



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

Case Reference : LON/00AP/OC9/2021/0050

Property : 1B Scarborough Road, London, N4 4LX

Applicant : Julie Noble

Representative : Harper and Odell Solicitors

Respondent : Irene de Silva

Representative : Bartletts Solicitors

Type of Application : Determination as to reasonableness of costs

Tribunal Members : Judge Shepherd

Date of Decision : 12th November 2021

1. This case began life with an application made by the Applicant Julie Elizabeth Noble a leaseholder of premises at 1 B Scarborough Rd, London N4 4LX (the premises). The application made was for a determination of reasonable costs pursuant to section 91(2)(d) of the Leasehold Reform Housing and Urban Development Act 1993 (The Act). The Respondent to the application is Irene Da Silva, the freeholder of the premises. It is likely that the real parties to this dispute are the respective solicitors for the Applicant and Respondent, namely Harper and Odell and Bartletts who have found themselves in a tit for tat war of attrition at the cost of their respective clients, presumably.
2. The Applicant made an application pursuant to section 42 of the Act seeking the grant of a new lease on 22 August 2019. The Respondent served a counter notice pursuant to section 45 of the Act on 25 September 2019. The parties

reached agreement in relation to the value of the lease extension and to all intents and purposes there was formal completion on 3 December 2020. So far so good. There then emerged a dispute over surveyor's costs (£1050).

The law

3. Section 56 of the Act states the following:

56.— Obligation to grant new lease.

(1) Where a qualifying tenant of a flat has under this Chapter a right to acquire a new lease of the flat and gives notice of his claim in accordance with section 42, then except as provided by this Chapter the landlord shall be bound to grant to the tenant, and the tenant shall be bound to accept—

(a) in substitution for the existing lease, and

(b) on payment of the premium payable under Schedule 13 in respect of the grant,

a new lease of the flat at a peppercorn rent for a term expiring 90 years after the term date of the existing lease.

(2) In addition to any such premium there shall be payable by the tenant in connection with the grant of any such new lease such amounts to the owners of any intermediate leasehold interests (within the meaning of Schedule 13) as are so payable by virtue of that Schedule.

(3) A tenant shall not be entitled to require the execution of any such new lease otherwise than on tendering to the landlord, in addition to the amount of any such premium and any other amounts payable by virtue of Schedule 13, the amount so far as ascertained—

(a) of any sums payable by him by way of rent or recoverable from him as rent in respect of the flat up to the date of tender;

(b) of any sums for which at that date the tenant is liable under section 60 in respect of costs incurred by any relevant person (within the meaning of that section); and

(c) of any other sums due and payable by him to any such person under or in respect of the existing lease;

and, if the amount of any such sums is not or may not be fully ascertained, on offering reasonable security for the payment of such amount as may afterwards be found to be payable in respect of them.

4. Section 60 of the Act states the following:

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.

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5. In this case there are parallel proceedings in the County Court. The Respondent who is the Claimant in the County Court made a money claim for the surveyor's costs that are in issue before the Tribunal. Pausing here it is regrettable that parallel proceedings were brought and that yet further costs were racked up presumably to be paid by the parties to the case and not the solicitors themselves. The Applicant's solicitors defended the County Court claim on the same basis as her claim in the Tribunal.

6. The nub of the case is a dispute as to whether the surveyors costs are recoverable notwithstanding the fact that they were not claimed by the Respondent when she sent her claim for section 60 costs. The Respondent says that s60 speaks for itself and the costs are recoverable. The Applicant says that the Respondent has missed her chance and cannot claim the s60 costs once completion has taken place. Added to this is a layer of further satellite litigation between the solicitors in which the Respondent solicitor seeks to strike out the application on the basis that it has no merit. This application was made on 15 July 2021.

7. At the commencement of the hearing I indicated that the strike out application was unsuccessful and that I would hear the dispute. The fact that there were arguments (of mixed strength) on either side in relation to this dispute meant that this case was plainly not one in which a strike out application was appropriate. In addition to this there were cost applications on both sides pursuant to regulation 13 of the 2013 Regulations both sides alleging that the other sides solicitors were at fault in some way. Pausing here, I consider that both solicitors in the case are at fault. This case should not have proceeded to hearing and should have been resolved. Instead, this unseemly row between two experienced solicitors has led to matters being

protracted presumably at a substantial cost on both sides when the amount at issue is relatively small. Instead of the parties taking a sensible view both sides have adopted a war of attrition type stance in relation to the issue at hand.

The substantive issue

8. The disputed sum is £1020 which was the cost of Talbots Surveying Services Ltd incurred by the Respondent. The relevant correspondence is on 4 December 2020 when the Respondent's solicitor wrote to the Applicant's solicitor stating the following:

I confirm receipt of the completion money. I am dating the lease 3 December 2020 and will post this to you. I look forward to receiving the counterpart lease. I regret that I have overlooked my client's valuers fee is in the sum of £1020. The invoice is attached. Can I trouble you to arrange payment for this additional sum?

9. The Applicant challenges their liability in relation to these fees on the basis that the fees were known of by the Respondent's solicitors prior to completion and should have been charged along with the other fees. They say that there is no ability to claim further fees or costs after a matter completes because it would leave the matter open-ended indefinitely. This would be inequitable they say and estoppel would apply. They also challenge the Respondent's legal fees notwithstanding the fact that these fees were previously agreed and paid. They submit various Tribunal decisions none of which were very helpful. In turn the Respondent states that the valuers costs were innocently omitted from the completion account before completion took place. They also say that the Act does make specific provision for a deadline for making an application for determining costs. They say that section 60 costs are payable on completion. They say that they have not sought further fees they have merely

sought the valuer's costs pursuant to the Act. They also say their legal costs are reasonable.

Determination

10. It is clear that the Applicant is liable for the surveyors costs pursuant to s60 of the Act. Section 60 1(b) specifically states that she is liable for any valuation of the flat obtained for the purpose of fixing the premium. The fact that the sums were not claimed prior to completion does not preclude that liability. Section 56(3) of the act does not assist the Applicant because that merely states that a tenant shall not be entitled to require the execution of any such new lease until sums are payable including those sums under section 60. This does not mean that because completion took place without payment of the surveyor's fees it is not open to the Respondent to claim those fees. Both parties worked on the common misapprehension that all fees had been paid. In the event the Respondent had overlooked the fact that she had not claimed the surveyor's fees. These sums are recoverable under section 60 albeit that completion has taken place. To decide otherwise would be to deprive the Respondent of a clear entitlement under section 60. The Applicant's solicitor was unable to identify any authority to make good her arguments in relation to estoppel or otherwise.
11. The Applicant's solicitor also challenged the amount of the valuation fee. She put forward two cases in which different fees had been allowed however her submission could no go no further than stating that the valuation "appears excessive". The Tribunal does not consider the valuation fee was excessive and the fee is reasonable and payable.
12. The Applicant's solicitor also challenged the legal fees sought by the Respondent notwithstanding the fact that these had already been agreed and paid. She provided a list of items that she sought to challenge and offered an

alternative amount again relying on decisions on section 60 costs without providing any explanation as to why they were relevant to the facts and circumstances of the present case. In general terms the Tribunal found the submissions in relation to the legal costs unattractive and despite strenuous efforts by the Applicant's solicitor in seeking to challenge individual items of her opponent's costs the costs overall appeared reasonable.

Reg 13 costs

13. As already indicated neither side's solicitors behaved properly in this case. The case has been unreasonably extended and complicated by entrenched litigation between two solicitors who have fallen out. It is not in the interests of their clients to expend disproportionate amounts of time and cost on issues which should be resolved by concession. In these circumstances the tribunal will not award any costs to either side.

Judge Shepherd

12th November 2021

ANNEX - RIGHTS OF APPEAL Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
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 state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers
5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.