



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESID-
ENTIAL PROPERTY)**

Case reference : **LON/00BE/OC9/2022/0116**

Property : **34 Wavel Place, Sydenham Hill
London SE26 6SF**

Applicant : **Jean Elizabeth Ward**

Representative : **Daniel Tang : Judge & Priestly
LLP**

Respondent : **Steven Wavel Buxton, Madeline
Buxton, Barnett Waddingham
Trustees Scotland Ltd**

Representative : **Vanessa Joll: DMH Stallard**

Type of application : **Application for determination of
reasonable costs Section 60,
91(2) (d) of the Leasehold Hous-
ing and Urban Development Act**

Tribunal member(s) : **Mr Duncan Jagger MRICS**

Date of paper hearing : **31st August 2022**

Date of decision : **31st August 2022**

DECISION

Summary

This has been a hearing on the papers which has not been objected to by the parties. A face to face hearing was not held because no-one requested the same, and it was considered all issues could be determined on papers. The documents that I was referred to, is in a helpful bundle extending to 163 pages which includes the parties statement of case, together with two detailed schedules which break down the costs in two sections, namely Procedural and Transactional. The contents of which I have carefully noted.

The application

1. The Applicant (leaseholder) seeks a determination of the amount of costs payable to the Respondent pursuant to sections 60(1) and (3) of the 1993 Act. In respect of an initial invalid notice, and a subsequent, lease extension and the grant of a new lease under the provision of the Act in respect of 34 Wavel Place Sydenham Hill London SE26 (The property)
2. The application were dated the 30th June 2022 and directions were issued on 1st July 2022 which were subsequently amended on the 5th July 2022. The directions included provision that the case be allocated to the paper track, to be determined upon the basis of written representations. Neither of the parties has objected to this allocation or requested an oral hearing. The paper determination took place on 31st August 2022.
3. The Respondents filed two detailed schedules of costs for the property together with costs submissions in accordance with the directions. The Applicant prepared a Statement of Case running to 153 pages which included various Tribunal decisions in this matter.
4. The relevant legal provisions are set out in the Appendix to this decision.

The background

5. The Applicant is the leaseholder of the property under a lease dated 11th May 1987, for a term of 125 years and the Respondents are the Freeholders
6. The application was made for the determination of the reasonable costs payable by the Applicant (leaseholder) to the Respondents (landlord) under section 60(1) of the Act. It follows two service of Notices of claim to acquire a new lease for the property.

7. The Applicant served the second notice of claim for the property on the Respondent on, 2nd December 2021, in which it proposed a premium for a new lease of £6000 and
8. It is accepted that the initial notice was under Section 42 was defective in one respect, because the competent landlord had been identified as Buxton Homes and not the Freeholders as stated in this decision.
9. The Respondent served a counter-notice on the 21st December 2021 in which it admitted the claim but proposed a higher premium of £7008. The Applicant now seeks to dispute the reasonable costs from the Respondent, pursuant to sections 60(1) and (3) of the 1993 Act.

Evidence and submissions

10. The Tribunal issued its standard costs directions on the 1st July 2022 (amended on the 5th July 2022). These required the Respondent to serve a Statement of case by 15th July 2022 and the Applicant to serve its Statement of case by the 29th July 2022. The Applicant was requested to submit the finalised bundle by the 19th August 2022.
11. The Respondent provided two schedules of the work undertaken for property (The Procedural Schedule and the Transactional Schedule). The cost of all items was said to be recoverable. For each item of the legal costs the Landlords representative provided: the date, activity, description, hours rate amount for the second schedule only. Legal work was provided at an hour rate of £330 and £300 respectively. These hourly rates are beyond the scope with the recently publishes *Guide to the Summary Assessment of Costs*, published by the Master of the Rolls 2021 edition. The National rate for a Solicitor and legal executive with over 8 years experience is £261. It is stated that *'In substantial and complex litigation an hourly rate in excess of the guideline figures may be appropriate.* The Tribunal do not consider this to be the case here.
12. In addition, there was a separate figure for disbursements (Land Registry, Post and Bank Transfer. VAT was added to all these figures.
13. The schedule showed the precise time spent by the Respondents solicitors, the tasks involved and description This was at a fee rate of £330 and £300 respectively, although no reason was provided to the Tribunal for the differential. The Applicant referred the Tribunal to a number of earlier cost decisions in order to demonstrate that the level of costs submitted should be disputed and the Tribunal should consider its decision based upon these similar lease extension cases.

14. The Respondents claim for costs are broken down into three sections , being £1500 in respect of the invalid Section 42 Notice, £1200 for the valid Section 42 Notice (Reduced from £1551) and finally £1500 in respect of the grant of a new lease (reduced from £1957.50) plus Disbursements of £117.40. All figures include Vat.
15. In the Statement of case the Applicant submits that these legal costs are excessive for various reasons carefully noted by the Tribunal. In the application a figure of £1500 plus Vat is considered by the Applicant to be an appropriate amount in this matter.
16. The Tribunal considered all of the documents provided by the Applicant when coming to its decision.

The Tribunal's decision

17. The Tribunal determines that the total costs payable by the Aare the Respondents legal costs of **£3,262.50 plus Vat and disbursements of £117.40**

Reasons for the Tribunal's decision

18. The Tribunal does not accept the Respondents hourly rates of £330 and £300. Those rates are higher than the published guidelines which give £261 for an experienced solicitor. For this reason the Tribunal adopts an hourly rate of **£261**
19. The Tribunal generally accepts the Respondents schedule of items with the following exception. There is possible duplication of costs in respect of the initial consideration of the two notices. The landlord is of course fully entitled to his costs in relation to the invalid notice. However, given the solicitors experience here, it would be surprising if it wasn't realised very quickly that the wrong competent landlord had been identified. Having advised who the correct landlord was but spend exactly the same time scrutinising the second notice does seem like double counting especially given the time differential. The Tribunal accepts the time spent in respect of the invalid notice being 4.5 hours at an hourly rate of £261 equals **£1174.50**. The Tribunal reduces the second claim to 3 hours being **£783**. In respect of the third section of the claim (the grant of the new lease) The Tribunal does not accept the level of the time spent, being 6.5 hours. This was determined by dividing the sum of £1957.50 by the hourly rate of £300. The Tribunal consider a more appropriate time would be 5 hours at £261 which equates to **£1,305**. This provides a total figure of **£3,262.50**
21. In making this decision, the Tribunal is following its recent decision in *Price v Daejan Investments Ltd 2020 (Lon/00ak/oc9/2019/0231)* The

Respondent is free to use its current legal representatives to act in such lease extension cases.

22. This was a straightforward lease extension claim and it is assumed the Respondents solicitors have experience in enfranchisement and lease extension claims and the work was suitable for a qualified Solicitor that specialises in this field.
23. It was also noted that there is was no charge to read the lease. This is not recoverable, as it is the solicitors task to do so. See *Huff v Trustees of the Sloane Stanley Estate Unreported 1997*) referred to in *Hague on Lease Enfranchisement at 32-24*.
24. Section 60 (2) states:-) 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**
25. The Tribunal has allowed the VAT charged on the Respondents legal costs as VAT is payable on the solicitor's fees,

Name: Tribunal Judge:
Duncan Jagger

Date: 31st August 2022

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).

Appendix of relevant legislation

Leasehold Reform, Housing and Urban Development Act

Section 60

(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 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