



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

Case reference : **LON/00AK/OC9/2019/0216**

Property : **Flat 19 Grosvenor Court London
Road Morden SM4 5HG**

Applicant : **Adam Michael Price & Roseanna
Sarah Price (Leaseholders)**

Representative : **Anthony Gold Solicitors**

**First & Second
Respondents** : **Daejan investment (1)
& Tripomen Ltd. (2)**

Representative : **Wallace LLP**

Type of application : **Section 91(2)(d) of the Leasehold
Reform, Housing and Urban
Development Act 1993**

Tribunal members : **N. Martindale**

**Date of determination
and venue** : **28 January 2020
10 Alfred Place, London WC1E 7LR**

Date of decision : **28 January 2020**

DECISION

Summary

The Tribunal determines that the Section 60 statutory costs payable by the leaseholder applicant of the Property, are as set out below.

Background

1. This is an application under section 91(2)(d) of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) in respect of the most recent claim for a lease extension at the Property.
2. The application is made for the determination of the reasonable costs payable by the tenant to the landlord, under section 60(1) of the Act. It follows service of a Notice of Claim to acquire a new lease for this flat. The freehold title at this address is subject to one or more occupational long leases. There is apparently no overriding headlease.
3. By way of a Notice dated 6 August 2018 the applicant made a claim to acquire a new lease of this flat. By way of Counter Notice dated 9 October 2018, the recipient of the notice admitted the entitlement, but made a counter proposal to the value of the premium.
4. The parties did not agree the landlords nor the intermediate landlord’s costs in respect of dealing with the lease extension. The current application to the Tribunal is over the costs payable to the landlord by the tenant, under S.60 of the Act.

Directions and Schedule of costs

5. The leaseholders applied on 17 October 2019 for a determination by the Tribunal of landlords’ costs. The Tribunal issued its standard costs directions on 6 November 2019. Owing to an error as to the identity of the parties’ representatives acting here, these directions were re-issued on 25 November 2019, with an extended timetable. These required the landlord to send to the tenant by 9 December 2019, the schedule of costs requiring a tenant response to the landlord by 23 December 2019, with a final response from the landlord by 30 December 2019.
6. On 13 December 2019, the respondents’ solicitors sought a two-week extension for the holiday period. Confirmed by the applicants’ solicitors, the Tribunal duly extended these periods.
7. The Tribunal directed that it was content to determine the matter on the papers unless either party requested an oral hearing. Neither party requested one and the application was to be determined on the papers in the week commencing 20 January 2020, which was delayed slightly to the following week.
8. The respondent generally complied with the directions, the applicant generally did not do so on time. A shortage of time around Christmas 2019 was dealt with by a variation to the timetable by the Tribunal. Even with

the extended period the applicant did not provide the bundles as directed until late.

Respondent's Case

9. The first respondent (landlord) provided a schedule of work activities. The Tribunal counted 36No.. None were numbered or otherwise referenced. The cost of all items was said to be recoverable. For each item the landlord provided: the date; activity; description; fee earner; hours; rate; amount. Legal work was provided variously by partner, assistant and paralegal at decreasing hourly rates; £495, £385; £210.
10. In addition, the schedule included a total cost of the second respondent (the intermediate landlord), and the fees for the valuers acting for the first and second respondents. All fees were subject to VAT at 20%. Lastly small disbursements were claimed for HMLR and courier (the latter plus VAT).
11. The schedule showed that time working for the first respondent was approximately divided between the representative's partner and assistant, with only a very small amount of support work from a paralegal. The respondent referred the Tribunal to a number of earlier costs decisions in order to support the general acceptance by the Tribunal of the extent and costs in similar lease extension cases. Although the respondent acknowledged the full nature of the hourly rate, they maintained that the solicitor engaged is their established firm of choice in such leasehold enfranchisement cases. The rates quoted reflected the specialist nature of their skills and experience as well as their central London location.
12. The respondents are critical of the absence (at the date of preparation of their statement) of a statement from the applicant's representatives and their failure to provide the joint bundle as directed. A bundle was finally received from the applicant's representatives, by the Tribunal on 23 January 2020.
13. The respondents' claim was broken down as: 1st respondent's legal fees £3,104.50; 2nd respondent's legal fees £300; respondent's valuers fees £1,150. Land Registry fees £30 (no VAT); courier £26.25. All subject to VAT unless stated.
14. The respondents' total claim was £4610.75 excluding VAT where due.

Applicant's Case

15. The applicant only challenged the 1st respondents' costs. In their brief written submission they confirmed that they did not challenge the 2nd respondents costs of £300 plus VAT.
16. The applicants provided a further schedule setting out and breaking down the respondents' basis of claim. It was apparently the same as the

respondents' original schedule on closer inspection the Tribunal found it was not.

17. The applicant's exercise nevertheless produced a total of £2953.50 and valuation fee £1350 (said to be claimed) whilst offering £1917 legal costs and £950 valuation fee (said to be due) plus VAT where due.
18. The applicant's principal challenge to the total cost appeared to be on the hourly rates for the legal practitioners. They sought rates by partner and assistant at £350 and £275. They did not challenge the paralegal's work or rate. However, in doing so they provided no detail in support their hourly rates.
19. The applicant summarized by arguing that for a lease extension entailing a premium of some £10,000 as agreed the legal costs said to be claimed at £3540 and valuation fee at £1380 applicants were excessive. *"The Respondent could not reasonably have expected its leaseholder to pay Section 60 cost incurred at this hourly rate"* They further requested that the legal costs should be capped at £2000 plus VAT and the recoverable valuation fee at £950 plus VAT."

Law

24. Section 60 of the 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.

Principles

25. The proper basis of assessment of costs in enfranchisement cases under the 1993 Act, whether concerned with the purchase of a freehold or the extension of a lease, was set out in the Upper Tribunal decision of *Drax v Lawn Court Freehold Ltd* [2010] UKUT 81 (LC), LRA/58/2009. That decision (which related to the purchase of a freehold and, therefore, costs under section 33 of the Act, but which is equally applicable to a lease extension and costs under section 60) established that costs must be reasonable and have been incurred in pursuance of the initial notice and in connection with the purposes listed in sub-sections [60(1)(a) to (c)]. The applicant tenant is also protected by section 60(2) which limits recoverable costs to those that the respondent landlord would be prepared to pay if it were using its own money rather than being paid by the tenant.
26. In effect, 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 only receive its costs where it has explained and substantiated them.
27. It does not follow that this is an assessment of costs on the standard basis (let alone on the indemnity basis). This is not what section 60 says, nor is *Drax* an authority for that proposition. Section 60 is self-contained.

Decision

28. The Tribunal has considered such representations as it received from the parties, following its directions, on the conduct of the application for lease extension and its subsequent implementation by way of surrender and re-grant in relation to S.60 costs.
29. The Tribunal noted that in the applicant's schedule started with 33No. original items of legal costs for the 1st respondent, rather than 36No. as originally claimed. The original sums also listed as being claimed by the respondent were in places different when they should have been the

same. The starting points should have been identical even if different outcomes were to be claimed for individual items and the total. Instead the applicant whilst challenging a few of the smaller items simply omitted others entirely without reference, to arrive at their final figure for the submission . The Tribunal found this approach confusing, careless and unhelpful. Lastly the applicant provided nothing to support the hourly rates contended for here.

30. On this occasion the Tribunal accepts the respondent's schedule of items, the allocation of work between those responsible and the hourly rates; without amendment. The Tribunal accepts that this landlord has long chosen and is free to use, their current legal representatives to act in such lease extension cases.

31. **The Tribunal determines the total costs payable by the applicant to the respondent landlord under S.60(a) are:**

1st respondent's legal fees £3,104.50; 2nd respondent's legal fees £300; respondent's valuer's fees £1,150; Land Registry fees £30 (no VAT); courier £26.25. All subject to VAT unless stated.

Name: N Martindale

Date: 28 January 2020