



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

Case Reference : **CHI/00HN/OC9/2014/0010**

Property : **Flat 10, Roslin Hall, 6 Manor Road,
Bournemouth, Dorset BH1 3ES**

Applicant : **Roslin Hall Freehold Limited**

Representative : **Horsey Lightly Flynn, solicitors**

Respondent : **Bio Estates Limited**

Representative : **Bude Nathan Iwanier, solicitors**

Type of Application : **Determination of costs under section
91 Leasehold Reform, Housing and
Urban Development Act 1993**

Tribunal Member : **Judge E Morrison**

Date of decision : **2 December 2014**

DECISION

The Application

1. By an application dated 18 September 2014 , the Applicant lessor sought, pursuant to section 91 of the Act, a determination of the costs payable by the Respondent lessee under section 60(1) of the Act.

Summary of Decision

2. The costs payable by the Respondent to the Applicant, pursuant to section 60(1) of the Act, are £360.00 + VAT for legal fees and £250.00 + VAT for valuation fees.

The Law and Jurisdiction

3. The relevant parts of the provisions in the Act are as follows:

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Where by virtue of any provision of this Chapter the tenant's notice ceases to have effect or is deemed to have been withdrawn then ... 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

(5)...

(6) ...

91. Jurisdiction of tribunals

(1) Any question arising in relation to any of the matters specified in subsection (2) shall, in default of agreement, be determined by the appropriate tribunal .

(2) Those matters are—

(a) – (c) ...

(d) the amount of any costs payable by any person or persons by virtue of any provision of Chapter I or II and, in the case of costs to which section 33(1) or 60(1) applies, the liability of any person or persons by virtue of any such provision to pay any such costs; and

(e) ...

4. To be reasonable, costs must be reasonably incurred and reasonable in amount.
5. Pursuant to the indemnity principle (which is reflected in the introductory wording of section 60(1)), a paying party is obliged to indemnify a receiving party only for expenditure actually incurred. Accordingly a party may not recover more than it is actually obliged to pay its advisers.

Background

6. A section 42 notice of claim to exercise right to a new lease was served by the Respondent's predecessor in title on the Applicant under cover of a letter dated 17 October 2013. In a letter sent by the Respondent's solicitors dated 7 November 2013 it was stated that the Notice was fatally defective for a number of reasons. Some correspondence followed. The Respondent maintained its stance that the notice of claim was defective but nonetheless obtained valuation advice and served a Counter Notice under section 45 (2) (a) dated 10 December 2013, admitting the claim, but proposing a higher premium. There was then further correspondence between the parties but the terms of a new lease were not agreed. The Respondent did not apply to the Tribunal under section 48 of the Act for a determination of the terms in dispute, with the result that the notice of claim was deemed withdrawn, under section 53, on or about 11 June 2014.
7. The Applicant sought payment of legal fees of £660.00 + Vat and valuation costs of £250.00 + VAT. The amount of the costs not being agreed, this application was made to the Tribunal.

8. By Directions dated 23 September 2014, the parties were given notice that the Tribunal intended to deal with the matter on the papers and without a hearing unless either side objected. Neither party having objected, the Tribunal has determined this matter on the basis of written representations without an oral hearing.
9. Statements of case with supporting documentation were filed as directed by the Tribunal.
10. There was no inspection of the property.

The Applicant's submissions

11. The legal fees of £660.00 + VAT amount to 3.3 hours of Grade B fee-earner time charged at £200.00 per hour, for work carried out between 18 October 2013 when the notice of claim was received, and 17 June 2014. A breakdown of time spent has been provided in the Applicant's statement and in spreadsheet format. The Applicant now accepts that certain components of the costs are not within section 60(1) but contends that the remainder of costs are reasonable, and should be assessed on the indemnity basis, meaning any doubts over reasonableness should be resolved in favour of the receiving party. The Applicant had agreed the hourly rate and section 60(2) was satisfied.
12. The valuation advice of £250.00 + VAT was for 2 hours work charged at £125.00 per hour. This advice was needed once it had been decided to serve a Counter Notice admitting the claim, albeit without prejudice to its contention that the notice was invalid, a course of action suggested in *Haig on Leasehold Enfranchisement (6th Ed. Para 30.18)*.

The Respondent's submissions

13. The Respondent accepts that the some legal costs were payable under section 60 but contends these should be limited to £80.00 + VAT, representing 0.4 hours work on 4 letters out. Detailed reasons are set out on the spreadsheet annexed to this Decision, but essentially the Respondent contends that once the Applicant had decided that the notice of claim was invalid, there was no need for a counter-notice, preparation of a draft lease, or valuation advice. Section 60(2) is not satisfied in relation to these costs as the Applicant would not have incurred these costs had it been paying for them itself. Further, some elements of the costs do not fall within those payable under section 60. In addition, costs should be assessed on the standard basis, rather than the indemnity basis, meaning any doubts over reasonableness should be resolved in favour of the paying party.
14. None of the valuation costs should be allowed, as no valuation advice was required, given the Applicant's position on the validity of the notice of claim.

Discussion and Determination

15. The course adopted by the Applicant, namely service of a Counter Notice admitting the claim, but without prejudice to its contention that the notice of claim itself was invalid, cannot be said to be unreasonable. It is specifically recommended by the authors of *Haig* in circumstances where the validity of the tenant's notice is disputed (Para. 30-18). It would have been open to the Applicant to apply to the court under section 90(2) of the Act to challenge the validity of the notice. Given that the Respondent contended that the notice was valid, and did not withdraw the notice, the Respondent can hardly complain if the Applicant did not pursue its challenge, but instead proceeded in line with the Counter Notice admitting the Respondent's entitlement.
16. It follows that the valuation obtained for the purpose of ascertaining the premium was reasonably incurred and, there being no objection to its amount, the valuation fees are payable in full. The two Tribunal decisions relied on by the Respondent where valuation fees were disallowed after an invalid notice of claim are clearly distinguishable. In *19 Netherhall Gardens London NW3* Ref: LON/ENF/995/03 there was no evidence that the fees claimed had been incurred in connection with a valuation and no Counter Notice admitting the claim seems to have been served. In *48 Greenway Close N11* Ref: LRX/8/2006 (Lands Tribunal) the refusal of permission to appeal makes it clear that the valuation costs had been incurred after a Counter Notice had been served under section 45(2)(b) i.e. the entitlement to a new lease had not been admitted (unlike in the instant case).
17. So far as the legal costs are concerned, the time spent does not appear excessive, and the hourly rate has not been challenged. However, in line with the approach to assessment of costs under the CPR, charges for letters in will not be allowed, as the time taken to read the incoming letter is covered by the time to write any reply. Time spent preparing a counter notice is not within section 60, and neither is time spent on negotiations. Drafting the new lease falls squarely within section 60(1)(c).
18. As to whether section 60 costs should be assessed on the standard or indemnity basis, the position is not entirely free from doubt. It only makes a difference if there is any doubt about reasonableness, or if issues of proportionality arise (which are only relevant to a standard basis assessment). The traditional approach has been that the indemnity basis applies, as contended by the Applicant. However in *Drax v Lawn Court Freehold Limited* [2010] UKUT 81 (LC) AJ Trott FRICS suggested that section 33(2) of the Act (which has identical wording to section 60(2)) "in effect introduced a (limited) test of proportionality of a kind associated with the assessment of costs on the standard basis". In any event, the Tribunal finds in this case that the choice of basis makes no difference whatsoever. The costs are not

disproportionate, and there are no doubts over reasonableness. The costs allowed would therefore be no less on the standard basis than on the indemnity basis.

19. Annexed and part of this Decision is the costs spreadsheet endorsed with the Tribunal's decision on each item of costs. The total time allowed for legal costs is £360.00 + VAT, which equates to 1.8 hours. As stated above, the valuation fee of £250.00 + VAT is also allowed in full.

Dated: 2 December 2014

Judge E Morrison (Chairman)

Appeals

1. 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.
2. 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.
3. If the person wishing to appeal does not comply with the 28-day time limit, the 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.
4. 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.

SCHEDULE

DISPUTED COSTS

Case Reference: CHI/OOHN/OC9/2014/0010	Premises: Flat 10, Roslin Hall, 6 Manor Road, Bournemouth BH1 3ES
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ITEM	COST	APPLICANT'S COMMENTS	RESPONDENT'S COMMENTS	LEAVE BANK (FOR THE TRIBUNAL)
a	2 Units	The Applicant's Solicitor submits that, given the importance of the Section 42 Notice and its contents, it is appropriate for the Applicant's Solicitor to review the Notice and its contents in detail and that up to 12 minutes is a reasonable amount of time. Further, the Applicant's Solicitor submits that these costs fall within the ambit of Section 60(1)(a) being incidental to investigation reasonably undertaken of the tenant's right to a new lease which emanates, in large part, from the contents of the Section 42 Notice.	1 unit is more than sufficient for reviewing the Section 42 notice, particularly for an experienced conveyancer. No costs for correspondence in can be charged	<i>Two units allowed as reasonable time for this work which falls within s 60(1)(a)</i>

b	1 Unit	The Applicant's Solicitor submits that the correspondence in and out claimed is reasonably incurred and incidental to the investigation reasonably undertaken of the Respondent's right to a new lease under Section 60(1)(a).	No charge for correspondence in can be made to the Respondent	<i>Disallowed – charge was stated to be for letter in, not for separate perusal time</i>
c	1 Unit	This claimed unit is no longer in dispute.	Accepted.	<i>One unit allowed</i>
d	1 Unit	The Applicant's Solicitor submits that receipt, review and consideration of this letter, within the 6 minutes claimed is reasonable and incidental to investigation reasonably undertaken to establish the tenant's right to a new lease under Section 60(1)(a).	No charge for correspondence in can be made to the Respondent	<i>Disallowed – charge was stated to be for letter in, not for separate perusal time</i>
e	1 Unit	This claimed unit is no longer in dispute.	Accepted	<i>One unit allowed</i>
f	1 Unit	The Applicant's Solicitor submits that the unit claimed is reasonably incurred and incidental to investigation reasonably undertaken of the tenant's right to a new lease under Section 60(1)(a).	No charge for correspondence in can be made to the Respondent	<i>Disallowed – letter in</i>
g	1 Unit	1. The Applicant's Solicitor submits that the unit claimed was reasonably incurred and incidental	1. No charge for correspondence in can be made to the Respondent.	<i>Disallowed – letter in</i>

		<p>to the valuation obtained for the purposes of fixing the premium payable and recoverable under Section 60(1)(b).</p> <p>2. The Applicant's Solicitor submits, as set out in their Statement at para 7.2, that in the circumstances it was reasonable for valuation advice to be sought. This is because:-</p> <p>(a) the Applicant only has one opportunity to serve a binding counter-notice;</p> <p>(b) the Respondent's Solicitor, as can be seen from the correspondence exhibited at SRP3 of the witness statement of the Samuel Raphael Pariente, refuted forcefully that their notice was defective and invited on two occasions the service of the counter-notice; and</p> <p>(c) in these circumstances it was appropriate for a without prejudice counter-notice to be served which necessitates the landlord obtaining valuation advice which is recoverable under Section 60(1)(b).</p>	<p>2. No costs in relation to valuation are reasonable in the circumstances and fall outside the ambit of Section 60.</p>	
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		3. The Applicant's Solicitor submits that the costs claimed are incidental to Section 60(1)(b) and are therefore recoverable.	3. In any event, solicitors do not need to be involved in the valuation aspect. That is for the Applicant to do.	
h	13 Units	<p>1. The Applicant's Solicitor submits that the units claimed in preparing the Counter-notice and draft Lease to be annexed thereto are recoverable under Section 60(1)(c) as incidental to the grant of the lease.</p> <p>2. The Applicant's Solicitor submits that it is accepted practice, as set out in Hague 30-18 that in the event of potential defects in the Section 42 Notice, that a counter-notice should be prepared and served on a without prejudice basis. Further, in circumstances when amendments to the lease have been requested in a Section 42 Notice the Applicant's Solicitor submits the most appropriate way of indicating those amendments which are acceptable is for a draft lease incorporating the substance of the amendments acceptable to the landlord to be sent</p> <p>3. The Applicant's Solicitor does</p>	<p>1. Any costs in connection with the counter-notice do not fall within Section 60.</p> <p>2. No draft lease should have been prepared at this stage, particularly given that the Applicant did not accept the validity of the Section 42 notice.</p> <p>3. In any event, the time charged is</p>	<p><i>Costs of preparing the Counter Notice are disallowed as these do not fall within section 60(1)(a)</i></p> <p><i>10 units (1 hour) allowed for drafting new lease, within section 60(1)(c)</i></p>

		not agree that the time charged is excessive particularly given the requirement to ensure that all of the requirements for the contents of the counter-notice and draft lease are dealt with.	excessive.	
i	1 Unit	This claimed unit is no longer in dispute although the Applicant's Solicitor would comment that the Respondent's Solicitor has accepted that it is valid for correspondence to be sent enclosing the counter-notice with draft lease annexed but has, immediately above, disputed the validity of the units claimed in preparing the same.	Accepted	<i>1 unit allowed</i>
j	1 Unit	The correspondence received from the Respondent's Solicitors was not, the Applicant's Solicitor's would submit, dealing with negotiations as to the premium but was dealing primarily with amendments to the lease that the Applicant's Solicitor had advised in the counter-notice and draft lease annexed were not acceptable. Therefore the time claimed is recoverable as costs incidental to the grant of the new lease under Section 60(1)(c).	The Respondent is not responsible for any correspondence in relation to negotiations and any matters not falling squarely within Section 60. This item does not fall within Section 60.	<i>1 unit allowed for email out in connection with draft lease, within section 60(1)(c)</i>

k	1 Unit	The unit claimed is in relation to an email sent by the Applicant's Solicitor seeking, at the request of the Respondent's Solicitors the calculation figures underpinning the valuation advice obtained by the Applicant under Section 60 (1) (b). Therefore, this unit was incurred incidental to the valuation under Section 60(1)(b).	The Respondent is not responsible for any correspondence in relation to negotiations and any matters not falling squarely within Section 60. This item does not fall within Section 60 and see (b) above.	<i>1 unit allowed as work incidental to obtaining valuation under section 60(1)(b) and in response to request from Respondent's solicitors</i>
l	1 Unit	<p>1. The Applicant's Solicitor submits that the correspondence enclosing the Applicant's Surveyor's calculation figures is not correspondence in relation to negotiations but rather properly costs incidental to valuation and recoverable under Section 60(1)(b).</p> <p>2. Again, the Applicant's Solicitor submits that the costs incurred in relation to valuation are reasonable as set-out above.</p>	<p>1. The Respondent is not responsible for any correspondence in relation to negotiations and any matters not falling squarely within Section 60. This item does not fall within Section 60.</p> <p>2. No costs in relation to valuation are reasonable in the circumstances and fall outside the ambit of Section 60. In any event, solicitors do not need to be involved in the valuation aspect. That is for the Applicant to do.</p>	<i>1 unit allowed as work incidental to obtaining valuation under section 60(1)(b) and in response to request from Respondent's solicitors</i>
m	1 Unit	1. The Applicant's Solicitor submits that the claimed correspondence is incidental to and recoverable under Section 60(1)(b) as reasonable costs incurred in forwarding the Respondent's	1. The Respondent is not responsible for any correspondence in relation to negotiations and any matters not falling squarely within Section 60. This item does not fall within	<i>Disallowed – letter in, and not within section 60(1)</i>

		<p>Surveyor's calculation figures to the appointed Valuer. The Applicant's Solicitor was not involved in dealing in relation to negotiations but merely forwarding information that had been provided to it.</p> <p>2. The Applicant's Solicitors position regarding valuation costs has been dealt with elsewhere.</p>	<p>Section 60.</p> <p>2. No costs in relation to valuation are reasonable in the circumstances and fall outside the ambit of Section 60. In any event, solicitors do not need to be involved in the valuation aspect. That is for the Applicant to do.</p>	
n	1 Unit	See m above	<p>1. The Respondent is not responsible for any correspondence in relation to negotiations and any matters not falling squarely within Section 60. This item does not fall within Section 60.</p> <p>2. No costs in relation to valuation are reasonable in the circumstances and fall outside the ambit of Section 60. In any event, solicitors do not need to be involved in the valuation aspect. That is for the Applicant to do.</p>	<i>Disallowed, not within section 60(1)</i>
o	1 Unit	The Applicant's Solicitor accepts that this correspondence was in relation to negotiations and is not recoverable – this unit is no longer in dispute.	1. The Respondent is not responsible for any correspondence in relation to negotiations and any matters not falling squarely within Section 60.	<i>Disallowed</i>

			<p>This item does not fall within Section 60.</p> <p>2. No costs in relation to valuation are reasonable in the circumstances and fall outside the ambit of Section 60. In any event, solicitors do not need to be involved in the valuation aspect. That is for the Applicant to do.</p>	
p	1 Unit	The Applicant's Solicitor accepts that this correspondence was in relation to negotiations and is not recoverable – this unit is no longer in dispute.	The Respondent is not responsible for any correspondence in relation to negotiations and any matters not falling squarely within Section 60. This item does not fall within Section 60.	<i>Disallowed</i>
q	1 Unit	The Applicant's Solicitor accepts that this correspondence was in relation to negotiations and is not recoverable – this unit is no longer in dispute.	The Respondent is not responsible for any correspondence in relation to negotiations and any matters not falling squarely within Section 60. This item does not fall within Section 60.	<i>Disallowed</i>
r	1 Unit	The Applicant's Solicitor accepts that this correspondence was in relation to negotiations and is not recoverable – this unit is no longer in dispute.	The Respondent is not responsible for any correspondence in relation to negotiations and any matters not falling squarely within Section 60. This item does not fall within Section 60.	<i>Disallowed</i>
s	1 Unit	The Applicant's Solicitor accepts that this correspondence was in relation to negotiations and is not recoverable – this unit is no longer in dispute.	1. The Respondent is not responsible for any correspondence in relation to negotiations and any matters not falling squarely within Section 60. This item does not fall within Section 60.	<i>Disallowed</i>

			2. No costs in relation to valuation are reasonable in the circumstances and fall outside the ambit of Section 60. In any event, solicitors do not need to be involved in the valuation aspect. That is for the Applicant to do.	
t	1 Unit	The Applicant's Solicitor submits that this correspondence is recoverable as it was correspondence advising the Respondent's Solicitors of the costs incurred and payable by the Respondent tenant under Section 60.	The Respondent is not responsible for any correspondence in relation to negotiations and any matters not falling squarely within Section 60. This item does not fall within Section 60.	<i>Disallowed – costs incurred after deemed withdrawal (section 60 (4)).</i>
2.4	£250 plus VAT	The Applicant's Solicitor notes that the defects in the Section 42 Notice have, after the event, been accepted by the Respondent's Solicitor after initially being forcefully refuted and the Applicant's position regarding the appropriateness of valuation advice, in these circumstances, is set-out above.	No valuation should have been undertaken in circumstances where it was clear and beyond doubt that the Respondent's Section 42 notice was invalid.	<i>Allowed at £250.00 + Vat for reasons stated in Decision</i>