



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

Case reference : **LON/00AU/OC9/2022/0088P**

Property : **353A Holloway Road, London N7
ORN**

Applicant : **Fatima Samadi**

Representative : **Bolt Burdon Solicitors**

Respondents : **Anthony John Napolitano**

Representative : **Not represented in relation to this
cost application**

Type of application : **Section 60(1) costs pursuant to
section 91(2)(d) of the Leasehold
Reform, Housing and Urban
Development Act 1993**

Tribunal member : **Judge P Korn**

Date of decision : **12 September 2022**

DECISION

Description of hearing

This has been a remote hearing on the papers. The form of remote hearing was **P**. An oral hearing was not held because the Applicant confirmed that it would be content with a paper determination, the Respondent did not object and the tribunal agrees that it is appropriate to determine the issues on the papers alone. The documents to which I have been referred are in an electronic bundle, the contents of which I have noted. The decision made is described immediately below under the heading “Decision of the tribunal”.

Decision of the tribunal

The tribunal determines that the costs payable by the Applicant to the Respondent pursuant to section 60 of the Leasehold Reform, Housing and Urban Development Act 1993 amount to £8,097, this being £6,700 plus VAT and disbursements.

The application

1. The Applicant seeks a determination under section 91(2)(d) of the Leasehold Reform, Housing and Urban Development Act 1993 (“**the Act**”) as to the reasonable costs payable by the Applicant tenant under section 60 of the Act.
2. On 4 August 2021 the Applicant served a notice of claim on the Respondent landlord to exercise the right to acquire a new lease under section 42 of the Act.
3. The Respondent served a counter-notice on 8 October 2021 disputing the amount of the proposed premium for the new lease. The amount of the premium was later agreed, and the new lease was completed.
4. On 4 April 2022 the Respondent’s solicitors provided the Applicant’s solicitors with details of the costs that the Applicant was seeking from the Respondent pursuant to section 60 of the Act. These amounted to £6,700 plus VAT and disbursements, a total of £8,097.

Applicant’s case

5. The Applicant’s solicitors submit that the drafting of the lease was protracted at the Respondent’s end and that the bulk of the Respondent’s proposed changes were subsequently removed. They also argue that the detailed cost breakdown shows much duplicated and administrative time spent, and they question why it has taken three individuals to be involved in preparing a draft lease. They add that any training time should be written off.
6. They also submit the agreed lease is a standard precedent lease without much adaptation. They consider the sum of £3,000 plus VAT and disbursements to be an appropriate charge, reduced from £6,700 plus VAT and disbursements.

Respondent’s case

7. The tribunal has not received any submissions from or on behalf of the Respondent in response to the Applicant’s solicitors’ submissions. The Applicant’s solicitors have written to the tribunal stating that, according

to their understanding, the Respondent's solicitors are not acting for the Respondent in connection with this cost application.

8. In correspondence between the parties included within the determination bundle, the Respondent's then solicitors included a breakdown of their costs. When providing the breakdown, they commented that their actual costs were £8,725 plus VAT and disbursements but that they had limited their cost claim to £6,700 plus VAT and disbursements. They stated that the work included liaising with the Applicant's agent, preparing and serving the counter-notice, reviewing the lease and title documents, preparing the lease extension including modernising the lease, engaging in extensive 'toing and froing' with the Applicant's solicitors on the lease extension, taking instructions and finalising the lease.
9. In response to the Applicant's solicitors written objections to the amount of the Respondent's costs, this response having been given prior to the Applicant's cost application to this tribunal, the Respondent's then solicitors characterised the Applicant's solicitors' comments on those costs as baseless. In addition to the points already noted above, the Respondent's then solicitors stated that a substantial amount of modernisation of the lease had been carried out and that the 'toing and froing' referred to above was caused by the Applicant and/or her solicitors and then by the need to take instructions from the Respondent and to finalise the lease extension. They described the reduction from £8,725 plus VAT and disbursements as a goodwill gesture.

The relevant legal provisions

10. Under the relevant parts of section 60 of the Act (in the context of this application):-
 - (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.

11. Under the relevant parts of section 91 of the Act:-

(1) Any question arising in relation to any of the matters specified in subsection (2) shall, in default of agreement, be determined by the appropriate tribunal.

(2) Those matters are –

(d) the amount of any costs payable by any person or persons by virtue of any provision of Chapter I or II and, in the case of costs to which ... section 60(1) applies, the liability of any person or persons by virtue of any such provision to pay any such costs

Tribunal's analysis

12. It is common ground between the parties that the Applicant, having given a notice under section 42 of the Act, is liable for the Respondent's reasonable costs in respect of the matters set out in section 60(1) subject to any relevant exceptions or qualifications.
13. The Applicant has challenged the reasonableness of the Respondent's costs on specific grounds. First of all, her solicitors state that the drafting of the lease was protracted at the Respondent's end. However, the Applicant has provided very little by way of supporting evidence for this submission. She has not included a copy of the original lease or the new lease in the bundle. There is also no witness evidence, nor even any details beyond an assertion that the drafting process was protracted. Even if it is the case that the drafting process took longer than normal, there is no real analysis beyond the superficial as to why this might have been the case.
14. Secondly, the Applicant's solicitors state that the detailed cost breakdown shows much duplicated and administrative time spent, and they question why it has taken three individuals to be involved in preparing a draft lease. On the specific point that three individuals were involved, the Applicant has failed to show that this led to a higher overall cost. It is not uncommon for at least two lawyers to be involved

in a process such as this, with the junior (and cheaper) lawyer doing the more routine work and the senior lawyer doing the more complicated work, or alternatively with the junior lawyer doing all or most of the work under the senior lawyer's supervision. I accept that it is slightly unusual to have as many as three lawyers involved, but there are various plausible reasons for this, for example illness or pressure of workload causing one lawyer to need to hand over to another. In any event, the Applicant has failed to show that the involvement of three lawyers in this case has increased costs. The Applicant has referred generally to 'duplication' but has not identified what she believes has been duplicated such that the Respondent could have answered – or tried to answer – this point. Similarly, the reference to 'administrative time spent' is too vague to be persuasive as an argument in the absence of more detail.

15. The Applicant has requested that 'training time' be written off but has not substantiated the proposition that any time has in fact been spent on pure training of no benefit to the Applicant, rather than – for example – on a junior lawyer carrying out some work (at that junior lawyer's hourly rate) and then that work being checked by someone more senior, if that is indeed what has happened here.
16. The Applicant proposes an alternative figure of £3,000 plus VAT and disbursements but has provided no explanation as to how this alternative figure has been arrived at.
17. In conclusion, I am not persuaded that any of the Applicant's arguments constitutes a sound basis for reducing the amount payable by the Applicant to the Respondent pursuant to section 60 of the Act.

Name: Judge P Korn

Date: 12 September 2022

RIGHTS OF APPEAL

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. 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.