



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

**Case Reference** : CHI/29UB/OC9/2022/0017

**Property** : 71 Riverbank Way, Ashford, Kent, TN24  
0PZ

**Applicant** : Freehold Managers (Nominees) Ltd

**Representative** : Bolt Burdon

**Respondent** : Elaine Michelle Murphy

**Representative** : Kingsford Solicitors Limited

**Type of Application** : Landlord's costs new lease – Section 60(1)  
of the Leasehold Reform, Housing & Urban  
Development Act 1993

**Tribunal member** : D Banfield FRICS, Regional Surveyor

**Date of Decision** : 15 May 2023

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DECISION

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## **Background**

1. The Applicant seeks a determination of the costs payable by the Respondent. The application was received on 7 October 2022.
2. The Applicant is claiming Legal Fees of £1,304.36 (inclusive of VAT) and Valuation fees of £780.00 (inclusive of VAT).
3. The Tribunal made Directions on 31 January 2023 indicating that the application would be determined on the papers without a hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013 unless a party objected. No objection has been received and the application is therefore so determined.
4. The Tribunal's directions required the Applicant to send to the Respondent a statement itemising the claim to which the Respondent was to respond. The Applicant was then to prepare an agreed hearing bundle.
5. The Respondent has not engaged with the proceedings and no response is therefore included within the bundle. Whilst the Tribunal therefore relies on the unchallenged evidence of the Applicant it nevertheless needs to be satisfied that the costs claimed are reasonable.

## **The Law**

6. Section 60(1) of the Act provides that, where a notice is given under section 42, then, subject to the provisions of the section, the tenant is 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 ... in connection with the grant of a new lease under section 56;*
  - (c) *the grant of a new lease under that section.*
7. Section 60(2) provides:

*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 the costs.*
8. In summary therefore Section 42 of the Leasehold Reform, Housing, and Urban Development Act 1993 allows a leaseholder to serve a notice on their landlord requesting a lease extension. However, if the notice is

found to be invalid, the landlord may be entitled to recover their costs under Section 91(2)(d) of the Act.

9. In the case of *Day v Hosebay Limited* [2012] EWCA Civ 176, the Court of Appeal held that a landlord could recover their costs under Section 91(2)(d) of the Act even if the notice had been assigned to a purchaser. In that case, the leaseholder had served a notice on the landlord requesting a lease extension, but the notice was found to be invalid. The leaseholder subsequently assigned the benefit of the notice to a purchaser, who then sought to rely on the notice. The landlord argued that they were entitled to recover their costs under Section 91(2)(d) of the Act, even though the benefit of the notice had been assigned to a purchaser. The Court of Appeal agreed with the landlord, stating that the assignment of the notice did not affect the landlord's right to recover their costs.
10. Therefore, based on the *Day v Hosebay Limited* case law, a landlord who has received an invalid notice under Section 42 of the Leasehold Reform, Housing, and Urban Development Act 1993 can claim costs under Section 91(2)(d) of the Act, even if the benefit of the notice has been assigned to a purchaser.

### **The Submissions**

11. The Applicant's Statement of Costs referred to the receipt of a letter dated 1 March 2022 from Kingsfords Solicitors Ltd enclosing a copy of an undated Notice of Claim served by the Respondent's predecessor in title requiring the Applicant to respond with its counter notice by 21 March 2022 together with a copy of an Assignment.
12. On 18 March 2022 a counter notice was served without prejudice to the validity of the Notice and requesting evidence required to determine the validity of the Notice of Claim.
13. On 12 April 2022 Kingsfords requested details of the Applicant's surveyors to which the response was that before the claim could be progressed the documentation requested needed to be addressed.
14. Despite several reminders the documents were not provided and on 14 June 2022 the Applicant sent details of their section 60 costs.
15. Despite further chasing emails no response was received and an application was therefore made to the Tribunal on 7 October 2022, a copy being sent to Kingsfords.
16. Attached to the statement was a schedule detailing the actions undertaken by a Partner and Legal Executive at charge out rates of £400 and £280 per hour respectively. Also attached was an invoice dated 17 March 2022 from Bunch & Duke Chartered Surveyors for providing a valuation report.

## Decision

17. The Tribunal is not required by the Act to conduct a forensic examination of costs, such as might be required of a Costs Judge in a High Court action. The Tribunal considered the evidence and submissions made and determines whether the overall charges made are reasonable and chargeable by reference to Sections 60(1) and 60(2) of the Act and as referred to above.
18. Whilst the charge out rates exceed the Guideline rates; enfranchisement is considered to be expert work and the rates charged by a London firm are not considered unusual and as such are accepted. Overall, the itemised schedule appears reasonable, and the Tribunal determines that Legal Fees of £1,304.36 (inclusive of VAT) are payable by the Respondent.
19. Turning now to the valuation fees the Tribunal accepts that once a Notice has been received it is not unreasonable to obtain valuation advice even where the validity of the Notice is being challenged. A fee of £780 (inclusive of VAT) whilst at the upper end of what the Tribunal considers reasonable is nevertheless accepted and determined as payable by the Respondent.
20. **In summary the tribunal determines that the following Section 60 costs are reasonable and payable;**
  - **Legal fees of £1,304.36 (inclusive of VAT)**
  - **Valuation fee of £780 (inclusive of VAT)**

D Banfield FRICS  
15 May 2023

### **RIGHTS OF APPEAL**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.