



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

HMCTS CODE : **PAPER REMOTE**

Case reference : **LON/00BK/OC9/2020/0010**

Property : **Lower ground floor flat and garden 3
Portnall Road, London W9 3BA**

Applicant : **Leonard Irvin Property Corporation
Limited**

Representative : **Comptons Solicitors LLP**

Respondent : **Upper Side Limited**

Representative : **CLC Solicitors**

Type of application : **An application under section 91(2)(d) of
the Leasehold Reform, Housing and
Urban Development Act 1993 for a
determination as to costs to be paid
under s60 (1) of the Act**

Tribunal members : **Tribunal Judge Dutton**

**Date of
determination** : **7th August 2020**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers which has been consented to by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face

hearing was not held because no-one requested the same, or it was not practicable, and all issues could be determined on paper. The documents that I was referred to are in a bundle of 65 pages, the contents of which I have noted.

Background

1. This is an application made by the applicant leaseholder pursuant to the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) for a determination of the reasonable costs to be paid under the provisions of sections 91(2)(d) and 60(1) of the Act in respect of the lower ground floor flat and garden at 3 Portnall Road, London W9 3BA (the “property”).
2. The application is dated 13th January 2020 and directions were issued on 5th February 2020.
3. I have before me the following documents which would appear to be relevant:
4. There is a bundle of 4 invoices from Debenhams Ottaway (DO) who acted for the applicant during the time that the initial notice was served (12.4.18), the counter-notice was served (13.6.18) and withdrawal of the claim on 14th December 2018. These invoices are dated 29th May 2018 in the sum of £848.40; 29th June 2018 in the sum of £521.40; 29th November 2018 in the sum of £231 and finally on 21st December 2018 in the sum of £297. These invoices total £1,897.80.
5. Next is a costs summary, prepared by Comptons Solicitors LLP, who now act for the applicant, showing a total sum claimed including VAT, the tribunal fee of £100 and the surveyors fee of £900, which is no longer in issue and disbursements, of £3,063.40. This costs summary was served under cover of a letter dated 19th February 2020.
6. I have a letter from, CLC solicitors for the respondent (CLC) dated 26th February 2020 which in summary disputes the surveyors fee (but has since been withdrawn by a letter dated 28th July 2020) and offers £333.75 plus VAT for the solicitors fees for the reasons stated.
7. Finally, I have a statement in response to the respondent’s statement made on behalf of the applicant, which is undated although according to the Bundle index is dated 11th March 2020.
8. The application states that the sum in dispute is £1,977.80.
9. I must confess that I have found it difficult to understand the costs claimed. I can only make sense of the applicant’s claim by dealing with it on the basis that the costs summary shows the sums sought and the

invoices from DO merely seek to support the figures. It is not helped by the application indicating that £1,977.80 is in dispute without further explanation.

10. The respondent's submissions are set out in the letter dated 26th February 2020 from CLC. This sets out the background, I believe erroneously referring to a s42 Notice dated 12th April 2019, which I think should be 2018. I have noted what has been said and the rebuttal from Comptons, in reaching my decision. I note also that Comptons have not been assisted by DO but have honestly confirmed that in their view there was nothing extraordinary in the case,
11. The provisions of s60 of the Act are set out below and have been borne in mind by me in reaching this decision

The tribunal's determination

12. **The tribunal determines that the costs payable under the provisions of s60(1) of the Act are £2,059.20 inclusive of VAT and any disbursements**

Reasons for the tribunal's determination

13. To make sense of the Costs summary I have reviewed the invoices from DO. The first in the sum of £848.40 dated 29th May 2018. This includes a number of communications with Mr Greenblatt, whose status is unclear and work to deal with deposit request, which I do not consider would be payable by the respondent under the provisions of s60. The second invoice dated 26th June 2018 again has a number of communications with Mr Greenblatt, which would not be recoverable. The third invoice is dated 29th November 2018 in the sum of £231 is essentially communication with Mr Greenblatt and the final invoice in the sum of £297.00 is again communication with Mr Greenblatt, but also with the tribunal, again in my finding non-recoverable.
14. I then consider the statement of costs. This show around 4 hours spent on the file with further 18 units on documents including £385 on the counter notice.
15. The respondent, in the letter dated 26th February 2020 alleges duplication, that the costs of preparing the counter notice are excessive and the fee grade of solicitors used too high. It offers a somewhat paltry £333.75 plus VAT.
16. I am satisfied that there has been no duplication following the explanation given by Comptons in the response to the respondent's letter. The charging rates do not, in my finding, appear excessive. I do think that by reference to the DO invoices a good deal of time has been

spent on matters that do not fall within the limited ambit of costs under s60. The excessive communications with Mr Greenblatt, whoever he may be, does not fall within s60 (1)(a) or (b) and there are other examples, such as communications with the tribunal. There is no consideration of a lease to take into account and therefore 60(1)(c) does apply in this case. The time spent on preparing the counter notice seems on the high side. The counter notice is not unique, containing as it does some fairly standard wording, save only for the suggested amendment to the registration fee. I consider that this document, in the hands of a Grade A solicitor should not have taken more than 45 minutes to complete, say 7 units thus half the amount claimed. I also consider that the fee for preparing the deposit notice is not recoverable but that for deducing title is. That would seem to be one unit at £26.50 plus VAT. I will allow the perusal of the valuation report as being covered by s60(1)(b). This therefore reduces the costs in considering the documents to £192.50 for the Counter notice and £81.50 for the remaining work on that schedule.

17. As to the remainder of the costs summary, doing the best I can with the information before me conclude that the fees of £1,069 should be reduced by 50% to reflect the work set out on the DO invoices which do not, in my finding fall within s60. It should be remembered that this case involves the issue of an initial notice, service of a counter notice and withdrawal. The fee for the surveyor is not in dispute and is agreed at £1,080 inclusive of VAT. The disbursement of £9 for the Land Registry copies is not in dispute.
18. To summarise therefore I find that following fees and disbursements are payable by the respondent
 - Solicitors fees of £808.50
 - Vat thereon of £161.70
 - Surveyors fee of £1080 inclusive and
 - Land registry fee of £9
19. Accordingly, I find that the costs payable under the provisions of the Act (s91(2)(d) and 60(1)) are £2,059.20 inclusive of VAT and any disbursements

Name: Tribunal Judge Dutton **Date:** 7th August 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).

The relevant law

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.