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

**Case Reference** : **LON/00BF/OC9/2016/0029**

**Properties** : **Ground Floor Flat, 105 St James Road, Sutton, Surrey SM1 2TJ**

**Applicant** : **Nicola Catherine Elizabeth Molina**

**Representative** : **Carpenter & Co, Solicitors**

**Respondent** : **Mr Roland Way**

**Representative** : **Porter & Co, Solicitors**

**Type of Application** : **Application for the determination of reasonable costs pursuant to sections 60 of the Leasehold Reform, Housing and Urban Development Act 1993**

**Tribunal Members** : **Judge N Hawkes**

**Date and venue of paper determination** : **23<sup>rd</sup> March 2016 at 10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **23<sup>rd</sup> March 2016**

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## DECISION

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### Decision of the Tribunal

**The Tribunal determines that the total sum of £1,897 plus VAT (£2,276.40) is payable by the applicant in respect of legal fees and valuation costs.**

### Background

1. This is an application under section 91 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act"). The application is for the determination of the costs payable by the applicant under section 60(1) of the 1993 Act.
2. By a decision dated 25<sup>th</sup> November 2015, the Tribunal determined the premium payable by the applicant for the grant of a new lease of the Property. However, a new lease was not entered into by the end of the period allowed under the provisions of the 1993 Act and it is common ground that the applicant's notice pursuant to section 42 of the 1993 Act is deemed to have been withdrawn.
3. The costs payable by the applicant have not been agreed and, accordingly, the respondent makes this application to the Tribunal seeking a determination of the statutory costs payable.
4. Directions were issued on 22<sup>nd</sup> January 2016. These Directions provided for the application to be determined by way of a paper determination unless either party requested an oral hearing within 14 days of the date of the Directions.
5. Neither party has requested an oral hearing. Accordingly, this matter has been determined by way of a paper determination on Wednesday 23<sup>rd</sup> March 2016.

### The law

6. Section 60 of the 1993 Act provides:

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.

7. Drax v Lawn Court Freehold Limited [2010] UKUT 81 (LC) dealt with costs under section 33 of the 1993 Act, rather than section 60, but the principles established in Drax have a direct bearing on costs under section 60.
8. In summary, costs must be reasonable and have been incurred in pursuance of the section 42 notice in connection with the purposes listed in sub-paragraphs 60(1)(a) to (c). The applicant is also protected by section 60(2), which limits recoverable costs to those that the respondent would be prepared to pay if they were using their own money rather than being paid by the applicant.
9. This introduces what was described in Drax as a "(limited) test of proportionality of a kind associated with the assessment of costs on the standard basis". It is also the case, as confirmed by Drax, that the landlord should explain and substantiate the costs claimed.

10. The Tribunal has had regard to the first instance decisions which have been referred to by the applicant.

### The Submissions

11. The respondent seeks to recover costs in the total sum of £11,752.50. The costs claimed include the costs of arguing and negotiating the claim and the costs of the proceedings before the Tribunal.
12. In respect of the costs of arguing and negotiating the claim, the applicant relies upon Paragraph 32.24 of Hague on Leasehold Enfranchisement which provides:  
  
*“The matters for which the tenant is liable to pay costs are:*  
...  
*(iii)*  
*The grant of a new lease under s.56. This has been construed as meaning “the costs of and incidental to the drafting and execution of the new lease”, and will not include the costs of arguing or negotiating the claim” [reference is made to Huff v Trustees of the Sloane Stanley Estate unreported 1997 LVT].*
13. In respect of the costs of the proceedings before the Tribunal, the applicant relies upon subsection 60(5) of the 1993 Act, which is set out above.
14. The applicant accepts that the hourly rate charged by the respondent’s solicitor is reasonable. However, the applicant seeks clarification as to whether or not the solicitor (Mr James Roland Way) and the respondent are one and the same person and questions whether, if this is the case, the fees are recoverable. The applicant also argues that the time spent by the applicant’s solicitor is excessive.
15. The applicant accepts that the surveyor’s fee of £750 plus VAT for the initial valuation is reasonable.
16. The respondent explains that Mr Roland Way is not acting in person and that he has, throughout these proceedings, been represented by his son, Mr James Roland Way. The respondent asserts that the time spent by Mr James Roland Way in dealing with this matter is reasonable.
17. The respondent does not challenge the legal submissions made by the applicant regarding the costs of arguing and negotiating the claim and the costs of the proceedings before the Tribunal.
18. Instead the respondent claims in his reply to the applicant’s statement of case that the applicant should be ordered to pay the costs of the Tribunal proceedings pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 (“the Tribunal Procedure Rules”).

## The Tribunal's determination

### *Costs pursuant to rule 13 of the Tribunal Procedure Rules*

19. There is no reference to a claim for costs pursuant to Rule 13 of the Tribunal Procedure Rules in the respondent's application and Rule 13 is not expressly referred to in the respondent's statement of case.

20. However, in the statement of case the respondent asserted:

*"On 7<sup>th</sup> December 2015, Porter & Co received a letter advising that Ms Molina (1) only had about £40,000 worth of savings and a limited income and (2) did not appear to have the funds to extend her lease in accordance with the Tribunal's decision. It appears that, in front of the Tribunal, Mr Weston was instructed to advance a figure that his client could not afford. In other words, even if the Tribunal had set the Premium at Mr Weston's figure, it seems the Applicant could not have afforded the Premium plus statutory costs. The Respondent respectfully submits that this conduct was unreasonable and led to him incurring unreasonable costs."*

21. The applicant has responded to this assertion in her statement of case and the respondent has provided the Tribunal with a copy of the letter of 7<sup>th</sup> December 2015. Accordingly, I consider that it is appropriate and proportionate to rule on this issue, notwithstanding the fact that the first express reference to Rule 13 costs is contained in the respondent's reply to the applicant's statement of case.

22. By Rule 13 of the Tribunal Procedure Rules provides that "(1) The Tribunal may make an order in respect of costs only—(a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs; (b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—... (iii) a leasehold case."

23. It is assumed that the respondent seeks to rely upon Rule 13(1)(b). Before this costs power came into effect, the Tribunal had the power to make an award of costs under paragraph 10, Schedule 12 of the Commonhold and Leasehold Reform Act 2002 limited to a maximum order of £500 (or other amount to be specified in procedure regulations). Under Rule 13 of the Tribunal Procedure Rules there is no upper limit on the amount of the costs which a party can be ordered to pay.

24. Rule 13 costs orders should, in my view, be reserved for cases where on any objective assessment a party has behaved so unreasonably that it is only fair and reasonable that the other party is compensated by having their legal costs paid. This is because the Tribunal remains essentially a costs-free jurisdiction where an applicant should not be deterred from

using the jurisdiction for fear of having to pay the other party's costs should she or he simply be unsuccessful in their application.

25. It appears from the respondent's reply that, at the hearing, Mr Weston for the applicant advanced a case that the premium should be no more than £44,702. The letter dated 7<sup>th</sup> December 2015 from the applicant's solicitors states that the applicant's only assets comprise savings "in the region" of £40,000 and a "limited" income. The size of the applicant's limited income and the extent to which she might be able to borrow are not specified. This is because the purpose of the letter was to explain that the applicant could not afford to pay a premium of £67,500.
26. The respondent asserts in his reply that the applicant "must have ignored advice given as to valuation and the chances of success bearing in mind the amount she had available (as recently revealed)" and that the applicant advanced a figure at the hearing which she could not pay and which was approximately one third lower than that found by the Tribunal.
27. The applicant states her statement of case that she "at all times acted in good faith and upon the advice and guidance of those representing her."
28. I am not satisfied that the respondent has established on the balance of probabilities that this assertion on the part of the applicant is incorrect. I note that the statement of case was served and drafted by the applicant's solicitor. Paragraph 1 of the statement of case states that the statement of case is produced "on behalf of" the applicant.
29. Further, I am not satisfied on the balance of probabilities that the applicant would not have been able to pay the premium put forward by Mr Weston at the hearing and the statutory costs having regard to the fact her savings are "in the region" of £40,000 and the size of her limited income and the extent to which she might be able to borrow have not been specified.
30. Accordingly, I am not satisfied that the applicant has acted unreasonably in bringing, defending or conducting the proceedings before the Tribunal and do not make any order for costs against the applicant pursuant to Rule 13 of the Tribunal Procedure Rules.

*Costs recoverable under section 60 of the 1993 Act*

31. As stated above, the respondent does not challenge the legal submissions made by the applicant regarding the recoverability of the costs of arguing and negotiating the claim and the costs of the proceedings before the Tribunal.
32. I accept the applicant's unchallenged submissions on these issues and find that Mr Russ's fees in the sum of £1,225 (plus VAT) for negotiations with Mr Weston; Mr Russ's fees in the sum of £3,675 (plus

VAT) for preparing the submission for and attending the Tribunal hearing; Mr Roland Way's fees in the sum of £573.50 (plus VAT) for preparing for the Tribunal hearing; and Mr Roland Way's fees in the sum of £111.00 (plus VAT) in respect of communications with the Tribunal are not recoverable (items 5, 6(2) and (3) and 10 in the costs schedule).

33. I accept the respondent's statement that Mr James Roland Way is the respondent's son and not the respondent himself. The Tribunal has been informed that Mr James Roland Way was admitted in June 2007 and that he has acted as a "consultant solicitor" throughout. His hourly rate is £185 plus VAT and I find that this hourly rate (which is not disputed by the applicant) is reasonable. In the circumstances of this particular case, I find that the time spent by Mr Roland Way in connection with items 2 to 5 in the costs schedule during the period 10<sup>th</sup> October 2014 to 10<sup>th</sup> November 2014 was reasonable.
34. The remaining items in the costs schedule (items 7, 8, 9, 11, 12 and 13) include some work which relates to the Tribunal proceedings and the time spent on the Tribunal proceedings is not broken down. The applicant submits that a further 1 hour of chargeable time (£185 plus VAT) should be allowed. The respondent claims a total of £2,867.50 plus VAT in respect of these remaining items, including the additional fees which relate to work carried out in connection with the Tribunal proceedings. Doing my best on the basis of the limited information available, I find that it is reasonable to allow a further 3 hours of chargeable time (£555 plus VAT) in respect of the remaining items insofar as they relate to matters which fall within section 60 of the 1993 Act.
35. Accordingly, I determine that the total amount payable is as follows:

Legal fees in the sum of £1,147 plus VAT

Valuation fees in the sum of £750 plus VAT

**Total payable £1,897 plus VAT**

Judge N Hawkes

23<sup>rd</sup> March 2016