

		FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)
Case reference	:	KA LON/00AY/OC9/2019/0099
Property	:	First Floor Flat, 21A Carnac Street, London SE27 9RR
Applicant	:	Ms Chloe Dunscombe
Representative	:	Mr Ben Rose
Respondent	:	(1) Ms Mary Nelson (2) Ms Orla McKee
Representative	:	Cook Taylor Woodhouse Solicitors
Type of application	:	Application for determination of reasonable costs
Tribunal member(s)	:	Mr Jeremy Donegan (Tribunal Judge) Mr Duncan Jagger MRICS (Valuer Member)
Date and venue of paper determination	:	26 June 2019 10 Alfred Place, London WC1E 7LR
Date of decision	:	26 June 2019

DECISION

Decision of the Tribunal

The costs payable under section 60(1) of the Leasehold Reform, Housing and Urban Development Act 1993 ('the 1993 Act') are £2,577 (Two Thousand, Five Hundred and Seventy-Seven Pounds), including VAT.

The background

1. These proceedings arise from a statutory lease extension claim for 21A Carnac Street, London SE27 9RR ('the Flat'), under the 1993 Act. The applicant is the leaseholder of the Flat and the respondents are the freeholders.
2. The applicant served a section 42 notice of claim on 01 June 2017. The respondents served a counter-notice dated 14 August 2017, admitting the claim but proposing a higher premium. The parties subsequently agreed the premium in the sum of £10,711 and completed the new lease on 25 September 2018. They have not agreed the section 60 costs.
3. On 26 April 2019, the Tribunal received an application to determine these costs. Directions were issued on 29 April and the application was allocated to the paper track, to be determined without an oral hearing. None of the parties has objected to this allocation or requested an oral hearing.
4. The parties exchanged documents in accordance with the directions and the Tribunal was supplied with a bundle of documents that included copies of the application, directions, various title documents and the parties' statements of case.
5. The relevant legal provisions are set out in the appendix to this decision.

Submissions

6. The respondents produced a schedule with a detailed breakdown of their costs. The work was undertaken by Ms Carla Figuera of Cook Taylor Woodhouse Solicitors ('CTWS'). She is a grade C fee earner and her hourly charging rate is £165. The legal costs total £3,349.50 plus VAT, which is broken down as follows:

Section 60(1)(a) £1,229.25

Section 60(1)(b) £272.25

Section 60(1)(c) £1,848.00

The applicant proposed a much reduced figure of £1,000 plus VAT.

7. In addition, the respondents are claiming Land Registry search fees of £15 and a valuation fee of £650 plus VAT, which are agreed.
8. The applicant's representative commented on the section 60 costs in a statement of case dated 23 May 2019. In brief, he contends that the time claimed is excessive and some of the costs are not recoverable under section 60(1). He also referred to the applicant's attempt to negotiate a voluntary lease extension, prior to service of the section 42 notice and suggested this should have led to some costs saving.
9. CTWS replied in a statement in response dated 03 June 2019. They referred to previous issues between the parties, the acrimonious nature of the lease extension claim, the need to give detailed advice to the respondents and their lengthy correspondence with the applicant's solicitors. They also pointed out that the voluntary lease extension discussions dated back to 2016, some time before the section 42 notice was served. CTWS alleged that parts of the applicant's statement of case was misleading and submitted that their costs had been incurred and should be recoverable in full.
10. The applicant's representative served a further statement of case dated 10 June 2016, denying the allegation that he had misled the Tribunal.

The Tribunal's decision

11. The Tribunal determines that legal costs of £1,485 plus VAT are payable under section 60(1). This figure is broken down as follows:

Section 60(1)(a)	£660 plus VAT
Section 60(1)(b)	£165 plus VAT
Section 60(1)(c)	£660 plus VAT

Reasons for the Tribunal's decision

12. The applicant is only liable to pay "*reasonable*" costs under section 60(1). The respondent's costs will 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*" (section 60(2)).
13. The Tribunal allows Ms Figura's charging rate of £165 per hour, which is reasonable and was not challenged by the applicant.
14. The voluntary lease extension negotiations in 2016 have no bearing on the costs that can be recovered under section 60(1) and were disregarded by the Tribunal. It also disregarded the allegation that the applicant's statement of case was misleading and makes no finding on this allegation.

15. The Tribunal focused on the time claimed by CTWS. Their costs of £3,349.50 plus VAT equate to 20.3 hours at £165 per hour. Based on the Tribunal's knowledge and experience, this is excessive and unreasonable. Further, it is disproportionate to the agreed premium of £10,711. The Tribunal has no doubt that the respondents would not have incurred costs at this level, had they been personally liable to pay.
16. The applicant made various challenges to the time claimed, which she considered to be excessive and/or irrecoverable under section 60(1). The Tribunal adopted a 'broad-brush' approach when considering these challenges and looked at the case in the round. Based on the Tribunal Judge's experience, as an enfranchisement solicitor in private practice, the following time is reasonable:
- Section 60(1)(a) 4 hours
Section 60(1)(b) 1 hour
Section 60(1)(c) 4 hours

In coming to these figures, the Tribunal had regard to the modest level of the premium, the routine nature of the lease extension claim, the length of the original lease (only 8 pages) and the length of the new lease (only 7 pages including prescribed clauses).

Summary

17. The Tribunal has allowed a total of 9 hours at £165 per hour, which equates to £1,485 plus VAT. The applicant has agreed the valuation fee of £650 plus VAT and the Land Registry search fees of £15. It follows that the total sum due is £2,577 (including VAT). The Tribunal has allowed VAT upon the section 60(1) costs on the assumption that the respondents are not VAT registered. If this assumption is incorrect and the respondents are able to recover the VAT charged then the sum due should be reduced accordingly.

Name: Tribunal Judge Donegan **Date:** 26 June 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.