



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

Case reference : **LON/00BK/OC9/2021/0195 P**

Property : **236 Park West, Edgware Road,
London W2 2QL**

Applicant : **DAEJAN INVESTMENTS LIMITED**

Representative : **Wallace LLP**

Respondent : **SAID ABDELHAFIZ MOHAMED
HUSSEIN ELHAKIM**

Representative : **NWL Solicitors**

Type of application : **Section 60(1) of the Leasehold
Reform Housing and Urban
Development Act 1993**

Tribunal member(s) : **Judge Andrew Sheftel
Sarah Phillips MRICS**

Date of decision : **23 March 2022**

DECISION

This has been a remote determination on the papers which has not been objected to by any of the parties. The form of remote determination was P: Paper Determination. A face to face hearing was not held because it was not sought or practicable and all issues could be determined on the papers.

Decision of the tribunal

The tribunal determines that costs of £5,499.00 (including VAT) are payable by the Respondent to the Applicant pursuant to section 60 of Leasehold Reform, Housing and Urban Development Act 1993.

Background

1. 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 £5,499.00 (including VAT) incurred under section 60 of the 1993 Act arising from the service of a Notice of Claim by the Respondent lessee in respect of the grant of a new lease of the subject premises.
2. According to the Applicant, the Applicant is the competent landlord and owner of a head lease of Park West, Edgware Road. On 20 April 2020, the Respondent's predecessors in title made an application for the grants of a new lease of the flat by way of notice of claim. On 27 April 2020 the flat and the benefit of the notice of claim were assigned to the Respondent and on 22 June 2020 the Applicant served a counter notice under section 45 of the 1993 Act. On 21 December 2020 the Respondent made an application to the tribunal seeking determination of the terms of acquisition. Terms of acquisition were agreed between the parties on 8 January 2021 and accordingly the application was subsequently withdrawn. However, according to the Applicant, the Respondent failed to complete a new lease within the required statutory time pursuant to section 48 of the 1993 Act, and in accordance with section 53 of the 1993 Act, the notice of claim was deemed withdrawn on 7 May 2021. As the statutory costs have not been agreed, the Applicant has made this application to the tribunal.
3. 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.

(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."

4. Directions for the costs application were issued by the tribunal on 14 October 2021.

5. The Respondent has made no submissions or representations in relation to this application. However, by letter dated 24 January 2022, the tribunal raised the issue that the no reference had been made in the Applicant's submission to the 2021 Edition of the "Guide to the Summary Assessment of Costs" published on 1 November 2021, and in particular the guideline hourly rates for London Band 2. The

Applicant's solicitors responded by letter to the tribunal dated 2 February 2022.

The Applicant's submissions

6. In written submissions dated 8 December 2021 the Applicant asserted that as the Respondent had failed to comply with the tribunal's directions, they must be considered as having no objection to the application for costs. In any event, 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. The Applicant asserted that section 60(3) of the 1993 Act provided that the Respondent was liable for the Applicant's costs up to the date of the notification of the withdrawal of the Notice of Claim.

7. In response to the tribunal's letter of 24 January 2022 concerning hourly rates, the Applicant made a number of submissions including:
 - that it is reasonable for a fee earner with the relevant experience to have conduct of the matter and to perform work on the same;

 - that the basis for instructing Wallace LLP was to ensure that enfranchisement matters (which are technical in nature) are dealt with by the appropriately experienced advisors to the highest professional standards. The charge out rates of the fee earners dealing with this matter therefore appropriately reflect their experience in this technical area of law – and that the rates have been approved by tribunals in other cases;

 - that the County Court Guideline Hourly Rates, are not relevant to the determination of the costs payable pursuant to the provisions of Section 60 of Act as they are guideline rates for summary assessment in Civil Court matters where recovery of costs is not determined by specific statutory provisions, and in any event the same do not reflect the specialist nature of leasehold enfranchisement work or the intended

indemnity for costs specifically set out in Section 60. Further, even if the County Court Guideline Hourly Rates did apply, the technical nature of the enfranchisement work would certainly render the Applicant's solicitors within London 1 band rates.

Determination

8. In our determination, the fact that the Respondent has failed to respond to the application is not the end of the matter – it is still for the tribunal to determine the amount of costs payable. However, we accept that the County Court Guideline Hourly Rates are not directly applicable in a case such as the present. Further, in this regard, we agree with the proposition that the work involved in an enfranchisement case is complex with particular risk attached.
9. Overall, the tribunal determines that the sum of £5,499.00 (including VAT) is payable by the Respondent to the Applicant in respect of costs incurred pursuant to section 60 of the 1993 Act.
10. The tribunal is satisfied that the legal costs incurred by the Applicant and those of its valuer have been reasonably incurred and are reasonable in amount having regard to the work done, as are the standard Land Registry fees. We consider that this is a reasonable sum and proportionate to the issues and complexity of the application.

Name: Judge Sheftel

Date: 23 March 2022

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).