

4407



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

**Case reference** : LON/00AN/OC9/2016/0485

**Property** : Flat 2, 2 Gliddon Road, London  
W14 9BH

**Applicant** : Women's Pioneer Housing Limited

**Representative** : Trowers & Hamblins LLP

**Respondent** : Vincenzo Treggiari (1)  
Silvia Toseroni (2)  
Hutchins & Co. Solicitors (3)

**Representative** : Hutchins & Co. Solicitors

**Type of application** : (1) Enfranchisement costs  
(2) Rule 13 costs

**Tribunal member(s)** : Judge Dickie

**Date of decision** : 20 March 2017

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**DECISION**

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**DECISION OF THE TRIBUNAL**

- 1) The tribunal determines that solicitors costs of £1412.40 plus VAT (and disbursements of £19.58 plus VAT), and surveyor's fees of £650 plus VAT are payable by the Respondents. The application for costs under Rule 13 is dismissed.

**THE APPLICATION**

- 2) This application has been made on 1 December 2017 for a determination of costs payable by the Applicant under section 60(1) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act").

- 3) The tribunal issued directions for this matter to be determined on the papers unless a hearing was requested. No such request having been received, the tribunal has proceeded to determine this application without an oral hearing.
- 4) The tribunal has received statements of case from the Applicant but has received no response from the Respondents.

## THE LAW

- 5) So far as is relevant, section 60 provides:

(1) Where a notice is given under section 42, then ... 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 any 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;...

(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 be reasonably be expected to have been incurred by him if the circumstances had been such that he was personally liable for all such costs....

(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.

## EVIDENCE

- 6) On 27 August 2015 the Respondent leaseholders of Flat 2, 2 Glisson Road, London W14 9BH ("the property"), sent to the Applicant freeholder a Notice of Claim pursuant to section 42 of the Act. The Applicant served a counter notice dated 27 October 2015 on the Respondents. No terms were agreed in respect of the grant of the new lease and the Respondents made an application to the tribunal under section 48(1) of the Act on 28 April 2016 (allocated reference LON/00AN/OLR/2016/0714). The Applicant sought a determination from the tribunal that it had no jurisdiction as the application had been made outside of the six month period specified in section 48(2) of the Act. The tribunal determined the issue of jurisdiction in the Applicant's favour by Order dated 17 August 2016.

- 7) I note that the Upper Tribunal has recently considered similar facts in 16 February 2017 in *Mahtaban Salehabady v Trustees of the Eyre Estate [2017] UKUT*.
- 8) The costs that are the subject of this application and sought by the Respondent are
  - a) Solicitors' costs £4165.80 plus VAT
  - b) Valuer's fees £650.00 plus VAT
  - c) Rule 13 costs of £1648.20 plus VAT

### **Solicitors' Costs**

- 9) The tribunal directed the Applicant's solicitor to provide a schedule of costs sufficient for summary assessment. The Applicant's solicitor produced in response only a further copy of the costs record provided with the application. This records costs totalling £5184, and it is asserted that £4165.80 is recoverable under s.60 of the Act. However, I am unable to identify from which entries that figure is derived. The description for many of the entries is insufficiently detailed.
- 10) It is not clear that any of the costs after 19 November 2015 up until the application was made to the tribunal relate to anything other than negotiation over the premium, and such costs are not recoverable under s.60. The application to the tribunal for the determination of the premium was made by 28 April 2016. Costs thereafter appear to be costs in the proceedings, which are not recoverable under s.60.
- 11) The hourly rate charged is £262 plus VAT for a Grade A partner and is reasonable. I have therefore allowed costs incurred up to 19 November 2015 which relate to service of the counter notice. These total £1412.40 plus disbursements of £19.58 plus VAT.

### **Valuer's Fees**

- 12) The valuer's fees of £650 plus VAT are reasonable and allowed in full.

### **Rule 13 Costs application**

- 13) The Applicant has made an application under Rule 13 for costs against the Respondents and their solicitors. However, pursuant to Rule 13(5) such an application must be made during the proceedings or within 28 days after the date on which the tribunal sends a decision notice recording the decision which finally disposes of all issues in the proceedings.
- 14) The tribunal issued its reasoned decision on application LON/00AN/OLR/2016/0714 on 17 August 2016, and the application for costs was received on 2 December 2016. The tribunal wrote to the Applicant's solicitors on 1 March 2017 observing that the application for costs appeared to be out of time. They have responded by letter dated 6 March 2017 arguing that their application is not out of time as the decision

of 17 August 2016 related only to the tribunal's jurisdiction and was not a final determination, since there is no decision finally disposing of all issues in these proceedings until the s.60 costs are determined.

- 15) I cannot agree with the Applicant's submissions however, since the effect of declining jurisdiction was that the s.48 proceedings came to an end. The tribunal's absence of jurisdiction does I find finally dispose of all issues in those proceedings. The application under Rule 13 for costs in respect of those proceedings was out of time.
- 16) The Applicant's solicitors seek costs under Rule 13 to include those incurred during a three month period post dating the decision on jurisdiction. However, costs under Rule 13 can only be ordered if a person has acted unreasonably in bringing, defending or conducting proceedings, and there were no proceedings in existence during that three month period. In any event, the Applicant could easily have brought any prevarication to an end at any time during this period by applying to the tribunal.
- 17) The Applicant's solicitors have applied for an extension of time to make their Rule 13 application, in the event that I find it is out of time. I decline to exercise my discretion to do so. None of the circumstances justify the delay in applying for costs incurred in the s.48 proceedings.
- 18) To the extent that the application for costs relates to those incurred in the s.60 proceedings, it is in time. However, I decline to make an order for such costs in all of the circumstances because the Respondent's conduct is not deserving of an order for costs, and in any event those costs are not separately and sufficiently identified.

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**Name:** F Dickie

**Date:** 20 March 2017