



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

**Case Reference** : LON/00AN/OC9/2015/0315  
**Property** : 32 Fairholme Road, London, W14 9JX  
**Applicant** : Anne Tobin  
  
**Representative** : Bishop Sewell  
**Respondents** : (1) Rupert Price; (2) Cindy Tuyet Tran; (3) Mevlut Canagir and Georgia Canagir; and (4) Mandie Martin.  
**Representative** : Prettys Solicitors  
**Type of Application** : Enfranchisement  
**Tribunal Members:** Mr Robert Latham  
**Date and venue of Determination** : Paper determination on 14 September 2015 at 10 Alfred Place, London WC1E 7LR  
**Date of Decision** : 14 September 2015

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**DECISION**

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The Tribunal finds that the following costs sought by the landlord are payable: (i) Legal Costs of £1,437.41 (inclusive of VAT and disbursements) and (ii) Valuation Costs of £1,080 (inclusive of VAT).

## Introduction

1. This is an application under section 13 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act"). The current application by the landlord is for the determination of the costs payable by the tenants under section 33(1) of the Act.
2. On 17 July 2015, the landlord issued her current application claiming a total of £2,517.41, namely legal costs of £1,380 (inc VAT) plus disbursements of £57.41 and valuation costs of £1,080 (inc VAT).
3. On 21 July, the Tribunal gave directions:
  - (i) On 4 August, the landlord served a detailed Schedule of Costs. The legal costs total £1,663 (exc VAT). However, the landlord is restricting its claim to £1,150 (exc VAT). Chris Macartney charges out his time at £240 per hour (pre-November); £250 (November 2014 to May 2015) and £270 (post May 2014). A detailed schedule of the time engaged is given. These fees have been billed to the tenant. An invoice has also been provided in respect of the valuation fees.
  - (ii) On 20 August, the tenant served their Statement of Case. This is brief. A preliminary point is raised the Initial Notice that they had served was a nullity and therefore of no legal effect. They contend that that precludes the landlord from claiming any costs under section 33 of the Act. The Directions required the tenants to serve any legal submission. No submissions have been provided. Without prejudice to this contention, the tenants assert that the costs claimed are excessive. No further particulars are provided.
  - (iii) On 25 August, the landlord served a detailed Statement in Reply. The landlord provides authority for their contention that she is entitled to her costs, despite the tenants notice being invalid.
4. In its Directions, the Tribunal stated that the matter was suitable for determination without an oral hearing. However, either party was permitted to request an oral hearing, preferably within 14 days of the Directions. In their Statement of Case, the tenants state: "if the Tenants fail on their primary argument, that there should be an oral hearing to determine what reasonable costs can be recovered by the landlord". That approach is not acceptable to the Tribunal. The tenants have indicated that they are content for their main argument to be determined on the papers. It would be disproportionate to adjourn the case to a further oral hearing to determine the quantum of costs. The position is the more stark given that the tenants have failed to give any particulars for contending that the costs claimed are excessive. Any party disputing a claim for costs must specify their grounds for so doing. Directions are given to enable both parties the opportunity to identify the substance of the dispute that they require the Tribunal to determine.

(c) making out and furnishing such abstracts and copies as the nominee purchaser may require;

(d) any valuation of any interest in the specified premises or other property;

(e) any conveyance of any such interest;

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 the reversioner or any other relevant landlord 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 initial notice ceases to have effect at any time, then (subject to subsection (4)) the nominee purchaser'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) The nominee purchaser shall not be liable for any costs under this section if the initial notice ceases to have effect by virtue of section 23(4) or 30(4).

(5) The nominee purchaser 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.

## **The Principles**

11. *Drax v Lawn Court Freehold Limited* [2010] UKUT 81 (LC) established principles for the assessment of costs under Section 33. In summary, costs must be reasonable and have been incurred in pursuance of the section 13 notice in connection with the purposes listed in sub-paragraphs 33(1)(a) to (e). The nominee Applicant is also protected by section 33(2), which limits recoverable costs to those that the Respondent would be prepared to pay if he were using his own money rather than being paid by the Applicant.

12. This does, in effect, introduce what was described in *Drax* as a “(limited) test of proportionality of a kind associated with the assessment of costs on the standard basis”. It is also the case, as confirmed by *Drax*, that the Respondent should only receive his costs where it has explained and substantiated them.

13. It does not follow that this is an assessment of costs on the standard basis. That is not what section 33 says, nor is *Drax* an authority for that proposition. Section 33 is self-contained.

## **The Background**

5. On 17 October 2014, the tenants served their Section 13 Notice claiming the right to purchase the freehold of their block. There were four participating tenants.
6. On 22 December 2014, the landlord served a Counter Notice. This notice admitted the tenants' entitlement to a new lease, but was served without prejudice to their contention that the notice was invalid as it failed to accurately state the additional freehold property that the tenants were entitled to include in their claim. The tenants were asked to confirm that they accepted that their notice was invalid.
7. On 22 January, Bishop & Sewell wrote to Prettys seeking their acceptance that their Initial Notice was invalid. On 19 February, Prettys responded asserting the validity of their notice.
8. On 20 March, Prettys finally accepted that the Initial Notice was invalid. They declined to withdraw it on the ground that it was a nullity. They denied that the landlord was entitled to any costs under section 33 in respect of an Initial Notice which was a nullity. The Act only provided for the recovery of costs "where notice is given"; that notice must be a valid one.
9. On 24 March, Bishop & Sewell wrote setting out their contention that the landlord was entitled to her costs. On 2 June, They wrote setting out the legal costs that were to be sought. On 3 June, details were provided of the valuation costs. On 12 June, They wrote confirming the grounds upon which they were entitled to their costs. No substantive response was received.

## **The Statutory Provisions**

10. Section 33 provides, insofar as relevant for the purposes of this decision:
  - (1) Where a notice is given under section 13, then (subject to the provisions of this section and sections 28(6), 29(7) and 31(5)) the nominee purchaser shall be liable, to the extent that they have been incurred in pursuance of the notice by the reversioner or by any other relevant landlord, for the reasonable costs of and incidental to any of the following matters, namely—
    - (a) any investigation reasonably undertaken—
      - (i) of the question whether any interest in the specified premises or other property is liable to acquisition in pursuance of the initial notice, or
      - (ii) of any other question arising out of that notice;
    - (b) deducing, evidencing and verifying the title to any such interest;

## **The Tribunal's Determination**

### The Landlord's Entitlement to Costs

14. Hague on "Leasehold Enfranchisement" (6<sup>th</sup> Edition) at [28.32] states: "It is considered that where a purported initial notice is served which turns out to be invalid, the nominee purchaser and participating tenants are estopped from denying that s.33 costs are payable at any time while they assert that it is a valid notice". A footnote refers to the 1999 unreported decision of *Scottish Widows v Abbas* in support of this proposition. Reliance is also placed on *Benedictus v Jalaram* [1989] 1 EGLR 251 and an analogous situation under Part II of the Landlord and tenant Act 1954.

15. The Tribunal has no hesitation in accepting this contention. The consequences of a landlord failing to serve a Counter Notice are draconian (see Section 25). The legislature could not have contemplated that a landlord who believed that an Initial Notice might be invalid, could not protect their position by serving a Counter Notice. If a landlord is to serve a Counter Notice, a valuer needs to be instructed to provide a valuation of the freehold of the property and a solicitor needs to investigate and advise on the Initial Notice with a view to drafting and serving the Counter Notice.

### The Legal Fees

16. the landlord served a detailed Schedule of Costs which total £1,663 (exc VAT). However, the landlord is restricting its claim to £1,150 (exc VAT). Chris Macartney charges out his time at £240 per hour (pre-November); £250 (November 2014 to May 2015) and £270 (post May 2014). A detailed schedule of the time engaged is given. These fees have been billed to the landlord.

17. The tenants do not provide any critical assessment of Bishop & Sewell's Schedule of Costs. The hourly rate is consistent with that charged by a West London firm. Some 6.5 hours work is claimed. This could not be considered to be excessive.

18. The Tribunal notes that the Schedule relates to the period 3 November 2014 to 14 July 2015. On 20 March 2015, Prettys conceded that the Initial Notice was invalid. The entitlement to costs therefore ceases on receipt of this letter. The Tribunal would therefore have restricted the costs to £1,372 (+ VAT). However, the landlord is restricting her claim to the lower sum of £1,150 (+ VAT), a total of £1,380. The tenants have failed to establish any grounds for contending that this is excessive.

### The Valuer's Fees

19. The landlord claims £1,080 (inc of VAT); a net sum is £900. An invoice has been provided from Craig and Sheehan who inspected and valued all the subject flats. The valuation of any interest in the subject premises in accordance with section 33(1)(d) requires a consideration of the component parts in order to be able to value the property appropriate within the context of the claim. Again,

the tenants have failed to establish any grounds for contending that this is excessive.

**Robert Latham,  
Tribunal Judge  
14 September 2015**