



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

**Case Reference** : **MAN/00BZ/OC6/2019/0004**

**Property** : **1 Danby Fold, Rainhill, Prescot, Merseyside,  
L35 9LY**

**Applicant** : **Marilyn Adele Nelder**

**Representative** : **Orme Associates**

**Respondent** : **Chime Properties Limited**

**Representative:** : **J B Leitch Real Estate**

**Type of Application** : **Section 21(1)(ba), Leasehold Reform Act  
1967.**

**Tribunal Members** : **Judge Caroline Hunter  
William Reynolds MRICS**

**Date of Decision** : **31 January 2020**

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**DECISION**

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## **Summary Decision**

1. The Tribunal decides:
  - a. the Applicant was entitled to rely upon the Respondents' lawyers' email of 25 January 2019, identifying their legal costs to be £1,250 inclusive of VAT;
  - b. The Respondents' lawyers are ordered to confirm to the Applicant and their agent whether and to what extent the Respondent is in a position to recover VAT on their legal costs;
  - c. to the extent that the Respondent is able to do so, the VAT element of the Respondent's legal costs that the Respondent is in a position to recover shall not be payable by the Applicant;
  - d. the Tribunal orders that the Applicant be responsible for the Respondents' legal costs in the sum of £1,041.67 if VAT at 20% is capable of being fully recovered by the Respondent on the whole of the Respondents legal costs or a maximum of £1,250 inclusive of VAT if VAT at 20% is not capable of being recovered by the Respondent on the whole of the Respondents legal costs.

## **Background**

2. The applicant in a notice dated 28 November 2018 initiated a claim to enfranchise her lease of 1 Danby Fold, Rainhill, Prescot, Merseyside, L35 9LY (the property). The applicant's right to enfranchise was accepted by the respondent and the transfer agreed. We note that the respondent was the mesne landlord and the transfer also required negotiation with the head lessor. The only matter still in dispute is the reasonable costs of the respondents under the Leasehold Reform Act 1967, s.9(4).
3. On 14 November 2019 the Tribunal gave direction that the respondent should provide a detailed schedule of costs sought including justification for the amounts claimed. This was provided on 19 November, and the applicant's comments in response on 9 December 2019. The Tribunal considered that it was appropriate for the application to be determined on the papers. None of the parties requested a hearing, and this decision is made on the papers.

## **The law**

4. Under the Leasehold Reform Act 1967, s.9(4) a person exercising their right to enfranchise must pay the reasonable costs "incurred in pursuance of" the enfranchisement notice of:
  - “(a) any investigation by the landlord of that person's right to acquire the freehold;
  - (b) any conveyance or assurance of the house and premises or any part thereof or of any outstanding estate or interest therein;
  - (c) deducing, evidencing and verifying the title to the house and premises or any estate or interest therein;
  - (d) making out and furnishing such abstracts and copies as the person giving the notice may require;
  - (e) any valuation of the house and premises.”

## **The costs sought and the response of the applicant**

5. There are two sets of costs claimed. One, the Valuation Fee, of £375 is agreed and we make no comment on it.

6. The second is the costs for the legal work. The respondent retained its representative, JB Leitch, for the matter. Their costs are set-out on p.25 of the respondent's bundle. Both sides are agreed that the hourly rate (quantified in 6-minutes units) of £192 is appropriate. The parties are not agreed as to the number of hours at that rate which should be allowed.
7. The costs are split in to 3 heads of claim: letter/emails to client; letters/emails to TPS; Reviewing and drafting documents. Taking the units for each heading this amounted to:
  - a. Letter/emails to client: units 42: 4.2 hours: £806.40 plus VAT
  - b. Letters/emails to TPS: 32 units; 3.2 hours: £614.40 plus VAT
  - c. Reviewing and drafting documents: 27 units: 2.7 hours: 518.40 plus VAT.
8. The respondent contends that the costs which total £1,939.20 plus VAT are more than fair and reasonable, given the involvement of the freeholder and their legal representatives and the protracted negotiations. Further they say that the applicant's representatives have never entered into any correspondence relating to costs, save to advise their application covered costs. They have not made any attempts to resolve this matter, while the respondent's representatives made an offer of £1700 inclusive of VAT on 21 July 2019.
9. In response the applicant asserts:
  - a. That in other cases, the Tribunal has stated that the usual legal costs for a straightforward 1967 Act matter are around 3 hours work.
  - b. The freehold and leasehold titles were all registered, further in drafting the transfer the Tenant (the applicant) supplied the draft Transfer (TP1), no response to the Transfer was received. Accordingly, it is assumed that no rights of way or restrictive were required (see the Leasehold Reform (Enfranchise and Extension) Regulations 1967).
  - c. Invoice. The applicant notes that no invoices have been provided.
  - d. VAT. The applicant referred to two first-tier decisions where the Tribunal has stated that where the landlord is registered for VAT, the VAT will be recoverable and therefore should not be payable by the lessee.
  - e. Correspondence on costs. The applicant disputes the suggestion that her representatives did not enter into any correspondence relating to costs. Indeed, they assert that on 11 July 2019 they sent a without prejudice offer to settle the costs.

### **Decision of the Tribunal**

10. The Tribunal reminds itself that it has to deal with matters in accordance with rule of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) rules 2013, which provides that the Tribunal must deal with a case fairly and justly and in ways which are proportionate to the case.
11. The applicant's agent's response, while dealing with some of the evidence, does not respond to all of it. We note the following:
  - a. Whilst the original claim (dated 29 November 2018) was made by applicant's agent on behalf of Marilyn Adele Nelder as tenant, the subsequent TP1 and Notice under Schedule Part 5, Condition 1 provided by

- the applicant's agent incorrectly states that the applicants agent was acting as agent for Mr & Mrs Kelly.
- b. The applicant's agent contends that its provision of the TP1 should mitigate the respondents' legal fees however, the original TP1 was clearly incorrect. The Tribunal notes however that an amended TP1 was provided alongside the application to the Tribunal dated 31 May 2019 in respect of price payable.
  - c. The original and amended TP1 provided by the applicant's agent both identify the freehold as pending registration. However, the applicant's submission in response to respondents' statement of case contains a heading stating 'All Titles Registered'. The Tribunal is therefore conscious that the applicant's agent itself identifies that was not the case when the claim was submitted.
  - d. The applicant's agent (at page 8) purports to quote from e-mail sent by the respondents' lawyer however the quotation provided (in italics with speech marks) is inaccurate as it refers to Legal fees of £1,250 + VAT and Valuation Fees of £450 + VAT). In fact, the sums stated in the respondents' lawyers e-mail were stated inclusive of VAT and the net of VAT valuation fee quoted (equating to £375) has been accepted by the applicant's agent in their response to the respondents' statement of case.
12. However, we recognise the statement of case is brief from the respondent and the Tribunal would have found it to be of assistance to have received a more detailed statement. The Tribunal does, however, note that the respondents' lawyer refers to protracted negotiations on matters now agreed and to the involvement of the freeholder and their legal representative. The Tribunal assumes the latter are denoted on the respondents' lawyers schedule of costs as 'Letters/emails to TPS'.
  13. In the absence of any further detailed schedule of work being provided by the respondents' lawyers, the Tribunal must determine the matter solely by reference to the submissions it has received and the Tribunal's own experience.
  14. The Tribunal notes the matters in para. 11, above. The Tribunal is therefore of the view that the matter was not entirely straightforward and that liaison with the freeholders' legal representative was a necessary requirement.
  15. The applicant's agent refers to the VAT position and also states that no invoices have been supplied. The Tribunal agrees with the applicant's agent on this issue and orders that the legal costs recoverable by the landlord shall be limited to no greater sum than that identified in a proper invoice addressed to the landlord from the landlords' lawyers, a copy of which shall be supplied to the applicant and their agent. The respondents' lawyers are also ordered to confirm to the applicant and their agent whether the respondent is in a position to recover VAT and, to the extent that the respondent is able to do so, the VAT element that the respondent is in a position to recover shall not be payable by the Applicant.
  16. The lawyers' charges of £192 per hour are not disputed on behalf of the applicant. Based upon the submissions received and the Tribunal's own knowledge and judgement, the Tribunal determines that its estimate of the legal work involved in liaising with the respondent and the freeholder be assessed at £1248 equating to 6.5 hours' time charge and being inclusive of costs involved in registering the

freehold and reviewing and drafting documents including those documents that were originally provided by the applicant's agent.

17. In the absence of other factors, the Tribunal therefore would have determined that the respondents' legal costs payable by the applicant would be assessed at £1,248 plus VAT in the event that VAT is applicable and not recoverable.
18. However, the Tribunal notes that in its email of 25 January 2019, the respondents' lawyers identify their legal costs to be £1,250 inclusive of VAT. The Tribunal finds that the applicant was entitled to rely upon this statement and accordingly, the Tribunal orders that the applicant be responsible for the respondents' legal costs in the sum of £1,041.67 if VAT at 20% is capable of being fully recovered by the Respondent on the whole of the respondents' legal costs or a maximum of £1,250 inclusive of VAT, if VAT at 20% is not capable of being recovered by the respondent on the whole of the respondents' legal costs.

### **RIGHTS OF APPEAL**

19. 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.
20. 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.
21. 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.
22. 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.

**Judge C Hunter**  
**31 January 2020**