



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

Case reference	:	RC/LON/00AC/OC9/2018/0348
Property	:	13 Sheridan Lodge & Parking Space, Potters Road, Barnet, Herts, EN5 5HW
Applicants	:	Mr. CAM Stark (Leaseholder)
Representative	:	Howard Schneider Spiro Steele (Solicitors)
Respondents	:	Freehold Estates Ltd. (Landlord)
Representative	:	Stevensons (Solicitors)
Type of application	:	Section 60 of the Leasehold Reform, Housing and Urban Development Act 1993
Tribunal Members	:	Mr N. Martindale FRICS
Date of determination and venue	:	10 September 2019 at 10 Alfred Place London WC1E 7LR
Date of decision	:	10 September 2019

DECISION

The section 60 costs determined by the Tribunal are £1,645.80 plus VAT,
where applicable

REASONS

Background

1. This is an application made under the provisions of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) in relation to the prospective extension of the lease of the Property. In their application dated 14 November 2018 the applicants sought determination of the premium, other sums payable, the landlords costs; and the terms of the new lease of the Property.
2. Standard directions dated 13 June 2019 were issued by the Tribunal office. These included requirements for the content and timing of submissions on the substantive matters of dispute, and dealt with S.60 costs. The application was listed for hearing on request of either party on 7 August 2019 or otherwise by default on the papers in the week commencing 5 August 2019.
3. On 31 July 2019 owing to extensive non-compliance with the standard directions by the applicant, both parties were notified that the Tribunal was minded to strike out the application. Representations on this proposal were invited in the Directions on 31 July 2019 and again by letter on 7 August 2019 to be received before 19 August 2019.
4. On 8 August 2019 solicitors for the respondent confirmed that they had complied with the original directions and had supplied a bundle to the Tribunal on 25 July 2019. They also asked that the application was not struck out, but that the Tribunal issue a determination on the landlord’s costs arising under S.60 of the Act. They supplied a copy of their earlier Statement of Case which had been acknowledged as received by the applicant’s solicitors on 26 June 2019.

Law

5. Section 60 of the Act is reproduced in the Appendix to this decision. for costs arising in the case of lease extensions. Section 33 is also reproduced and deals with costs in the case of freehold purchases.
6. The proper basis of assessment of costs in enfranchisement cases under the 1993 Act, whether concerned with the purchase of a freehold or the extension of a lease, was set out in the Upper Tribunal decision of *Drax v Lawn Court Freehold Ltd* [2010] UKUT 81 (LC), LRA/58/2009. That decision related to the purchase of a freehold. The costs incurred by the landlord of obtaining professional services, in responding to a claim must be reasonable and have been incurred in dealing with the Notice and any subsequent transfer. The same approach applies to lease extensions.
7. Those landlord costs incurred and arising from the claim for a new lease must be for the purposes listed in the Act, only, under S.60 (1)(a - c).

The tenant is also protected by section S.60(2). Both sub-sections effectively limit recoverable costs to those that the landlord would be prepared to pay if it were using its own money rather than being paid by the tenant.

8. In effect, 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 only receive its costs where it has explained and substantiated them. Furthermore, when a court is determining costs, and where there is any doubt, the benefit should be resolved in favour of the paying party, CPR44.3 (2)(b).
9. It does not follow that this is an assessment of costs on the standard basis (let alone on the indemnity basis). This is not what S.33 or S.60 says, nor is *Drax* an authority for that proposition. Both sections are self-contained.

Applicant’s Case

10. The Tribunal did not receive from the applicant, any representations in reply to the Tribunal’s Notice considering striking out of the application, nor were any representations or counter representations regarding the award of S.60 costs to the landlord respondent, received from the applicant.

Respondent’s Case

11. The Tribunal received a letter dated 12 August 2019 from the respondent. It included a copy of the Statement of Case prepared in response to the Tribunal’s original directions dated 13 June 2019. It included an account and brief representations for each item. The Statement dealt with the costs of dealing with the Notice of claim from the tenant; the draft lease and of the valuation of the premium and any other sums.
12. The respondent sets out the initial work done and confirms that no abortive work was undertaken after the drafting of the new lease. The respondent claims various sums under the usual heads. All of the work was apparently performed by G N Stevenson (GNS) at an hourly charge rate of £285 plus VAT. It appeared to the Tribunal that the applicant was not now pursuing their claim for enfranchisement.

Notice of Claim costs

13. Item 1: Attendance on client obtaining instructions and giving advice, 5 units, over 2 days, 30 minutes in all.
14. Item 2: Considering the lease and office copy entries and other relevant documents, 3 units, over 3 days, 18 minutes in all.
15. Item 3: Notices and correspondence regarding deposit, 4 units, over 3 days, 24 minutes in all.
16. Item 4: Considering validity of tenant's notice, 3 units, on 1 day, 18 minutes in all.
17. Item 5: Drafting counter notice, 5 units, on 1 day, 30 minutes in all.
18. Item 6: Considering valuation (1 unit) and discussing the same with clients (1 unit) and valuer (2 units), 4 units, on 1 day, 30 minutes in all.
19. Item 7: Letters out to client seeking instructions/ updated progress, and to tenants representatives, 5 units, on 1 day, 30 minutes in all. It is unclear of this is estimated or undertaken.
20. Item 8: Checking the file and reporting to client, 4 units, on 1 day, 24 minutes in all.
21. **Total 3.3 hours at £285 = £940.50.**

Grant of the Lease costs

22. Item 1: Considering terms for inclusion in Counter Notice. 3 units on 1 day, 18 minutes in all.
23. Item 2: Drafting new lease incorporating terms of Counter Notice. 8 units on 1 day, 48 minutes in all.
24. Item 3: Preparing engrossments and check. Estimated at 2 units, 12 minutes in all.
25. Item 4: Attending to completion. Estimated at 5 units, 30 minutes in all.
26. Item 5; 5 letters out. Estimated at 5 units, 30 minutes in all.
27. Item 6: Checking file and reporting to client. Estimated at 5 units, 30 minutes in all.

28. **Total 2.8 units at £285 = £798.00**

29. Vat on all items in both sections above. Land Registry costs of £12 and postages £12.80 (no VAT). Total £2,111.00 including VAT where applicable.

Valuation costs

30. Valuation costs incurred in preparation of the landlord's counter notice, by engaging FGRE Asset Management Ltd. Of £595.00 plus VAT, £714 in all.

Decision and Reasons

31. The Tribunal found that the applicants did not submit any case.

32. The Tribunal nonetheless reviewed the items, time spent, the hourly rate, and the resulting professional costs incurred by the landlord. The Tribunal approves the hourly rate charged. Although on the high side, all of the work was undertaken by the principal and time periods were not excessive for the work actually completed.

33. The Tribunal determines that all items, time spent and hourly rate in relation to the notice of claim, are reasonable and payable, save for items No.6 and No.8 which are not tasks covered by S.60. **A total of 2.5 hours units @£285 = £712.50 plus VAT and disbursements £24.80 (no VAT).**

34. The Tribunal determines that all items, time spent and hourly rate in relation to the grant of the lease, are reasonable and payable, save for those not actually incurred and which remained estimated, because from the submission, no new lease has been completed. The Tribunal therefore disallows items 3, 4, 5, & 6 as tasks that were not undertaken, only estimated. **A total of 1.1 hours @ £285 = £ 313.50 plus VAT.**

35. The Tribunal determines that the cost of the valuation for the purposes of preparing the counter notice is reasonable and payable. **A total of £595 plus VAT.**

36.

Name: Neil Martindale

Date: 10 September 2019

Appendix 1

Leasehold Reform, Housing and Urban Development Act 1993

S.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 a leasehold valuation 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.

S.33.— Costs of enfranchisement to be paid by tenant.

(1) Where a notice is given under section 13, then (subject to the provisions of this section and sections 28(6), 29(7) and 31(5)) the nominee purchaser shall be liable, to the extent that they have been incurred in pursuance of the notice by the reversioner or by any other relevant landlord, for the reasonable costs of and incidental to any of the following matters, namely—

- (a) any investigation reasonably undertaken—
 - (i) of the question whether any interest in the specified premises or other property is liable to acquisition in pursuance of the initial notice, or
 - (ii) of any other question arising out of that notice;
- (b) deducing, evidencing and verifying the title to any such interest;
- (c) making out and furnishing such abstracts and copies as the nominee purchaser may require;
- (d) any valuation of any interest in the specified premises or other property;
- (e) any conveyance of any such interest;

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 the reversioner or any other relevant landlord 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 initial notice ceases to have effect at any time, then (subject to subsection (4)) the nominee purchaser'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) The nominee purchaser shall not be liable for any costs under this section if the initial notice ceases to have effect by virtue of section 23(4) or 30(4).

(5) The nominee purchaser shall not be liable under this section for any costs which a party to any proceedings under this Chapter before [the appropriate tribunal] 1 incurs in connection with the proceedings.

(6) In this section references to the nominee purchaser include references to any person whose appointment has terminated in accordance with section 15(3) or 16(1); but this section shall have effect in relation to such a person subject to section 15(7).

(7) Where by virtue of this section, or of this section and section 29(6) taken together, two or more persons are liable for any costs, they shall be jointly and severally liable for them.

Appendix 2 – Rights of Appeal

1. 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.
2. 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.
3. 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.
4. 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.