

44669



**First-tier Tribunal  
Property Chamber  
(Residential Property)**

**Case reference** : **CAM/00KG/OC9/2018/0001**

**Property** : **80 Ashlands Court,  
Coronation Avenue,  
East Tilbury,  
RM18 8SW**

**Applicant** : **Jacqueline Stone**

**Respondent** : **Leafenvoy Ltd.**

**Date of Application** : **26<sup>th</sup> March 2018**

**Type of Application** : **To determine the costs payable on  
a lease extension (Section 60 of the  
Leasehold Reform and Urban  
Development Act 1993 (“the 1993  
Act”))**

**The Tribunal** : **Bruce Edgington (lawyer chair)  
David Brown FRICS**

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**DECISION**

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1. The reasonable legal costs of the Respondent payable by the Applicant pursuant to Section 60 of the 1993 Act are £1,258.20.
2. As the services of the solicitors and valuer concerned are to the landlord, not the tenant, VAT is only payable on such fees by the tenant if the landlord is either not registered for VAT purposes or cannot claim the VAT as an input. The landlord’s solicitors, on page 58 of the bundle, have stated that the landlord is registered for VAT purposes. If VAT is still claimed, a certificate from the landlord’s auditors or solicitors (either of which will be sufficient) will have to be provided to the tenant confirming that VAT cannot be recovered as an input.

**Reasons**

**Introduction**

3. This dispute arises from the service of an Initial Notice seeking a lease extension of the property by a qualifying tenant. In these

circumstances there is a liability on the Applicant to pay the Respondent's reasonable legal and valuation costs.

4. It should be said at the outset that the original application form and, as a result, the directions order, give the applicant as Leafenvoy Ltd. (landlord) and the Respondent as Jacqueline Stone (tenant). That is clearly incorrect as the applicant's signature on the applicant appears to be that of Stevensons who act for Jacqueline Stone. The statement of costs and points of dispute appear to be headed correctly with the landlord's name as Respondent, not Applicant. This decision reflects that reality.
5. It is also regrettable that the landlord's replies to the objections were not put on the same form as the objections – as specifically ordered – which makes the format of this decision as set out in the directions order impossible to create. Thus, more time has to be spent by the Tribunal who remind the landlord's solicitors in particular of the requirement in the overriding objective to help the Tribunal.
6. The terms of the lease extension and valuation fee have been agreed and the legal fees claimed are £1,607.50 plus disbursements and VAT.
7. The Tribunal made a directions order on the 8<sup>th</sup> April 2018. The order advised the parties that the Tribunal considered that the outstanding issues could be dealt with on a consideration of the papers and submissions lodged and the Tribunal would do so on or after 1<sup>st</sup> June 2018. However, it told the parties that if anyone wanted an oral hearing then they should say so and one would be arranged. No request for an oral hearing was made.

### **The Law**

8. It is accepted by the parties that an Initial Notice was served and therefore Section 60 of the 1993 Act is engaged. For the reasons set out below, the Applicant therefore has to pay the Respondent's reasonable costs of and incidental to:-
  - (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;*  
*(Section 60(1) of the 1993 Act)*
9. What is sometimes known as the 'indemnity principle' applies i.e. the Respondent is not able to recover any more than it would have to pay its own solicitors in circumstances where there was no liability on anyone else to pay (Section 60(2)). Another way of putting this is to

say that any doubt is resolved in the receiving party's favour rather than the paying party.

### **Discussion**

10. The Applicant relies upon the Upper Tribunal decision of **Sinclair Gardens Investments (Kensington) Ltd. v Wisbey** [2016] UKUT 0203 (LC). The first point raised is the work undertaken to communicate with the surveyor. As is correctly stated by the Applicant's solicitors, **Wisbey** says that the instruction of the surveyor is not something a client would expect to pay for. However, that case only dealt with the instruction of the surveyor (not claimable) and the solicitor's consideration of the valuation report (claimable). No intervening communication was dealt with. The landlord's solicitors do not say what these other communications are but merely say that the **Wisbey** decision is that all the costs are recoverable, which is not what paragraph 25 says.
11. The next objection is to argue about the number of communications after completion. The objection fails to acknowledge the need to communicate with the management company. Yes, there are quite a few letters claimed for but the Tribunal considers that these are within the realms of reasonableness. Suggesting that the solicitor should not contact his client by telephone seems to the Tribunal to be unrealistic. As has been said, any doubt should be resolved in the receiving party's favour, which it is.
12. Objection 5 relates to the deduction made by the Upper Tribunal in **Wisbey** of a bulk discount for quantity when, as in this case, there are a substantial number of similar leases in the same estate. It does not seem to be contested that the landlord's solicitors have already dealt with 9 lease extensions on this estate. The point is that if the landlord had to pay the costs for all these transactions, a commercial decision would be made to negotiate a discount. The discount allowed in **Wisbey** was 20%, not 80% as alleged by the Applicant's solicitors.
13. Paragraph 36 of the decision is very clear and the decision is made because, amongst other things, there was no "*...evidence from the appellant (with reasons) as to why a quantum discount/fixed fee reduction was not available in respect of the solicitors' costs*". Despite the landlord's solicitors knowing what the decision said, they have not provided such evidence either. They just say that the paragraph is disputed. That may be the case but this Tribunal is bound by a clear statement from the upper Tribunal. There will be a 20% discount in respect of profit costs.
14. The Tribunal had some other concerns about, for example, the amount of time spent on reviewing the lease and drafting the counter-notice and deed of surrender and new lease. However, it will not make any further deduction in view of the previous paragraph above.

15. The final point is about VAT and the paragraph in the decision dealing with this issue is self explanatory. The Tribunal considers this to be the only fair way of dealing with the issue.

### **Conclusions**

16. The Tribunal concludes that it will deduct 2 letters to the surveyor (£50) and 20% of the balance ( $£1,607.50 - £50 = £1,557.50 \times 20\% = £311.50$ ) leaving a balance of £1,246.00 plus disbursements of £12.20 i.e. a total of £1,258.20.



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**Bruce Edgington**  
**Regional Judge**  
**1<sup>st</sup> June 2018**

### **ANNEX - RIGHTS OF APPEAL**

- i. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
- ii. 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.
- iii. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- iv. 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.