



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

Case reference : **LON/00AZ/OC9/2020/0143**

HMCTS code : **P:PAPER**

Property : **Upper flat, 1 Manwood Road, London
SE4 1AA**

Applicant : **Ms H A Green**

Representative : **Cook Taylor Woodhouse**

Respondent : **Mr A K Anand**

Representative : **KLPA & Company Estate Management**

Type of application : **Costs – payable by the applicant under
s.60(1) Leasehold Reform, Housing and
Urban Development Act 1993**

Tribunal members : **Judge Pittaway
Mr K Ridgeway MRICS**

Date of decision : **24 February 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers. The form of remote hearing was P:PAPERREMOTE, A face-to-face hearing was not held because the tribunal considered that the application might be determined by summary assessment, without a hearing, on the basis of the written submissions from the parties unless any party requested a hearing and neither party did.

The documents that the tribunal referred to are in a bundle of 100 pages the contents of which the tribunal has noted. In particular the tribunal has had regard to the respondent's schedule of costs & supporting documentation, and the applicant's Statement of Case.

The decisions made and reasons are set out below.

Decisions of the tribunal

The tribunal determines that the amount of costs payable by the applicant is **£2,190 plus VAT** made up as follows

- Fees under section 60 (1) (a) of the 1993 Act £960 + VAT
- Fees under section 60 (1) (b) of the 1993 Act £120 + VAT
- Fees under section 60 (1) (c) of the 1993 Act £1,110 + VAT

Of the total fees of £1,110 plus VAT payable under section 60 (1) (c), the solicitor's fees in connection with the grant of the lease, in the sum of £750 plus VAT, should only be paid on the grant of the lease.

Background

(1) The applicant leaseholder seeks an order under section 60(1) of the Leasehold Reform, Housing and Urban Development Act 1993 (the "1993 Act") as to the amount of costs payable by a RTM Company.

(2) Section 60 of the 1993 Act provides that

“(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.

(5) A tenant shall not be liable under this section for any costs which a party to any proceedings under this Chapter before the appropriate 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."

(3) The costs claim arises out of a determination of the terms under which the tenant applicant was entitled to extend her lease of the upper flat, 1 Manwood Road, London SE4 1AA (**'the property'**) under the 1993 Act.

(4) By Directions dated 5 November 2020, varied on 2 December 2020, the respondent landlord was directed to provide the applicant a schedule of costs sufficient for summary assessment, invoices substantiating the costs and any other documents relied on.

(5) The directions provided for the applicant to provide a statement in response.

(6) The directions also stated that the tribunal considered that the application suitable to be determined on the basis of written submissions from the parties, using a document bundle to be provided.

The respondent's case

1. The respondent's managing agents, KLPA & Company Estate Management, have provided a schedule of costs incurred by it, supported by invoices prepared by them detailing the following fees,

25 March 2019	Counsel drafting lease and serving on tenant's solicitors	£960
25 May 2019	Counsel drafted counter notice and its service	£480
20 June 2020	Various communications	£528
20 June 2020	Various conferences	£648
20 June 2020	Various e mails	£2232
20 June 2020	Telephone calls	£288
25 June 2020	Preparation of costs statement	£600
25 June 2020	Solicitors fees	£750
undated	Valuation of flat for counter notice	£750

The above total £7,236, to which the agents have added VAT on the solicitor's cost of £150, to achieve a total of £7,386.

The applicant's case

2. The applicant has provided a statement of case dated 13 January 2021.
3. The applicant submits that she had not previously seen the invoices now provided by the respondent and submits that the landlord's costs (which total £7,434 excluding VAT are excessive for a standard lease extension and that the landlord has provided no explanation for why the managing agents are entitled to charge £240 per hour. She submits that by comparison her costs are
 - Legal costs £1,300 plus VAT
 - Valuation costs £609.40 plus VAT
 - Disbursements £182
4. The applicant comments on the invoices provided by the respondent
 - Regarding the invoice for the draft lease: the date of the invoice appears to be incorrect. The lease itself was not used and the Deed of Surrender

and Re-grant was prepared by the applicant's solicitors. £960 is an excessive charge, representing four hours drafting when 1 ½ hours would be more appropriate. She proposes a charge of £360 plus VAT for this .

- The invoice of 25 May 2020 of £480 plus VAT for investigating the claim and serving the counternotice is agreed.
 - The invoice of 20 June 2020 for £528 appears to duplicate the work covered by the invoice of 25 May and also covers the period before service of s42 Notice and should be disregarded.
 - The invoice of 20 June 2020 for £648 for conferences with the landlord and is equivalent to 2 hours and 42 minutes. The applicant submits that this is excessive and that a more reasonable time for this would be one hour. The applicant proposes that this should be reduced to £240 plus VAT.
 - The invoice of 20 June 2020 for £2,232 relates in part to work undertaken before service of the s42 notice. As it is difficult to ascertain how much of the work postdates service of the s42 notice the applicant submits that this should be disregarded in its entirety.
 - The invoice of costs dated 25 June 2020 is stated to be in relation to preparing the statement of costs. This is outside the costs contemplated by the 1993 Act and should be disregarded.
5. The applicant submits that no invoice has been provided for surveyor's valuation fee of £750 plus VAT.
6. The applicant submits that costs in the sum of £2,070 are appropriate made up as follows
- | | |
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| Fees under section 60 (1) (a) of the 1993 Act: | £960 plus VAT |
| Fees under section 60 (1) (b) of the 1993 Act: | nothing in the absence of an invoice. |
| Fees under section 60 (1) (c) of the 1993 Act: | £1,110 plus VAT, subject to the respondent's solicitor completing the lease. |

Reasons for the tribunal's decision

7. Other than the schedule of costs and invoices there is no statement of case from the respondent in the bundle. The schedule of costs is virtually illegible and

appears to duplicate costs. For example, without explanation to the contrary, the tribunal finds that the six entries for 6 May 2019 duplicate each other. There is no invoice for counsel's fees, the solicitor's fees or the valuer's fees. The tribunal further note that it was the applicant who had to draft the form of lease used for the lease extension because that drafted by the respondent was unsuitable.

8. Not all the costs claimed meet the test of reasonableness set out in section 60(2). Any costs incurred by the relevant person in respect of professional services rendered are to be regarded as reasonable only 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 existence of receipted invoices indicates that the respondent may have paid them, but of itself that does not make the charges reasonable.
9. The applicant queried but has not challenged the level of fee charged by the applicant's agent, namely £240 per hour, and the tribunal have accordingly adopted this charge out rate per hour for the respondent's agent. The applicant challenged the length of time spent on various aspects of the claim, arguing that either they are outside the fees contemplated by section 60 or that they are unreasonable. The tribunal agree that the respondent is seeking to charge for fees outside those contemplated by section 60, for example the preparation of the schedule of costs.
10. The tribunal agree with the applicant that the invoices point to an unnecessary duplication of work. For example, the tribunal accepts the applicant's submission that the invoice of 20 June 2020 for £528 appears to duplicate the work covered by the invoice of 25 May and also covers the period before service of s42 Notice and should be disregarded.
11. The tribunal find that at a level of charge of £240 per hour the applicant is entitled to expect a level of expertise that reduces the amount of time spent on the various aspects of the transaction. The tribunal finds, from the information that can be obtained from the schedule of costs provided by the respondent and applicant's submissions, that an unreasonable amount of time has been allocated to the work undertaken.

12. The tribunal have therefore accepted the applicant's proposal as to what would be reasonable fees in relation to fees under sections 60 (1) (a) and (c) of the 1993 Act.
13. Insofar as a valuation fee is concerned the tribunal note that the bundle before it contains a valuation dated 20 May 2019. This is a one page valuation prepared in-house by the managing agents. There is no valuation report to substantiate the valuation. A fee of £750 might have been reasonable if the valuation had been undertaken by an independent firm of chartered surveyors and accompanied by a valuation report, but it is not. The tribunal find, on the valuation information before it, that a reasonable fees under section 60 (1) (b) of the 1993 Act would be £120.
14. Insofar as the solicitor's fees of £750 plus VAT are concerned the tribunal find these to be reasonable provided that the applicant is provided with a relevant invoice from a firm of solicitors who are instructed to complete the lease. These fees are not reasonable and payable unless the lease is completed by the landlord.

Name: Judge Pittaway

Date: 24 February 2021

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).