



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

Case reference : **LON/00BK/OC9/2021/0207**

**HMCTS code
(paper, video,
audio)** : **P: PAPERREMOTE**

Property : **Flat 11 G Oxford & Cambridge Mansions,
Transept Street, London NW1 5EN**

Applicant : **Deritend Investments (Birkdale)
Limited**

Representative : **Wallace LLP**

Respondent : **Mohammad Nazry Bin Abdullah Halim
and Suzanna Binti Abdullah Halim**

Representative : **N/A**

Type of application : **Section 60 - costs**

Tribunal member : **Judge Tagliavini**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **8 February 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers which has not been objected] by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because it was not practicable, and all issues could be determined on paper. The documents that the tribunal were referred to are in a bundle of documents pp1-171 together with other statements and supporting documents, the contents of which have been noted.

Summary decision of the tribunal

- (1) The tribunal determine that costs of £4,924.80 (including VAT) are payable by the respondents to the applicant pursuant to section 60 of Leasehold Reform, Housing and Urban Development Act 1993.
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Preliminary issue

1. The respondents failed to comply with the tribunal's directions dated 16 November 2021 (as amended), which notified the parties that this application would be determined on the papers and without a hearing in the week beginning 7 February 2022 unless an oral hearing was requested within 28 days of those directions. Despite these clear directions, the respondents sent in a late request in the afternoon of 7 February 2022 seeking an oral hearing on the grounds that the issues were complex. Due to the lateness of this request, it appears not have been dealt with by a Procedural Tribunal Judge.
2. Having considered this late and out of time request and having regards to the lack of co-operation displayed by the respondents in complying with the tribunal's directions and the lack of complexity of issues in this application, the tribunal refuses the request for an oral hearing. The tribunal determines, on balance, that the request is intended to unduly delay the conclusion of this application and that the request is without merit and contrary to the overriding objective under rule 3 of The Tribunal Procedure (First-tier) (Property Chamber) Rules 2013.

The application

3. This is an application made by the landlord under section 91(2)(d) of the Leasehold Reform, Housing and Urban Development Act 1993 ('the 1993 Act'), in respect of costs of £4,924.80 (including VAT) incurred under section 60 of the 1993 Act arising from the service of a Notice of Claim by the respondent lessees in respect of the grant of a new lease of the subject premises.

Background

4. The respondents served a Notice of Claim dated 20 March 2021 in respect of a proposed lease extension of premises situate at Flat 11G Oxford and Cambridge Mansions, Transept Street, London NW1 5EN at a premium payable of £21,000. This Notice specified that the applicant '*Must respond to this notice by serving a counter-notice under Section 45 of the Act section 45 within 2 months of receiving this notice.*'

5. A Counter-Notice dated 14 May 2021 was served without prejudice to the applicant’s contention that the Notice of Claim was invalid and of no effect as it failed to specify a specific date for service of the Counter-Notice. Notwithstanding this assertion in the applicant’s letter also dated 14 May 2021, the applicant accepted the respondents’ right to the grant of a new lease and proposed a premium payable of £105,000 and a draft of the new lease terms was forwarded to the respondents.

6. In an email dated 18 August 2021, the respondents withdrew their Notice of Claim citing their acceptance of the applicant’s assertions in respect of the invalidity of the Notice. In its application to the tribunal, the applicant now seeks costs of:
 - (i) Landlord’s legal fees (including VAT).....£3,0000

 - (ii) Landlord’s valuation fees (including VAT).....£1,896.00

 - (iii) Land Registry fees.....£28.80

Total: £4,924.80

The applicant’s case

7. In written Submissions dated 1 February 2022 the applicant asserted that as the respondents had failed to comply with the tribunal’s directions, they must be considered as having no objection to the application for costs. In support of its application, a Schedule of Costs was submitted to the tribunal specifying the work done, when and by whom and the hourly rate charged. This Schedule totalled£4,945.00 (including VAT). The applicant also referred the tribunal to several of its previous decisions where its hourly rates had been approved.

8. The applicant asserted that section 60(3) of the 1993 Act provided that the respondents were liable for the applicant’s costs up to the date of the notification of the withdrawal of the Notice of Claim. Consequently, as a response to the Notice of Claim was required, notwithstanding the applicant’s contention was invalid, it was appropriate to incur both legal and valuer’s fees in addition to the Land Registry fees. The tribunal was also provided with a statement of Mit Jitander Kotak BA (Hons) PgDip MRICS of Chestertons, Professional Valuations dated 1 February 2022, in support of the charges made in respect of the valuation and premium included in the Counter-Notice.

The respondents’ case

9. The respondents failed to comply with the tribunal’s directions dated 16 November 2021 (as amended) which notified the parties that this

application would be determined on the papers and without a hearing in the week beginning 7 February 2022 unless an oral hearing was requested within 28 days of 16 November 2021. Despite these clear directions, the respondents sent in a late request in the afternoon of 7 February 2022 seeking an oral hearing on the grounds that the issues were complex. Due to the lateness of this request, it appears not have been dealt with by a Procedural Tribunal Judge. Having considered this late and out of time request, and having regards to the lack of co-operation displayed by the respondents in complying with the tribunal's directions and the lack of complexity of issues in this application, the tribunal refuses the request for an oral hearing on the grounds it is out of time, the respondents have shown little co-operation with the tribunal's procedural requirements and directions and determines, on balance, that the request is intended to unduly delay the determination of this application and is without merit.

10. In an email dated 27 August 2022 to the applicant, the respondents asserted that the applicant should not have incurred costs once they were aware the Notice of claim was invalid. The respondents asserted that they are not legally bound to pay the applicant's fees/costs.
11. In an email dated 12 September 2021 to the applicant, the respondents asserted that only if the premium of £21,000 had been accepted and the irregularities in the Notice of Claim had been accepted, a reasonable ground for seeking costs might have been established. The respondents asserted that the applicant should have pointed out the irregularities in the Notice of Claim straight away and waited for the respondents to serve a valid Notice before incurring costs.

The tribunal's decision and reasons

12. The tribunal determines that costs of £4924.80 are payable by the respondents to the applicant in respect of costs incurred under section 60 of the 1993 Act.
13. Despite the respondents' failure to provide a Statement setting out clearly their objections to the application as required by the tribunal's directions dated 16 November 2021 (as amended), the tribunal had regard to the various emails sent to the applicant and forwarded to the tribunal, notwithstanding one of these emails had been marked 'without prejudice' by the applicant and to which the respondents had added their comments. Therefore, the tribunal was able to understand the reasons for the respondent's objections to the application for costs.
14. In reaching its determination, the tribunal finds that the respondents have misunderstood their legal liability under the 1993 Act to pay costs incurred up to the date of a Notice of Claim that was subsequently withdrawn, i.e., 18 August 2021. The tribunal finds that the respondents were notified by the applicant as early as 14 May 2021 that

the Notice of Claim was invalid. Despite this notification, the respondents chose not to formally withdraw the Notice of Claim until 18 August 2021.

15. Notwithstanding, the alleged defects in the Notice, the tribunal finds that it was reasonable for the applicant to continue to prepare a Counter-Notice and valuation in the absence of any formal acknowledgment of the invalidity of the Notice by the respondents. The tribunal finds that to wait until the respondents had served a valid Notice before acting, as they suggested, was both unreasonable and potentially prejudicial to the applicant's legitimate interests. The tribunal also finds that the large majority of costs were incurred by the applicant in period before 14 May 2021 in response to the respondents' Notice of Claim, and significantly fewer costs were incurred thereafter to 18 August 2021.
16. The tribunal is satisfied that the legal costs incurred by the applicant are and those of its valuer have been reasonably incurred and are reasonable in amount, as are the standard Land Registry fees.
17. In conclusion, the tribunal finds that costs of £4,924.80 (including VAT) are reasonable and payable by the respondents.

Name: Judge Tagliavini

Dated: 8 February 2022

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.