



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

**Case Reference** : **LON/00BK/OC9/2018/0294**

**Property** : **536 Park West, Edgware Road,  
London W2 2RA**

**Applicant** : **Adrian Anthony Walker-Smith  
("the tenant")**

**Representative** : **Comptons Soicitors LLP**

**Respondent** : **Daejan Investments Limited ("the  
landlord")**

**Representative** : **Wallace LLP**

**Type of Application** : **A determination of the reasonable  
costs under section 60(1) of the  
Leasehold Reform, Housing and  
Urban Development Act 1993**

**Tribunal Members** : **Patrick M J Casey MRICS**

**Date and venue of  
Hearing** : **1 April 2019  
10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **5 April 2019**

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**DECISION**

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## **Decision**

1. Pursuant to section 60(1) of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) the following statutory costs are payable by the tenant to the landlord:
  - legal costs of £705 plus VAT of £141 for the first notice, legal costs of £2,279 plus VAT of £455.90 for the second notice.
  - disbursements of £51.

## **The application and determination**

2. By application dated 10 September 2018 the tenant sought a determination of the premium payable on the grant of a new lease under the provision of the Act in respect of Flat 536 Park West, Edware Road, London W2 2RA, the terms on which the new lease be granted and the landlord’s statutory costs under section 60(1) of the Act. The parties were advised on 19 September 2018 that the costs issue had ben stayed pending agreement or determination of the substantive issues.
3. Standard directions were issued on 31 January 2019 in respect of the disputed s.60 costs after the parties advised the tribunal that terms for the grant of the new lease had been agreed but that the S.60 costs had not been. The directions stated that the application was suitable for determination on the basis of written submissions and without an oral hearing, but they informed the parties of their right to request an oral hearing. No such request was received and accordingly I have determined the statutory cost on the basis of the written submissions and other documents included in the document bundles that were submitted largely in accordance with the directions. Wallace raised an issue regarding directions compliance by the applicant in a letter to the tribunal dated 18 March 2019. They said that although required to provide his statement of case on or before 6 March 2019 it was only provided on 14 March 2019 after they had provided the applicants’ solicitor with their statement of case on 13 March 2019 and that this had required them to reassemble the bundle and make further submissions. They asked the tribunal to not to consider the applicant’s late statement of case or otherwise have regard to the respondent’s compliance with the directions and to consider the respondent’s further submissions. The tribunal is not minded to disregard the applicants’ late statement of case but will consider the respondent’s further submissions in the circumstances.

## **Background**

4. On 3 January 2018 the applicant tenant served a Notice of Claim under S.42 of the Act on the respondents seeking a new lease of Flat 536. On 11

January Wallace wrote to the applicant's solicitors to say the claim was invalid and of no effect because the competent landlord had been wrongly identified as Daejan Properties Ltd who held a lease over premises including Flat 536 for a term of 200 years from 24 June 1985. The new lease claimed would terminate in December 2193 thus Daejan Properties did not have a sufficient reversion to grant the term sought and were not the competent landlord.

5. The applicants' solicitors accepted this and the advice Wallace had given as to the identity of the competent landlord namely the freeholder, Daejan Investments Limited and served a new initial notice dated 30 January 2018 by which the tenant claimed the right to a new lease. The initial notice proposed a premium be paid of £5,800. The initial notice gave 6 April 2018 as the last day for the service of the landlord's Counter Notice.
6. The landlord's Counter Notice is dated 15 March 2018. The Counter Notice admitted the tenants' claim and proposed a premium of £9,360 in total.
7. The issues in dispute were eventually agreed on 21 January 2019 at a premium of £7,000. It is not entirely clear if the new lease has yet been completed but the parties have however been unable to agree the statutory costs that are payable to the landlord under section 60(1) of the Act.

### **The statutory framework**

8. The relevant provisions of section 60(1) of the Act provides:

#### ***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.*

### **The claimed costs**

9. The tribunal standard directions required the landlord to send the following documents to the tenants:

- A schedule of costs sufficient for a summary assessment.

*The schedule shall identify the basis for charging legal and/or valuation costs. If costs are assessed by reference to hourly rates, detail shall be given of fee earners/case workers, time spent, hourly rates applied and disbursements. The schedule should identify and explain any unusual or complex features of the case.*

- Copies of the invoices substantiating the claimed costs.
- Copies of any other documents/reports upon which reliance is placed.

10. Only the legal costs claimed are challenged and the landlord's solicitors provided a detailed eight column schedule itemising all the activities undertaken in respect of both notices. Work was undertaken by three grades of fee earners; a partner charging £475 per hour in respect of matters relating to the claim and Counter Notice (total 4.4. hours); an assistant solicitor charging £365 per hour rising in January 2019 to £385 in respect of matters relating to the new lease and completion of the transaction (total 3.6 hours) and a paralegal at £200 per hour in respect of obtaining office copy entries of title from the Land Registry (total 0.4 hours). In addition Land Registry fees incurred of £51 are claimed. The total bill comes to £4306.20 inclusive of VAT.

11. The applicant submits that these legal costs are excessive. Time spent in all should not have exceeded 5 hours in respect of both notices. Given the premium level and the number of previous claims in the block dealt with by Wallace there were precedents aplenty and in the circumstances a paralegal could have undertaken all the work at £200 per hour. Their own costs were £1,250 plus VAT including Land Registry where both notice and new lease have to be registered whilst the respondent is seeking 3 times

more. They suggest that Wallace have a dominant market position and act in an anti-competitive way.

12. Wallace in their submissions robustly defend their fees both in terms of the fee earners employed and their charge out rates given the specialist nature of the work and the consequences for the client of a failure to carry it out properly. Each case regardless of premium level has to be dealt with individually and on its own merits. Wallace is a specialist central London based firm and the landlord's solicitor of choice in such matters where it relies on the expertise and experience Wallace provides which also tends to mean that less time is spent than would be the case with solicitors with less experience and expertise in a complex field of law. Their fee levels have been subject of a number of First-tier Tribunal decisions which have largely accepted them. Copies of various such decisions are included with the submissions as indeed several are with the applicants.

### **Decision**

13. Wallace's S.60 (and indeed S.33) cost claims on behalf of a number of landlords have indeed been subject to scrutiny by Tribunals over the years possibly more so than any other firms. The decisions of the various tribunals are each made on the facts and evidence before the tribunal and are not in themselves evidential although they do provide helpful guidance. Certainly it is clear that a landlord is entitled to use the solicitor of his own choice and, given that he is being asked to grant a new lease which he may not have been willing to grant had the law not given the tenant a right it is not unreasonable to use a firm with acknowledged expertise and experience in a complex field of law to ensure such claims are fully in compliance with the Act. The first notice served in the present case was indeed invalid as Wallace pointed out. The fact that the firm is central London based with commensurate hourly rates is immaterial.
14. Those rates are higher than the published guidelines which give £409 for a partner but have not been revised since 2010 and £475 does not seem so out of line with what other leading London firms charge to make it clearly unreasonable. Nor is the use of a partner to consider the validity of the claim and prepare and serve the Counter Notice unreasonable and an assistant solicitor specializing in conveyancing seems entirely appropriate. However many previous new leases have been granted in the block would not justify the use of a paralegal for these tasks.
15. There are however aspects of the S.60 costs claim which concern the tribunal. The partner's charge rate for tasks carried out on 12 March 2018 relating to the Counter Notice jumps to £495 before reverting to £475 without any explanation. The 0.5 hours involved should in the tribunal's opinion be charged at £475. The last two entries on the schedule are in respect of anticipated time to deal with pre and post completion matters and anticipated further correspondence total 0.5 hours of assistant solicitor time again without any further justification. There may indeed be

more to do but this looks like a guestimate and without more detail is disallowed.

16. Of more concern however is the possible duplication of costs in respect of the initial consideration of the two notices. The landlord is of course entitled to his costs in relation to the invalid notice. Given Wallace's long standing relationship and involvement with previous lease extensions in the block it would be surprising if it wasn't realized very quickly that the wrong competent landlord had been identified. Having advised who the correct landlord was but then spend exactly the same time scrutinising the second notice does seem like double counting especially given the mere weeks separating the two. The tribunal accepts the amount claimed in respect of the invalid notices as presumably all other aspects of the notice were checked but disallows correspondence with the valuer as not needed at the time. This reduces the claimed sum to £705 plus £141 VAT plus £24 Land Registry fees.
17. In respect of the second notice, the same as the first save for the change of name for the landlord only 0.2 hours is allowed for the scrutiny of the claim which together with the previous disallowed items reduces the claimed amount by £491 to £2,279.50 plus £455.90 VAT plus £27 Land Registry Fees.

**Name:**



**Date:** 5 April 2019

## **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).