



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

**Case reference** : **LON/00AH/OC9/2024/0055**

**Property** : **221B Norbury Crescent, London,  
SW164JX**

**Applicant** : **Sam Mills**

**Representative** : **Nexa Law Limited**

**Respondents** : **Avon Ground Rents**

**Representative** : **Coleman Coyle**

**Type of application** : **Application under s.91(2)(2)(D)  
Leasehold Reform Housing and  
Development Act 1993**

**Tribunal** : **Judge Shepherd**

**Date of Hearing** : **Paper application**

**Date of Decision** : **29<sup>th</sup> October 2024**

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**Decision**

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1. This is an application under s.91(2)(2) (D) of the Leasehold Reform Housing and Urban Development Act 1993 (“The Act”) for a determination of the costs to be paid under s.60(1) of the Act. The Applicant is Sam Mills a leaseholder of premises at 221 B Norbury Crescent, London SW16 4 JX (“The premises”). The

Respondent is the freeholder of the premises. The application arises from the costs incurred by the Respondent in responding to a lease extension claim.

2. The background to the matter is as follows.
  - a. On 11<sup>th</sup> April 2023 the Applicant served an invalid s.42 notice.
  - b. On 29<sup>th</sup> June 2023 the Respondent served a without prejudice notice maintaining an assertion that the s.42 notice was invalid.
  - c. On 10<sup>th</sup> July 2023 the Applicant enquired why the notice was invalid.
  - d. On 14<sup>th</sup> July 2023 the Respondent explained why the notice was invalid.
  - e. On 28<sup>th</sup> July 2023 the Applicant accepted the invalidity of the notice.
  - f. On 4<sup>th</sup> August 2023 the Applicant served a new s.42 notice.
  - g. On 13<sup>th</sup> October 2023 the Respondent served a new s.45 notice.
  - h. On 18<sup>th</sup> December 2023 the terms of acquisition were agreed.
  - i. On 9<sup>th</sup> April 2024 the new lease terms were agreed.
3. The dispute between the parties concerns the legal fees incurred and claimed by the Respondent. The surveyor's fees are not in dispute. The Respondent claims £4304.50 for the work of three solicitors: Mr Coyle, an Assistant Solicitor, Ms Elahi a senior Associate and Mr Curbison, a partner. The rates charged by the three members of staff vary according to experience. Mr Coyle charges £235 per hour; Ms Elahi £285 per hour and Mr Curbison £390 per hour. The Respondents say that there is no overlap in terms of work and the principal aim is to carry out this complex work with as much done by junior staff as is safely possible.

## **The law**

6. S.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]<sup>1</sup> 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.*

## **Determination**

7. The Applicant has made a detailed point by point challenge to the Respondent's fees. He says that the first notice was so obviously defective that it didn't require much work on the Respondent's side. One questions why, if it was the case that the notice was glaringly defective, the Applicant asked the Respondent it was invalid? In any event the fact remains that the notice was defective and a new one had to be served. The Respondent is right that the prudent course was to re-institute the process and carry out all of the steps carried out after the service of the first notice.

8. This area of practice is a minefield for solicitors to negotiate. The financial risks are serious. The failure by the Applicant to serve a correct notice necessarily caused an increase in costs. It is not reasonable for the Applicant to compare their costs which were apparently on a fixed fee without taking into account the extra work entailed in dealing with the new notice. I accept the Respondent's proposition that fees of £2500 plus VAT are not unusual in these cases. This is certainly my experience. However, that is for cases where there is only one notice and the process is relatively trouble free. Here there was extra work caused by the defective notice. In broad terms I accept that the extra amount claimed by the Respondents (in the order of £1800) was also reasonable. In broad terms therefore I decide the matter in favour of the Respondent.

## **Next steps**

9. The Applicant has made a point by point challenge to the costs bill. I am happy to address each individual challenge with both parties submissions but the schedule will need to be submitted in a form so that I can add to it. Accordingly at this stage this decision is in draft and a final decision will be made with the associated appeal rights once I have been able to address the individual cost challenges. In the interim I make the following order:

Within 7 days the Applicant is to submit to the Tribunal the costs schedule with both parties submissions on it in a document form that can be added to by the Judge.

Judge Shepherd

29<sup>th</sup> October 2024