



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

Case Reference : **CAM/00KG/OC9/2020/0002 (P)**

Property : **Flat 23, Bonchurch Court,
Oakhill Road, Purfleet,
Essex RM19 1TN**

Applicant : **Emeka Afam Arinze**

**Represented by
Andrew Hamlett-Orme
(Orme Associates)**

Respondent : **Tulsense Limited**

Represented by SA Law LLP

Date of Application : **17th June 2020 (received Cambridge
6th November 2020)**

Type of Application : **Section 91(2)(d) Leasehold Reform
Housing and Urban Development Act
1993 (“the 1993 Act”)**

Tribunal : **Judge J. Oxlade**

**Date of Hearing
(Paper Hearing)** : **25th March 2021**

DECISION

For the following reasons, I assess the following costs payable by the Applicant to the Respondent as reasonable and incidental to the lease extension of the property completed on or about 23rd June 2020 as £2602, comprised of £ 1674 (legal fees) and £928 (valuation fees).

REASONS

Background

1. The Applicant seeks a determination of the quantum of costs and expenses which arise under statute payable to the Respondent, caused by the service on it of a section 42 notice, which initiates the process of seeking a lease extension of the property.

2. There were two notices served on the Respondent.

3. The first (invalid) notice was served on 2nd September 2019, but contained no reference to service of notice on the management company (a party to the lease), and who would be required to enter into a deed; as required by section 42(2)(b) of the 1993 Act. That being so the notice is deemed not served at all.

4. So, the Applicant served a second (valid) notice on 18th November 2019, and on or about 23rd June 2020 the lease extension was completed.

5. The Respondent's claim is set out in two costs schedules, certified by the Respondent's legal representatives, as payable under contract with them. The Respondent seeks the following (exclusive of VAT):

<u>Costs</u>	<u>Invalid notice</u>	<u>Valid notice</u>
Legal	£560.50	£1967.00 ¹
Valuation	£848.00	£880.00

Applicant's position

6. The Applicant's position is set out in submissions made on 27th January 2021; the Applicant concedes liability to pay total costs of £1850, comprising £1250 in legal fees and £600 valuation fees.

Legal Expenses

7. As to legal costs, the Applicant does not dispute the chargeable rates of the various fee earners, nor that the category of earner was appropriate for the work in question. Further, there is no issue but that the service of the invalid notice – which triggers the Respondent's response – would cause work to be done, for which the Applicant is liable to meet costs.

8. However, in respect of the valid notice the Applicant disputes the following: (a) that the cost of drafting the valid counter-notice was allowable (42 minutes at

¹ Comprised of £345.50 and £1621.50 set out in the cost schedule for the valid notice

£146.50), (b) there was no detail surrounding “correspondence with client, and Applicant” (36 minutes each at £48 and £48), (c) “correspondence with surveyor” is outside the scope of conveyancing (30 minutes £80), (d) Drafting the deed should be 30 minutes (£133, not 1 hour 36 at £312), (e) negotiating the claim with A solicitor is a significant cost and not allowable (2 hours 54 minutes at £619.50), (f) correspondence with client needs proof (36 minutes at £96), (g) “preparing completion statement and completion formalities” (186 minutes at £594) is too high.

9. In respect of the invalid notice the Application disputes the following: (h) the cost of £162.50 for considering the invalid notice (in contrast to £104 for the valid notice, (i) as per (a), (j) as per (b), (k) as per (c).

10. The Applicant says that as there is a liability to meet only the costs incurred, then there should be disclosure of the legal costs as invoice to the client.

Valuation Fees

11. As to valuer’s fees, the Applicant says that the Respondent had previously said that the costs were £800 and £400 as contained in a completion statement (page 8 AB); the second valuation fee is double and it requires an explanation. As the Applicant is obliged to meet costs “so far as they are incurred”, the Applicant wished for proof as to the sums were actually incurred and paid.

Nat West fee

12. Issue was taken with a £275 Nat West completion fee, which was added to the completion statement, being said to be the cost of releasing the mortgagee’s legal charge. The Applicant says that there was a refusal to complete without it, and so despite vociferous opposition, the Applicant was forced to pay it.

The Respondent’s position

13. The Respondent relies on a reply to tenant’s costs submissions dated 2nd February 2021, two certified costs schedules, and correspondence.

14. The Respondent says that in the run up to completion, a commercial view was taken in an attempt to agree statutory costs, and so there was a preparedness to accept payment of costs of the second notice in the sum of £400 for the valuer fees (not £800) and £1200 of legal costs (not £1967). As an agreement was not forthcoming, the Respondent seeks full costs incurred; issue is taken with the Applicant’s suggestion that there was an offer to compromise on £1250 for level fees and £600 valuer – rather it was an expression of what they usually do.

Legal Expenses

15. The Respondent said that the costs incurred in respect of the valid notice, which proceeded to completion were much higher than the norm, as the Applicant’s representative was “time intensive”. As an example of that there was

correspondence on the question of whether the deed could be executed by the Respondent on behalf of the third party.

16. Otherwise the Respondent would rely on the schedules provided.

17. On the specific issues raised, as to (a) and (i) the submissions did not accord with the case law, which provided that the time spent on drafting the section 45 counter-notice was recoverable as a statutory cost; Drax v Lawn Court Freehold [2010] was cited. As to (k) and (c) the costs of liaising with the valuer was permission, as per Sinclair v Wisbey.

18. The Respondent would not disclose the bill(s) submitted to their client for payment, as there was no obligation to provide proof of payment; further, a costs schedule had been filed and certified.

Valuation Fees

19. The Applicant is wrong (citing case of Sinclair v Wisbey) to say that the legal fees of instructing the valuer cannot be recovered. The costs of £800 were incurred for both valuations, which were necessary, as there was a gap of 2 1/2 months in between the notices and so further evidence may have come to light in that time; so the matter had to be reviewed.

Nat West Consent Fees

20. In respect of this, the Tribunal has no jurisdiction over this.

Findings

21. I have carefully considered the submissions made by both parties and the documents filed.

Legal Costs

22. The Respondent is right to acknowledge that the costs claimed are significantly higher than the norm; this observation accords with the Tribunal's experience, where legal fees of £1200 to £1400 would be the norm. However, it is not sufficient to simply say that the Applicant's representative was "time intensive" on one issue to prove that all other costs are reasonable. I attach no weight to the preparedness to accept more limited costs to settle as evidence that costs were less; is the norm to attempt to compromise.

23. As to the specific items in dispute: I reject the Applicant's submission as to the inability to claim the cost of drafting the counter notice (items (a) and (i)) for which authority was not provided; to say "Hague" generally (without specific reference) is not sufficient authority. The Respondent has supported their argument by reliance on Drax. As it is a part of the statutory framework, it would be surprising for the cost not to be recoverable.

24. As to (b) and (j), it is inevitable that the legal representative will liaise with their client on the receipt of the notice, the service of the counter-notice, and any reply. I find that this is not a valid objection.

25. As to (c) and (k), it would be usual for a Solicitor to instruct a valuer, liaise over the valuation, and iron out any issues; particularly where the parties view on premium is so different. I find that this is not a valid objection.

26. As to (d) there is an issue over the time taken to draft the deed, whether 30 minutes or 1 hour 36 minutes is reasonable. I find that 1 hour 36 is excessive, and 30 minutes is really too little to draft and check the document. I find 1 hour is appropriate – so £192 is allowed. The cost recoverable will accordingly be reduced by £120.

27. As to (e) there is an issue over the time taken to negotiate the claim; absent of a better explanation than noted in paragraph 15 and proof of the position I find that the time taken of 2 hours 54 minutes is excessive, and allow 1 hour 30 minutes; accordingly £619.50 will be reduced by £379.50. As to (f), the time taken to liaise with the client at 36 minutes, is reasonable.

28. As to (f), the Respondent has not further detailed “completion of formalities” absent of which 186 minutes has not been shown to be reasonable. From my knowledge as an expert Tribunal, the end of the transaction, and all that entails, should take 1 ½ hours, and so I will reduce £594 by £354 to £240.

29. Accordingly, in respect of the valid transaction I reduce the costs by £853.50, so from £1967 to £1113.50. Though I am aware that this is slightly less than the amount I have referred to in paragraph 21 above, this was a second notice, and there would have been an element of duplication. So, individually and globally, this is a fair assessment.

30. The Applicant raised a point against the cost of considering the invalid notice, at £162.50 as opposed to £104 for the valid notice; however, it seems entirely logical to me that considering the third party position, and double-checking the position, is likely to take more time. I allow this as asked.

Valuation fees

31. As to valuer’s fees, the Respondent relies on one invoice dated 17th January 2020 from GLK Services Limited (RB), which simply refers to “provision of professional services undertaking valuations”. The Tribunal’s directions required at paragraph 2 that the Respondent do send to the Applicant copies of the invoices substantiating the claimed costs and any other document or report upon which reliance is placed. Oddly, there is no first invoice provided, and there is no second valuation provided.

32. The invoice which has been provided gives no further detail; for example, the dates of the work, and what work was undertaken; there is no reference to inspecting the premises, nor establishing how the value of the reversion was arrived at, nor the extent to which the Respondent’s Solicitors liaised with the valuer.

33. The bundle contains a valuation dated 18th November 2019, in the form commonly seen by the Tribunal in contested proceedings attached to the expert's reports, which are used in setting the premium. There is produced no further valuation undertaken in January 2020. The valuation tool is available to all professionals in the field prepared to pay for it; it is a piece of software, and requires the insertion of several key pieces of information: capital valuation, the rates used, the ground rent and dates. Clearly it provides the basis for a professional opinion, and is a tool, but not the complete answer. However, it is reasonably quick process.

34. The Tribunal is frequently required to assess costs schedules, and sees the costs claimed in quantum cases. The costs of the valuation claimed in this case are on the high side and the only invoice provided is not detailed and which otherwise might have suggested any unusual feature to justify it. There is no copy of the second valuation, albeit that it would be necessary to re-calibrate the cost at the date of the second valuation for the purpose of serving a counter notice.

35. In the circumstances, I find that the sum of £600 is appropriate for the first valuation, and absent of any evidence to support considerable time spent on a second valuation, I assess the second as £200. I find reasonable valuation fees of £800 in total, plus the legal costs in liaising of £80 and 48. I therefore reduce the valuation costs to £928.

Nat West Consent Fees

36. I have not been referred by the Applicant to authority to show that this falls within the Tribunal's jurisdiction; I do not consider that I have jurisdiction over this.

Conclusion

37. For the reasons given above, I find that the Applicant is liable to costs reasonably incurred as follows:

<u>Costs</u>	<u>Invalid notice</u>	<u>Valid notice</u>
Legal	£560.50	£1113.50
Valuation	£648.00	£280.00

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 Judge J. Oxlade
 25th March 2021