FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CHI/OOML/OC9/2019/0007**
Property	**:**	**25 Sheridan Mansions, Sheridan Terrace, Hove, East Sussex, BN3 5AJ**
Applicant	**:**	**Homejoin Limited**
Represented by	**:**	**Coole Bevis LLP**
Respondent	**:**	**Staimon Securities Limited**
Represented by	**:**	**Ingram Winter Green LLP**
Type of Application	**:**	**Landlord's costs: Leasehold Reform Housing and Urban Development Act 1993, section 60(1).**
Tribunal Member	**:**	**Judge M Davey**
Date of Decision	**:**	**7 May 2019**

DECISION

The Tribunal determines that reasonable costs of £2,604.84 (including VAT) are recoverable by the Respondent from the Applicant under section 60 of the Leasehold Reform Housing and Urban Development Act 1993. The breakdown is set out in the following table.

	Costs	VAT	Sub-total
Legal costs	£1,200	£240	£1,440.00
Disbursements			£ 45.60
Valuation costs			£1,119. 24
			£2,604.84 incl. VAT

REASONS FOR DECISION

The Application

1. These are the reasons for decision of the First-tier Tribunal (Property Chamber) ("the Tribunal") in the matter of an application ("the Application") to the Tribunal dated 04 March 2019. The Application is made under section 91(2)(d) of the Leasehold Reform Housing and Urban Development Act 1993 ("the 1993 Act") by Homejoin Limited ("the Applicant"). The respondent to the Application is Staimon Securities Limited ("the Respondent"). Coole Bevis LLP ("CB") represents the Applicant and Ingram Winter Green LLP ("IWG") represents the Respondent. The Application is for a determination of reasonable costs payable to the Respondent by the Applicant under section 60 of the 1993 Act.

Background to the Application

2. The Applicant tenant acquired the long leasehold interest in 25 Sheridan Mansions, Sheridan Terrace, Hove, BN3 5AJ, ("the Flat"), on 12 May 2008. The lease was granted on 1 August 1974 for a term of 125 years commencing on 25 March 1974. On 16 October 2018 the Applicant, in whom the lease was still vested, served a notice, through CB, on the Respondent landlord of the Flat under section 42 of the 1993 Act, claiming a new lease of the Flat. The notice proposed a premium of £5,000 for the new lease. On 11 December 2018 the Respondent, through IWG, served a counter notice on the Applicant under section 45 of the 1993 Act. That notice admitted the Applicant's entitlement to acquire a new lease but proposed a premium of £6,600. By an email of 12 December 2018 to IWG the Applicant's solicitors, CB, accepted the counter proposed premium.

3. On 3 January 2019 CB received a draft lease from IWG. On 4 January 2019 the draft was returned to IWG with amendments. From 4 to 22 January 2019, emails were exchanged between the solicitors with regard to a disagreement as to the terms of the new lease. On 22 January 2019 the new lease was agreed. The Respondent landlord subsequently sought costs of £3,756.84 (including VAT) payable by the Applicant under section 60 of the 1993 Act. The Applicant does not agree the sum claimed and now seeks a determination from the Tribunal as to the reasonable costs payable.

4. Mr D Banfield FRICS issued Directions on 18 March 2019. The Directions stated that the Application would be determined without a hearing, unless either party objected within 28 days, and set out a timetable for submission of arguments.

The Law

5. Section 60 of the 1993 Act provides as follows:

> (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 tribunal incurs in connection with the proceedings.

(6) In this section "relevant person" in relation to a claim by 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.

The Respondent's claim

6. The Respondent landlord claims costs of £3,756.84 (including VAT) as follows:

	Costs	VAT	Sub-total
Legal costs	£2,160	£432.00	£ 2,592.00
Disbursements			£ 45.60
Valuation costs			£ 1,119.24
		Total	£3,756.84

7. The sum of £2,160 is made up as follows.

Time of solicitor (Adam Pearlman) up to service of counter notice: 1 hour 48 minutes @ £240 per hour = £432

Time of partner (Daniel Ginsbury) up to service of counter notice: 54 minutes @ £400 per hour = £360

Time of solicitor from service of counter notice to completion (including post-completion matters): 5 hours 12 minutes @ £240 per hour = £1,248

Time of partner from service of counter notice to completion (including post-completion matters): 18 minutes @ £400 per hour = £120.

The Applicant's case

8. The Applicant does not dispute the valuation fee, but challenges the landlord's legal costs as follows. First, that it was not necessary for IWG to use a junior solicitor and a partner to oversee the former's work. The Applicant states that the matter was straightforward and that the use of

the former alone would have been perfectly reasonable. Second that a reasonable sum for that solicitor's time up to the service of the counter notice would be 2 hours @ £240 per hour plus VAT (amounting to £480 plus VAT). The Applicant states that it does not dispute the disbursements of £14.40. Third that the solicitor's time taken between service of the counter notice and completion was excessive, because it included time spent arguing over the terms of the new lease which is not an allowable item (*Huff v Trustees of the Sloane Stanley Estate* (1997) unreported LVT decision), and that 2.5 hours @ £240 per hour (i.e. £600) would be a reasonable amount for drafting and executing the new lease. Fourth, that time (unspecified) taken on a post-completion matter (as opposed to completion) does not fall within the scope of section 60(1)(c) of the 1993 Act. Fifth, the Applicant submits that a disbursement of £31.20 charged by the Respondent for the electronic transfer of the premium to it by its solicitors does not fall within the scope of section 60(1)(c) because it is post completion and accordingly this charge should be disallowed. Finally, the Applicant states that the legal costs claimed by the Respondent are £2,124.00 and not the sum of £2,160 shown in the solicitor's schedule of costs.

The Respondent's case

9. The Respondent submitted that it was reasonable for the relevant legal work to be carried out by a solicitor at a charge out rate of £240 plus VAT per hour and for that work to be checked by a partner with a charge out rate of £400 plus VAT per hour. The Respondent stated that this was IWG's standard procedure and standard legal practice.

10. The Respondent further submitted that there was a dispute over the terms to be contained in the new lease and that the matter was prolonged by the Applicant's solicitor seeking variations to the draft lease, most of which were inappropriate and unnecessary thereby forcing IWG to spend additional time dealing with the matter.

The Applicant's Response

11. The Applicant referred to the counter notice, which expressly stated that the Respondent accepted the proposed terms set out in paragraph 4 of the Applicant's section 42 claim notice, dated 16 October 2018. Nevertheless, the Respondent subsequently sought to include further provisions in the draft lease, (clauses 3.2 and 5) which were not contained in the counter notice. The Applicant says that it was accordingly too late to introduce these terms, which were subsequently withdrawn by the Respondent. The Applicant submitted further and in the alternative that in any event "the costs of and incidental to the drafting and execution of the new lease" does not include the costs of arguing or negotiating the claim (see paragraph 8 above) and that those costs should therefore be excluded.

Discussion

12. Section 57(1) of the 1993 Act provides that the terms of the new lease are prima facie the same as those of the existing lease as they apply on the date when the claim notice was given. The Act provides for a limited number of grounds on which either party may require the exclusion or modification of an existing term (section 57(6)). Save in such cases any exclusion or modification would need to be by way of agreement between the parties.

13. Section 60 of the 1993 Act is designed to protect both landlord and tenant. It permits the landlord to recover the costs of being compelled to grant a new lease in accordance with the scheme of the Act. At the same time it also protects the tenant from being charged costs for professional services, which are unreasonable in amount.

14. Section 60(1) provides that the tenant is responsible for "the reasonable costs of and incidental to …(a) any investigation reasonably undertaken of the tenant's right to a new lease." It thus covers legal work carried out from receipt of the section 42 claim notice to service of the counter notice. In the present case the claim notice was served on 16 October 2018 and the counter notice was served on 11 December 2018. The Respondent claims £792 (1 hour 48 minutes @ £240ph and 54 minutes at £400ph). The Applicant says that this is unreasonable and that £480 (2 hours at £240 ph) would be a reasonable sum, the use of a partner to oversee the work of his junior colleague being unnecessary in what was a straightforward case. The Tribunal agrees with the Applicant. In a more complicated case use of a partner could be necessary and reasonable. However, this was a straightforward claim, with a standard title and the counter notice was simple and brief. The Tribunal accordingly agrees that £480 would be a reasonable sum to charge to the Applicant tenant.

15. Section 60(1) also makes the tenant liable for "the reasonable costs of and incidental to …(c) the grant of a new lease." In the present case this covers the period from 12 December 2018 to 31 January 2019. The Respondent claims £1,368 (5 hours 12 minutes @ £240 ph and 18 minutes at £400 per hour. The Applicant says that this is excessive and contends for £600 (2.5 hours at £240 per hour).

16. Clause 4 of the claim notice stated

"We propose that the terms of the new lease should be as follows:

(a) A term expiring 90 years after the term date of the existing lease.
(b) A peppercorn ground rent for the duration of the term of the new lease
(c) Save for:
    (i) the term of years and the rent; and

(ii) the provisions and terms required by sections 57(7), (8) and (11) of the LRHUDA 1993;

The terms to be contained in the new lease shall be the same as those in the existing lease as they apply on the relevant date."

17. The counter notice of 11 December 2018 stated

"The landlord admits that the applicant had on the relevant date the right to acquire new lease of the flat and:

(a) the landlord accepts the following proposals in the applicant's notice:

Grant of a new lease of 25 Sheridan Mansions, Sheridan Terrace, Hove BN3 5AJ under the 1993 Act on the proposed terms set out in paragraph 4 of the applicant's section 42 notice dated 16 October 2018."

18. On 12 December 2018 Jonathan Everett of CB emailed Daniel Ginsbury of IWG stating that, "I am instructed that my client is willing to agree the counter-proposed premium of £6,600. As there is no dispute between us regarding the terms to be contained in the new lease, I consider that terms of acquisition, as defined in section 48(7) of the LRHUDA 1993 are agreed as at 12 December 2018. If you disagree, please let me know. Otherwise, I look forward to receiving a draft lease for consideration within the next 14 days."

19. The draft lease was received by CB on 3 January 2019. Because that draft contained terms that were not specified in the claim notice or counter notice it was returned to IWG on 4 January 2018 with amendments. Between that date and 22 January 2018 there was emailed correspondence between the two firms of solicitors with regard to this conflict of opinion. CB claimed that it was not possible for IWG to introduce new terms after 12 December 2018 when the terms to be contained in the new lease had been agreed. The Respondent appeared to accept this argument when it withdrew the contested terms on 22 January 2019. The Applicant says that accordingly time spent on arguing these terms should not be chargeable to the Applicant. It also submits that it has been held by a leasehold valuation tribunal that section 60 does not permit recovery of the costs of arguing or negotiating the claim because these are not covered by the landlord's statutory entitlement to charge to the tenant the "costs of and incidental to the drafting and execution of the new lease" (*Huff v Trustee of the Sloane Stanley Estate* LON/NL/117 cited in paragraph 32-24 of Hague: Leasehold Enfranchisement 6th edn.)

20. The Tribunal agrees with the Applicant that because of the terms of the counter notice, it was fruitless for IWG to insist on new terms in the draft lease. The terms had been agreed and the landlord did not seek to rely on section 57(6) of the 1993 Act, leaving aside the problematic issue of whether it is possible for a party to introduce

terms not specified in the claim notice or counter notice. The Tribunal makes no decision on the alternative claim that the costs of arguing new terms are not incidental to the drafting and execution of the new lease. The Tribunal was not furnished with a copy of the *Huff* LVT decision. Furthermore, the reference to "arguing or negotiating *the claim*" is not necessarily the same as arguing or negotiating *the terms of the draft lease* (emphasis supplied).

21. The Tribunal accordingly agrees with the Applicant that 5 hours 12 minutes was too long in respect of the time that could reasonably have been taken by Adam Pearlman in connection with the grant of the lease. The Tribunal finds that a reasonable time would have been 30 units (i.e. 3 hours at £240 per hour) thereby costing £720.

22. The Tribunal agrees that time spent by IWG on a "post completion matter" is not incidental to granting the lease and in the absence of further and better particulars of the same the estimated time dealing with completion and a post completion matter has been reduced to 6 units.

23. The Tribunal does not agree with the Applicant that a disbursement of £31.20 for the electronic transfer of the premium to the Respondent from IWG is irrecoverable from the Applicant. It is an expense incidental to the drafting and granting of the lease because receipt of the funds from the purchaser is an essential aspect of that transaction.

RIGHT 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 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, that 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.

Martin Davey
Chairman

7 May 2019