasonable Legal Costs of the Respondent payable by the Applicant pursuant to section 60 of the Leasehold Reform and Urban Development Act 1993 are £3,588.00 including VAT.

## **Reasons**

### **Application**

2. The Applicant applied to the Tribunal on 11<sup>th</sup> June 2019 under section 91(2)(d) of the Leasehold Reform, Housing and Urban Development Act 1993 (“the 1993 Act”) for a determination of the costs under section 60 of the 1993 Act.
3. The Applicant also applied to the Tribunal on 11<sup>th</sup> June 2019 under section 48 of the 1993 Act for a determination of the premium and terms of acquisition of a Lease extension (Case Reference BIR/00CN/OLR/2-019/0029). The application for costs was therefore stayed until the application under section 48 had been determined. It was subsequently found that the premium and terms of acquisition had already been agreed between the parties, as a result, the Tribunal had no jurisdiction in respect of these matters. The Tribunal formally struck out the application under section 48 on 9<sup>th</sup> October 2019 under Rule 9(2)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and the stay in relation to the application for determination of reasonable costs was lifted.
4. Directions were issued on 9<sup>th</sup> October 2019 in which it was stated that the application would be determined on the basis of the documents alone and without an oral hearing unless the Respondent requested an oral hearing on lodging its Submissions within 21 days of the Directions. No request for an oral hearing was made to the Tribunal. Therefore this Decision is made based on the documents and information provided in the Bundle.

### **The Law**

5. The relevant law is contained in s60 of the Leasehold Reform, Housing and Urban Development Act 1993 set out in Annex 2 of these Reasons.

### **Evidence**

#### ***Applicant’s Case***

6. The Respondent’s Representative sent a Completion Statement to the Applicant in June 2019 in respect of a Lease Extension. The Legal Costs proposed were £4,500.00 including VAT. On the Application Form the Applicant counter proposed Legal Costs of £1,500.00 including VAT.

7. On 30<sup>th</sup> September 2019 the Applicant's Representative made a submission in respect of the Legal Costs proposed by the Respondent. The Applicant's Representative said that, following initial correspondence between the parties' representatives confirming instructions, on 21<sup>st</sup> May 2019 the form of Lease and premium of £16,000 was accepted. The Respondent also claimed Legal fees of £4,600.00 (including VAT).
8. The Applicant's Representative outlined the role of the freehold's solicitors in these matters as being:
  - A Receipt of the Section 42 Claim to a new Lease;
  - B Submission of the section 45 Landlord's counter Notice together with standard form draft Lease;
  - C Correspondence to agree the form of the Lease and submission of a completion statement;
  - D In due course:
    - (i) Accept receipt of the completion monies;
    - (ii) Provide the executed Lease.
9. It was said that as this was not a complex matter this should be dealt with by a solicitor of a status no higher than an Associate Solicitor. As such, even for London, the rate should be not more than £300.00 per hour.
10. The correspondence required was outlined as follows:
  - A Receipt of Section 42 Notice together with Statutory Deposit;
  - B Enquiry as to whether Lessee would consider transferring the benefit of the Lease back to the Freeholder;
  - C Advising of the identity of the Freeholder's valuer;
  - D Providing section 45 Counter Notice together with draft form of Lease;
  - E Following agreement of the premium, obtaining approval of Lease's contents;
  - F Providing Completion Statement;
  - G Notification that the Freeholder's had executed the Lease;
  - H Providing a copy of the letter sent to the Property Tribunal in respect of matters raised in the Tenant's application for determination.

8 letters were sent to the Freeholder's Solicitors and 7 by the Tenant's, the majority of which were just a few lines. Dividing each letter into 6-minute units would amount to £240.00 for letters sent and £105.00 for letters received.
11. The only additional work required was adding specific details to the Counter Notice and Standard Form Lease.
12. It is suggested that 2 hours would be enough to deal with the additional work at a cost of £600.00 The total costs on this basis would be £1,025.00 The work to be done would be to accept the completion monies and execute the Lease. The total fees should not exceed £1,250.00 plus VAT.

13. The Applicant's Representative added that in 50 years of routinely dealing with lease extensions the freeholder's legal costs of provincial solicitors in the West Midlands have not exceeded £950.00 plus VAT and for London based solicitors £1,250.00 plus VAT.

### ***Respondent's Case***

14. In response to the Applicant's statement of Case the Respondent's Representative set out the background in its submissions as follows:
1. On 17<sup>th</sup> October 2018 the Applicant served a Notice of Claim (the First Notice) under section 42 of the 1993 Act. On 6<sup>th</sup> November 2018 the Respondent wrote to the Applicant to say that the Notice of Claim was invalid as it had not been given to the Competent Landlord and did not propose a date by which the Counter Notice was to be served.
  2. On the 21<sup>st</sup> November the Applicant served a further Notice of Claim (the Second Notice) and subsequently on 5<sup>th</sup> December 2018 confirmed that the First Notice was invalid and withdrawn.
  3. On 12<sup>th</sup> December 2018 a Counter Notice was served accepting the Applicant's right to a new Lease.
  4. On 21<sup>st</sup> May 2019 the premium was agreed and on 24<sup>th</sup> May 2019 the terms of acquisition were agreed. On 28<sup>th</sup> and 29<sup>th</sup> May an engrossment and Completion Statement respectively were sent to the Applicant.
  5. The Applicant had until 24<sup>th</sup> September 2019 to enter a new Lease under the statutory timetable. A new Lease was not entered by this date and therefore the Applicant's notice of Claim is deemed withdrawn pursuant to section 53(1)(b) of the 1993 Act.

The completion of a new lease will not take place and therefore the fees have been reduced.

15. The basis for the Legal Fees is by reference to the time spent by the relevant fee earners. The Solicitors instructed are a London firm. The persons engaged are:
- Grade A fee earner whose rate is £495.00 plus VAT per hour,
  - Assistant Solicitors whose rate is £385.00 plus Vat per hour,
  - Paralegal whose rate is £210.00.00 plus VAT per hour.
16. It was said that the Solicitors have been acting for the Respondent for many years. The rates charged are consistent with the usual rates for solicitors in Central London. It was submitted that it was reasonable to engage a Grade A partner to carry out the work as the provisions of the Act are complex and require an experienced fee earner to:
- i. Consider the tenant's entitlement to the grant of new lease and the validity of the Notice of Claim
  - ii. Communicate with the client to obtain relevant information;
  - iii. Carry out and consider Land Registry searches;

- iv. Correspond with the tenant;
- v. Instruct and correspond with the valuer;
- vi. Consider the valuation and take client's instructions;
- vii. Prepare and Serve a Counter Notice;
- viii. Prepare and agree a new lease; and
- ix. Undertake all actions to complete the new lease pursuant to section 56 of the 1993 Act.

17. Reference was made to the fees being such that the Respondent would have considered them reasonable and paid them if it had been personally liable for them in accordance with section 60(2) of the 1993 Act. In support the Respondent's Representative also referred to the case of *Daejan Investments limited v Parkside 78 Limited* Lon/ENF/1005/03 in which it was said after quoting section 33(1) of the 1993 Act at paragraph 10:

*The statutory test does not turn upon what tenant-purchasers may reasonably expect to be their liability. Thus the Reversioner was not required to find the cheapest nor even the cheaper solicitors or valuers but only, in effect, to give such instructions as it would ordinarily give if it were itself going to be bearing the cost of paying the solicitors and valuers for acting, as it will be contractually obliged to do in so far as recovery cannot be obtained from the Nominee Purchaser (referred to as the reasonable expectation test).*

18. The Respondent's Representative referred to the following First-tier Tribunal decisions from the London Region (copies provided) in which the employment of a partner at the same or similar fee rate was accepted:

- *Daejan Properties Limited v Twin* LON/00BK/OC9/2007/0026;
- *Allen v Daejan Properties Limited* SB/LON/00AH/OLR/2009/0343;
- *Brickfield v Bloomfield* LON/00BC/OC9/2014/0226;
- *Rubin v Faroncell Limited* LON/00AM/OC9/2016/0072.

19. The Respondent provided a spread sheet which set out:

- a. The date the work was done,
- b. The type of work done,
- c. A description of the work,
- d. The level of the fee earner,
- e. The time spent,
- f. The hourly rate,
- g. The amount claimed,
- h. Respondent's Representative's Comments.

20. The spread sheet is set out in tabular form together with a summary of the commentary below (the activities have been itemised for ease of reference in the decision):

	<b>Date</b>	<b>Activity</b>	<b>Fee Earner</b>	<b>Time Hrs</b>	<b>Cost £</b>	<b>Description and Respondent's Comment</b>
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1	31/10/18	Docs	Partner	0.7	346.50	Consideration of First Notice
2	31/10/18	Letter	Partner	0.1	49.50	Confirming receipt of Notice to Client, requesting Lease & licences
3	31/10/18	Letter	Partner	0.1	49.50	Confirming receipt of Notice to Lessee, requesting Lease & licences
4	31/10/18	Letter	Partner	0.1	49.50	Instructing Valuer
5	01/11/18	Email	Partner	0.1	49.50	Advising Client that First Notice invalid
6	02/11/18	Docs	Paralegal	0.2	42.00	Obtaining Office Copy Entries
7	02/11/18	Docs	Partner	0.3	148.50	Considering Office Copy Entries & Lease
8	05/11/18	Email	Partner	0.1	49.50	Providing Valuer with Office Copy Entries & Lease
9	06/11/18	Letter	Partner	0.1	49.50	Informing Lessee Notice invalid with reasons
10	06/11/18	Email	Partner	0.1	49.50	Informing Client Notice invalid
11	12/11/18	Email	Partner	0.1	49.50	Informing Valuer Notice invalid & providing garage lease
12	27/11/18	Docs	Partner	0.4	198.00	Consideration of Second Notice
13	27/11/18	Letter	Partner	0.1	49.50	Requesting confirmation of status of Second notice from Lessee
14	28/11/18	Email	Partner	0.1	49.50	Informing Client of Second Notice and date Counternotice to be served
15	28/11/18	Email	Partner	0.1	49.50	Informing Valuer of Second Notice and date Counter Notice to be served
16	05/12/18	Docs	Partner	0.3	148.50	Consideration of Valuation report
17	06/12/18	Email	Partner	0.1	49.50	Requesting Service Charge percentage from Client
18	05/12/18	Docs	Partner	0.7	346.50	Drafting Counternotice
19	05/12/18	Letter	Partner	0.1	49.50	Copy of Counternotice to Client
20	05/12/18	Letter	Partner	0.1	49.50	Drafting letter to Serve with Counternotice on Lessee
21	10/12/18	Docs	Assistant	1.3	500.50	Drafting Lease
22	12/12/18	Docs	Paralegal	0.2	42.00	Obtaining updated Office

						Copy Entries
23	12/12/18	Docs	Partner	0.3	148.50	Considering updated Office Copy Entries & Lease
24	12/12/18	Docs	Partner	0.5	247.50	Finalising Counternotice
25	12/12/18	E mail	Partner	0.1	49.50	Copy of Counternotice to Valuer
26	16/05/19	Letter	Partner	0.1	49.50	Confirmation requested from Lessee that premium and lease agreed
27	12/12/18	Letter	Partner	0.1	49.50	Confirmation noted that premium agreed but request confirmation that lease agreed from Lessee
28	16/05/18	Docs	Assistant	0.2	77.00	Preparation of Engrossments
29	28/05/19	Letter	Assistant	0.1	38.50	Engrossment for execution to Lessee
30	28/05/19	Letter	Assistant	0.1	38.50	Engrossment for execution to Client
31	28/05/19	Email	Assistant	0.1	38.50	Requesting up to date copy of account from Client
32	28/05/19	Docs	Assistant	0.1	38.50	Preparation of draft Completion Statement
33	29/05/19	Letter	Assistant	0.1	38.50	Serving Completion Statement
34	14/06/19	Letter	Assistant	0.1	38.50	Confirming receipt of executed Lease & requesting completion date
35	04/07/19	Letter	Assistant	0.1	38.50	Confirming premium and terms of acquisition agreed and informing Lessee of date by which completion required
	Total Fees				3,510.00	
	VAT @ 20%				702.10	
	Total				4,212.60	

21. With regard to the Applicant's submissions, apart from points regarding the selection of solicitor and fee level which are mentioned above, the Respondent said that the correspondence identified by the Applicant's Solicitor did not accurately reflect all that was required. In particular it did not take account of correspondence between the client and the valuer.

## Decision

22. The Tribunal considered the submissions of both parties. It noted the Upper Tribunal case of *Drax v Lawn Court Freehold Ltd* [2010] UKUT 81 (LC), LRA/58/2009 with reference to need for a respondent to explain and substantiate its costs and that the costs should be proportionate to the matter.
23. The Tribunal noted that an hourly rate was applied and not a fixed fee. The Tribunal accepted the hourly rate of £495.00 notwithstanding that it appeared that nearly all the work was carried out by a Grade A solicitor with little delegation to a more junior fee earner. However, in doing so the Tribunal, in its assessment, expected the work to be carried out expeditiously and that included in the rate would be an allowance for administrative work such as diarising, internal communication and tasks such as checking the statutory deposit. It is standard practice that the reading of letters received are not charged as this cost is reflected in any work that is subsequently carried out.
24. The decisions of First-tier Tribunals are only persuasive, however, paragraph 10 of *Daejan Investments Limited v Parkside 78 Limited* Lon/ENF/1005/03 has been generally accepted as a correct statement of the law with reference to both section 33(1) (which was the specific section in issue for that case) and section 60 (the relevant section here) of the 1993 Act.
25. In accepting this rate and level of fee earner the Tribunal took into account that the solicitor employed was a Central London firm that had been engaged by the Respondent for this type of work over a number of years (at least since 2014 from the cases referred to). The Tribunal accepted that in respect of other matters it was likely that the Respondent would itself have been personally liable for costs chargeable at this rate for work done on its own account that were not reimbursed by another party.
26. Both parties provided a list of the tasks to be carried out by a landlord's solicitor which were essentially the same. When assessing the reasonableness of the time taken the Tribunal has grouped the tasks in three stages. It has then considered the correspondence. For ease of reference the Tribunal refers to the item of the Respondent's spread sheet of costs, as put in its tabular form by the Tribunal.
27. The first stage is to peruse and consider the Section 42 Notice received to check its validity and accuracy. Then to peruse and consider the title documentation, including any head lease and underlease (if any), and to cross-reference the leasehold and freehold documents with the section 42 Notice. This stage is chargeable under Section 60(1)(a).
28. In respect of the First Notice the Respondent's Solicitor has taken 7 units to carry out this task (Item 1), finding that the Notice is invalid. The Tribunal considered this to be a reasonable time.
29. The correspondence relating to the invalid First Notice (Items 5, 8, 9, 10 and 11) are charged at 1 unit for each item of correspondence, which is reasonable.



30. Other tasks related to the Notices generally are obtaining and perusing the office copies (Items 6 and 7). When added to the consideration of the First Notice the total time taken for the first stage of considering a Notice of Claim is about an hour which the Tribunal considers to be reasonable for a Grade A solicitor.
31. Notices generally, which include obtaining copies of licences etc from the Client and Tenant (Items 2 and 3) and instructing the Valuer (Item 4) are charged at 1 unit for each item of correspondence, which is reasonable.
32. The first stage is prolonged by the need to serve and consider a Second Notice (Item 12). This is additional to what might normally be expected. The time taken is 4 units which in the circumstances the Tribunal considers reasonable.
33. The correspondence related to the Second Notice (Items 13, 14 and 15) charged at 1 unit each for each item of correspondence is considered to be reasonable
34. The second stage is to draft the section 45 Counter Notice following receipt of the surveyors' valuation, if the premium set out in the section 42 notice is considered insufficient. This stage is chargeable under Section 60(1)(c) in so far as it informs the claimant of the premium that the landlord is prepared to accept or negotiate following the valuation by the landlord's surveyor.
35. The task of considering the Valuer's Report and the drafting of the Counter Notice as referred to in Items 16 and 18 are said to have taken an hour which the Tribunal considers reasonable.
36. The correspondence related to the Counter Notice (Items 19, 20 and 25) which is charged at 1 unit each for each item of correspondence is also reasonable.
37. The obtaining and perusing of up dated Office Copies is considered unreasonable. Once the First Notice had been identified as invalid for the reasons given it was pre-emptive to obtain Office Copies if it was thought updated copies would be needed on the service of a fresh Notice. In any event the delay caused by the service of the invalid notice is so short that the obtaining of updated Office Copies seems unnecessary. The Tribunal is of the opinion that either Items 2 and 3 can be claimed or Items 22 and 23, but not both.
38. The Tribunal also considers the half an hour taken in finalising the Counter Notice (Item 24) is unreasonable. A Grade A fee earner should be able to draft a counter notice based on the valuation report in an hour either without the need for further revision or taking into account any subsequent revisions.
39. The third stage is to draft the lease extension deed, finalise the agreed form, engross the lease and calculate and draft the completion statement. This stage is chargeable under Section 60(1)(c).

40. The drafting of the Lease and the engrossments (Items 21 and 28), including any review of its terms in accordance with section 57, should take an experienced Grade A solicitor about an hour. The time taken by the Assistant Solicitor is 1 and a half hours at a cost of £577.50. It appears to be submitted that the time taken was longer because it was the first lease for this block. A higher charge should not be made for this reason. The claimant of the first lease extension for a block should not have to subsidise the costs of later lease extensions. If the partner had undertaken the work it should have taken an hour and cost £495.00. A reduction of £82.50 is made against the Items 21 and 28.
41. The correspondence in relating to the Lease and Completion Statement etc was considered reasonable by the Tribunal being charged at 1 unit for each item of correspondence undertaken by the Assistant Solicitors.
42. Therefore, the Tribunal deducts from the Total Fees claimed of £3,510.50 the sum of £520.50 (Item 23 of £42.00, Item 24 of £148.50, Item 25 of £247.50 and a reduction against Items 21 and 28 of £82.50) and determines Total Fees of £2,990.00 plus VAT of £598.00 to be reasonable.
43. The Tribunal determines that the reasonable Legal Costs of the Respondent payable by the Applicant pursuant to section 60 of the Leasehold Reform and Urban Development Act 1993 are £3,588.00 including VAT.

## **Judge JR Morris**

### **Annex 1 – Right 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.

## **Annex 2 – The Law**

### **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.