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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AS/OC9/2014/0031**
Property	:	**323 Aylesham Drive, Ickenham UB10 8UJ**
Applicant	:	**Tulsesense Limited**
Representative	:	**SA Law LLP**
Respondent	:	**Mrs Kauser Parveen**
Representative	:	**Payne Skillington Solicitors**
Type of Application	:	**Section 91(2)(d) Leasehold Reform, Housing and Urban Development Act 1993 – determination of costs payable under section 60**
Tribunal Members	:	**Judge John Hewitt** **Mr Neil Martindale FRICS**
Date and venue of determination	:	**5 August 2014** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**26 August 2014**

DECISION

Decision of the Tribunal

1. The Tribunal determines that the costs and fees payable by the respondent to the applicant pursuant to section 60 Leasehold Reform, Housing and Urban Development Act 1993 (the Act) arising out of the notices of claim served by the respondent on the applicant dated 23 May 2011 and 14 November 2011 are as follows:

Legal costs	£ 837.50
Valuation fees	£1,000.00
	£1,837.50
VAT at 20%	£ 367.50
Total	£2,205.00

2. The reasons for our decision are set out below.

NB Later reference in this Decision to a number in square brackets ([ ]) is a reference to the page number of the hearing file provided to us for use at the hearing.

Procedural background

3. On 23 May 2014 the tribunal received an application form from the applicant pursuant to section 91(2)(d) of the Act. The applicant sought a determination of the amount of costs payable by the respondent pursuant to section 60 of the Act arising out of two notices of claim given by the respondent to the applicant.

4. Each of the notices of claim sought a new lease of the subject property.

5. Directions were given. The directions sought written representations from the parties and the parties were notified of the intention of the tribunal to determine the application on the papers to be filed and served pursuant to the directions and without an oral hearing pursuant to Rule 31.

6. The tribunal has not received a request for an oral hearing from either of the parties.

9. On 23 July 2014 the tribunal received a bundle of documents from the applicant, page numbered [1-96]. As to key documents:

The particulars of claim are at	[1-4]
The schedule of costs is at	[5-7]
The respondent's submissions are at	[8-11]
A response by the applicant is at	[22-23]
A response by the respondent is at	[24]

10. The tribunal met on 5 August 2014 to determine the application. The tribunal decided that further information was required from the applicant's solicitors. This was provided in a letter dated [] August 2014 which had been copied to the respondents solicitors. The gist of that letter was:

[ ]

The background in brief

11. By a notice of claim dated 23 May 2011 [54] the respondent sought a new lease of the property. The notice was served on the applicant which is the relevant reversioner. The applicant acted on that notice, took certain steps, including obtaining a valuation report, and gave a counter-notice which is dated 21 July 2011 [58]. That counter-notice was given without prejudice to a contention that the respondent's notice of claim was an invalid notice.

12. We infer the respondent's solicitors have conceded that the notice dated 23 May 2011 was an invalid notice because they have said as much in these proceedings and because a fresh notice of claim dated 14 November 2011 was given to the applicant [63]. The applicant also acted on that notice, took certain steps, including obtaining a valuation report, and gave a counter-notice which is dated 27 January 2012 [69].

13. In May 2012 the respondent made an application to the Leasehold Valuation Tribunal for determination of the terms of acquisition which were then in dispute. That application was stayed pending further negotiations, partly in respect of premium and partly in respect of the terms of the new lease. The stay was lifted and a hearing of the application was set for 20 & 21 November 2012. Evidently all terms of acquisition in dispute were finally agreed on 19 November 2012 and the hearing was vacated. It appears that the premium payable for the new lease was agreed at £13,700 [89].

14. In consequence of the above the respondent had until 19 March 2013 to complete the grant of the new lease or apply to the court to protect her position. The respondent failed to take either step. In the result the respondent's notice of claim dated 14 November 2011 was deemed withdrawn as at 19 March 2013.

The law as to costs

15. Section 60 of the Act provides 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, 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][1] 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.

16. The statute does not give any guidance as to the basis on which costs payable should be assessed. There is no mention of costs on the indemnity basis and no restriction that costs should be limited to those which might be assessed in civil litigation under the Civil Procedure Rules. The limitation that is imposed is that costs are only to be regarded as reasonably incurred to the extent that the costs of such services might reasonably be expected to have been incurred by the reversioner if the circumstances had been such that he was personally liable to pay them. Thus a reversioner cannot instruct a professional person, or a more expensive professional person, simply because he will not be footing the bill.

It has been held that a normal hourly charge-out rate is an appropriate starting point and that in complex cases it may well be justifiable to engage the services of an experienced or specialist practitioner.

Further, it has been also held that the value of a dispute and the amount to be gained or lost by a party is always a matter to be borne in mind in considering whether to incur costs and the level of those costs. See *Hague: Leasehold Enfranchisement* 6th edition para 32-24. It thus seems to us that the costs incurred and sought to be recovered must be proportionate.

The claim to costs

17. The applicant's schedule of costs is at [5-7]. The total claim is £4,519.80 made up as to:

Legal costs	£2,516.50
Valuation fees	£1,250.00
	£3,766.50
VAT at 20%	£ 753.30
Total	£4,519.80

The legal costs were based on charge-out rates of £235 and £225 for a grade B fee-earner and £150 for a grade D fee-earner.

The gist of the challenge to costs

18. The gist of the challenge to the costs claimed is:

18.1 The respondent is not liable for any of the costs relating to the first notice if claim because it was not a valid notice;

18.2 In the alternative the notice of claim was obviously invalid, the applicant's solicitors should have realised that within one hour and the respondent should not be liable for the any costs after that or the valuation fees;

18.3 A suggestion of a breach of the indemnity principle because the applicant had not originally provided a copy of the retainer;

184. The charge-out rates are not reasonable; the work should have been carried out at rates of £125 for a grade B fee-earner and £75 for a grade D fee-earner, which rates, it was asserted, are higher than those allowed in the magistrates' courts;

18.5 A number of challenges to the time said to have been incurred on certain aspects of the transaction; and

18.6 The amount of the valuation fees.

The respondent's counter-schedule is at [16-21]. In summary the respondent proposed:

Legal costs	£419.50
Valuation fees	£450.00
	£869.50
VAT at 20%	£173.90
Total	£1,043.40

19. In response the applicant's solicitors drew attention to an unreported case of *Daejan Properties Ltd v Wolfe*, 2001 Woolwich County Court, HHJ Welchman in support of the proposition that where a second notice is served because the first is, or might be, invalid the reversioner is entitled to its full costs for both notices. Unfortunately they did not provide the tribunal with a copy of the judgment. They also asserted that retainer letters and invoices are privileged in nature. They also asserted it was reasonable for a grade B fee-earner to supervise the grade D fee-earner who carried out the bulk of the work and that charge-out rates allowed in the magistrates courts are irrelevant.

Discussion of the claim

20. As regards costs of a notice which turns out to be an invalid notice, it would have been helpful if the applicant's solicitors had provided the authority they relied upon in support. However, we note the observation in *Hague: Leasehold Enfranchisement* 6th edition para 32-24 that the authors consider a tenant who serves what turns out to be an invalid notice of claim is estopped from denying liability to pay section 60 costs at any time while he asserts that the notice is valid. The support for that proposition is the analogy with collective enfranchisement as applied by the Lands Tribunal in the context of an RTM claim in *Plintal SA v 36-38 Edgewood Drive RTM Ltd* (unreported) LRX/16/2007.

21. We find *Plintal* authority persuasive and we follow it. Also we consider it to be rather disingenuous for the respondent's solicitors to serve a notice which they purport to be a valid notice and then complain that it was so obviously invalid that the applicant's solicitors should have realised that at a very early stage and that the applicant should be deprived of its costs in connection with that notice. It begs the question, if the notice was so obviously invalid why did the respondent's solicitors serve it?

22. We are satisfied that in principle the respondent is obliged to bear the costs properly payable in respect of both notices.

23. As to the charge-out rates we note that the rates recommended by the Senior Courts Costs Office (SCCO) for national region 2 are £177 for a grade B fee-earner and £111 for a grade D fee-earner.

24. The charge-out rates have been put in challenge by the respondent but the applicant's solicitors have not sought to justify rates quite a good deal higher than those recommended by the SCCO. That said we agree with the applicant's solicitors that charge-out rates that may be applied in the magistrates courts are wholly irrelevant to the current exercise.

25. We note and find that the majority of the work claimed for has been undertaken by the grade D fee-earner. We also accept that the rates recommended by the SCCO are for guidance only in general civil litigation and that there is a degree of specialism applicable to residential enfranchisement work, some of which can be complex. In the circumstances and having regard to the applicable statutory framework we find that charge-out rates of £200 for a grade B fee-earner and £125 for a grade D fee-earner should be applied as being reasonable and are what a reversioner paying himself is likely to agree.

26. We do have a number of reservations about some of the time claimed for. For example we reject the claim for 2 hours for a grade B fee-earner to consider each notice and give advice to the applicant. We allow 0.5 hrs only. Similarly we reject the claim to the cost of asking the respondent to supply a copy of the lease. The applicant should have supplied the counterpart lease to its solicitors. We also reject the claim for 1 hr for a grade B fee-earner to analyse the lease and ground rent provisions. Even though undertaken by a grade D fee-earner the claim

to 0.5 hrs to instruct the valuer is unreasonable. The letter at [37] is very short and we allow only 12 minutes. Of course sending the second letter of instruction would have taken even less time. We have rejected the claim to 1 hr for considering the valuation report and advising the client. Any valuation advice the applicant might have need would best come from the valuer. We reject the claim for 18 minutes related to correspondence with solicitors about the valuer's negotiations because we find this is outside the scope of section 60(1). Finally we have adjusted the time claim of 1.9 hrs for review of existing lease and preparation of new lease, agreeing the form of lease and preparing engrossments. Clearly from the correspondence there was a deal of negotiations over the terms of the new lease and such costs are outside the scope of section 60(1). Instead we allow 1 hr for this item.

27. Pursuant to directions we issued dated 6 August 2014, we have received from the applicant's solicitors a certificate that the applicant is not registered for VAT and thus is not able to recover the VAT paid or payable on the fees and costs claimed. We find therefore that the VAT element is payable by the respondent.

28. As regards the valuation fees these are claimed at £750 and £500 + VAT. Evidently the respondent's valuation fee in March 2011 was £495 + VAT [52]. The respondent's solicitors have suggested we should allow only £300 and £150 + VAT. That does not seem obviously fair or reasonable to us. We allow £500 + VAT for each report.

29. In the outcome and having made the several adjustments referred to above we assess the legal costs and valuation fees payable by the respondent to the applicant as follows:

Legal costs	£ 837.50
Valuation fees	£1,000.00
	£1,837.50
VAT at 20%	£ 367.50
Total	£2,205.00

Judge John Hewitt
26 August 2014