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

**Case Reference** : **MILON/00AS/0C9/2013/1609**

**Property** : **22 Waterside Cowley Uxbridge  
Middlesex UB8 2LG**

**Applicant (Respondent  
to the substantive  
proceedings)** : **Elmbirch Properties PLC**

**Representative** : **In person**

**Respondent (Applicant  
to the substantive  
proceedings)** : **Leigh Hossbach**

**Representative** : **Bonallack & Bishop, Solicitors,  
Salisbury**

**Type of Application** : **Costs payable from Lessee to  
Freeholder under section 60,  
Leasehold Reform Housing and  
Urban Development Act 1993 (“the  
Act”)**

**Tribunal Members** : **Mr Charles Norman FRICS (Valuer  
Chairman)  
Ms Jayam Dalal**

**Date of Decision** : **25 August 2014**

**Decision based on written representations  
without a hearing**

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**DECISION**

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## Background

1. Following a hearing of 24 June 2014 the Tribunal directed that an application pursuant to s.60 of the Act be determined separately.
2. An application was made on behalf of the landlord on 25 June 2014. Standard directions were issued on 25 June 2014.
3. Neither party requested a hearing and the matter was set down for a determination by written representations.
4. The amounts claimed on behalf of the landlord were as follows:

Legal Costs	£1655.50
VAT	£331.10
Valuation costs	£640.00
VAT	£128.00
Disbursements	£23.00
<b>Total</b>	<b>£2777.60</b>

5. The Tribunal received submissions from both parties and these are appended.
6. The Tribunal notes that the lessee has not taken issue with the amount of the surveyor's fee nor disbursements.
7. The respective submissions from the parties are given in their respective schedules (appended). The Tribunal is grateful to both parties for supplying electronic versions of their respective submissions which assisted the Tribunal in preparing its Decision.

## The Law

8. The law is given at section 60 of the Act as follows:

(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.

9. The Tribunal has applied those tests in reaching its findings.

### **Decision**

10. The Tribunal notes that hourly rates applied by a solicitor with more than 5 years post qualification experience and a Chartered Legal Executive. The respective rates were £125 and £185 per hour plus VAT. The Tribunal considers these are reasonable and notes that the Respondent lessee has not challenged them. The Tribunal has also noted the various reductions that have been applied and the prospective charges. However, the Tribunal considers that it is appropriate to make an assessment against the itemised costs provided.
11. The Tribunal findings in respect of the points of dispute are set out in the schedule below.

Item	Date	Type of Work	Description (summary)	Units /Charge	Landlord's Submission	Tenant's Submission	Decision	Amounts Allowed
1	10/06/13	Letter in	Receipt of instructions	2-£43	<p>The letter in sent a copy of the Respondent's s42 Notice. Our client asked to be advised as to the process and if, at first blush, the Notice appeared valid.</p> <p>The time includes an initial brief perusal of the s42 Notice to look for obvious errors such as incorrect signature or dates.</p> <p>Not all letters are chargeable at the same unit cost; the charge depends on the length and content of each letter.</p>	Unreasonable for receipt of a letter, usually £21 as per items 16 & 17	This is an important document and the solicitors have a duty of care to their client. The Tribunal considers this reasonable.	£43
7(a)	02/07/13	Attendanc	Ordering LH	3- £55	The Respondent will	Disputed, OCE	The Tribunal	£55

)		e	office copy entries		note that his representatives did not forward LH OCE (Office copy entries) until the 8 <sup>th</sup> July 2014. In order to investigate validity of the Respondent's s42, and in absence of the documents from the Respondent, we had to order these and peruse the same.	not understood, unclear, appears to be a duplication of work, perusing of LH Title establishing LH's right to new lease charged for in item 10.	accepts the landlord's submission and considers these payable.	
8	02/07/14	Preparation	Drafting counter-notice	2-£37	The Counter Notice is a fundamental document in the statutory process. It is a two page document over which considerable care and attention needs to be taken. 6 minutes per page is not unreasonable.	Unreasonable 3 units (£55.50) is considered excessive for preparation and attendance of a counter notice that contains 2 sentences (not including the sending of the letter).	The Tribunal accepts the landlords submission and considers these payable	£37
9	02/07/14	Attendance	Checking counter-notice	1-£18.50	As above, due to the importance of this document, and the	Unreasonable 3 units (£55.50) is considered	The Tribunal accepts the landlords	£18.50

					potential consequences for the Landlord if a valid Counter Notice is not served, it is not unreasonable to check this document at a cost of 1 unit	excessive for preparation and attendance of a counter notice that contains 2 sentences (not including the sending of the letter).	submission and considers these payable	
10	08/07/13	Letter in	Letter re leasehold title	3-£55.50	Once the LHs title was provided this had to be checked as it was a different edition of the leasehold register. We cannot assume it is/was the same as the edition that we had previously obtained and so the document needs to be checked in order to investigate the LHs right to a lease extension.	Disputed, excessive time for perusing a total of 2 pages of a standard Title document. A Title document is a standard small document and would not take 3 (£55.50) units to read and ascertain my right to a new Lease.	The Tribunal accepts the landlords submission and considers these payable	£55.50
12	08/07/13	Attendance	Perusing old lease in full	4-£74	In between items 12 and 13 on this Schedule the file was transferred from NLA to SD.	Unreasonable – duplication, full consideration of the Lease is done in item 13. Old	The Tribunal does not consider that it is reasonable for the tenant to	nil

					The charges in 12 and 13 would have been charged to, and payable by, our client (the Applicant/Freeholder) if they were paying the bill themselves.	Lease and existing Lease are the same Lease.	pay for "handover time" between fee-earners and does not accept that a freeholder would normally expect to pay for this. Item disallowed.	
15	02/01/14	Preparation	Amending first draft of lease	3-£64.50	When preparing the draft Lease Bonallack & Bishop make amendments as provided for under sections 56 and 57 of the 1993 Act. The draft then needs to be approved by the client and instructions taken on whether the Freeholder would like to insert any other amendments with a view to updating and modernising the	Disputed - duplication, Lease has already been considered and modernised in item 13	The Tribunal accepts the landlords submission and considers these payable	£64.50

					<p>Lease.  The freeholder is entitled to request modifications that do not come within s57(6) but are inserted for good and prudent management of a block/building. It is then for the LH to query, challenge or reject these.  Bonallack &amp; Bishop are unable to send a draft Lease without the same having been approved by our client as this would breach client instructions. In this case the client required amendments. This charge would be made to the client if it was paying the bill itself.</p>			
16	02/01/14	Letter	Letter to	1-£21.50	The s42 Notice	Disputed – the	The Tribunal	£21.50



			lessee's surveyor sending draft lease		listed the LHs surveyor as his representative and so the draft Lease was sent accordingly. The time would still be charged/claimed if the letter had been addressed to the LH personally.	Original Tribunal Application clearly shows I am representing myself My Tribunal Application clearly shows I had no representation and lists my full correspondence details,	accepts the landlords submission and considers these payable	
17	10/01/14	Letter	Letter to lessee	1-£21.50	It was necessary to write to the LH. Our client's valuer had been specifically informed by the LHs valuer that he was not instructed to negotiate. Our client always instructs its valuer to negotiate, in accordance with the spirit of the Act, but cannot do so if the other party is unwilling to open negotiations.	Disputed – the Original Tribunal Application clearly shows I am representing myself My Tribunal Application clearly shows I had no representation and lists my full correspondence details,	The Tribunal accepts the landlords submission and considers these payable	£21.50

					Bonallack & Bishop needed to clarify the position of who exactly was acting/representing the LH in order that we knew who to correspond with. A copy of the letter charged for is annexed to this Schedule and marked "Item 17"			
18-24	various	Various		13-£279.5	The Applicant provided detailed explanations of the proposed new Lease terms in response to the letters sent by the Respondent. It is not for Bonallack & Bishop to <i>advise</i> the Respondent as to the proposed new terms as this would breach our duty to our client, the Applicant, and breach our conduct	Disputed I deem these negotiations to be costs not covered under Section 60 of the 1993 Act. In the event that they are determined to be, I believe that if the Applicant had been paying these costs themselves all related correspondence costs (items 18-24) would have	The Tribunal considers that these costs are incidental to the grant of the new lease are therefore fall within section 60(1).	£279.50

				<p>rules under the SRA Code.</p> <p>The explanations given were clear and concise and would most likely have been avoided had the Respondent obtained legal representation, which this firm recommended he do on numerous occasions.</p> <p>Whilst Mr Hossbach states that he obtained legal advice (from John Pursely at TWM Solicitors) the advice appears to have been incorrect as it related to commercial property and the Lease Code 2007, which has no force or relevance to a 1993 Act lease extension. Had Mr</p>	<p>been avoided as they would have instead provided detailed explanations better justifying the disputed wording from the beginning rather than eventually providing them in their Tribunal hearing submission.</p> <p>Failure to provide sufficient explanations led directly to this being associated with the Tribunal proceedings, Section 60 (2). I gained the impression that they're reluctance to provide detailed explanations were due to not wanting to talk to</p>		
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					<p>Hossbach made us aware that this was the advice that he had obtained we could have pointed out that this was incorrect.</p> <p>Regrettably, Mr Hossbach preferred to conceal this fact in an attempt to use it as a 'trump card' at the Tribunal; which sadly backfired.</p> <p>We firmly believe that many of these costs would have been avoided had Mr Hossbach either; (a) sought legal advice at an earlier stage and/or (b) provided us with the name of his representative so we could have corresponded with them. We were not aware that Mr Hossbach had been</p>	<p>a litigant in person, evidenced in their constant requests for me to seek representation. They failed to realise that all my requests for further information were based on advice offered to me by a surveyor and legal professional. The Hearing made mention in the Application for Costs – Rule 13, that my disputing of the wording was justified</p> <p><i>Page 4 (10) "Nor do we consider that he [L Hossbach] pursued an obviously bad point in relation</i></p>		
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					<p>given inaccurate advice until a copy of TWM's letter was filed with the Tribunal by Mr Hossbach. It is not for our client to meet these costs. We attach letters to Mr Hossbach dated 30 January 2014 and 07 February 2014 marked "Item 18"</p>	<p><i>to the lease terms."</i></p>		
25	29/01/14	Attendance	Email from client surveyor	1-£21.50	<p>The surveyor and our client are separate entities. Our client's surveyor is Mr K McKeown of C A Church Limited. Our client is Elmbirch Properties PLC. It is not uncommon for more than one company or organisation to share an office</p>	<p>Disputed Unreasonable costs, 2 short emails from the same building possibly the same person as can be seen on the surveyor's invoice (attached to the Applicant's submission), the invoice is sent to and from the</p>	<p>The Tribunal considers that these emails could be considered within 1 unit of time and therefore allows item 25 only.</p>	£21.50

					building, or space.	same address, 14 Wilton Road, SP2 7EE. This is not an unreasonable assumption as prior conversations I had with the Surveyor Mr K. Mckeown confirmed that he had complete authority on all matters relating to the Lease renewal, not just premiums. As evidenced by his signature on the example Lease sent with the prior submission		
26	29/01/14	Attendance	Email from client	1-£21.50		Disputed Unreasonable costs, 2 short emails from the same building possibly the same person as can be	Disallowed for the reason above	nil

						<p>seen on the surveyor's invoice (attached to the Applicant's submission), the invoice is sent to and from the same address, 14 Wilton Road, SP2 7EE.</p> <p>This is not an unreasonable assumption as prior conversations I had with the Surveyor Mr K. Mckeown confirmed that he had complete authority on all matters relating to the Lease renewal, not just premiums. As evidenced by his signature on the example Lease sent with the prior submission</p>		
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						<b>Tribunal's determination on points in dispute</b>	<b>£618.00</b>	



Legal costs not in dispute						£933.50
Valuation fee (not disputed)						£640.00
<b>Subtotal</b>						<b>£2191.50</b>
VAT on the above						£438.3
Disbursements (not disputed)						£23.00
<b>Total</b>						<b>£2652.80</b>

## **Conclusion**

The Tribunal concludes that the Respondent (lessee) is liable to pay the Applicant (freeholder) costs of £2652.80 from the date of this decision.

## **Right to Seek Permission to Appeal**

The Tribunal is required to set out the rights of appeal against its decisions and these are provided in the appended guidance notes.

Charles Norman FRICS

Valuer Chairman

25 August 2014