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

**Case Reference** : **GM/LON/OOBK/OC9/2015/0461**

**Property** : **Flat E, Melcombe Regis Court, 59  
Weymouth Street, London W1G  
8NS**

**Applicant** : **Khazal Holdings Limited**

**Representative** : **Christopher Mathews Solicitors**

**Respondent** : **Launcelot Investments Limited**

**Representative** : **Ashfords LLP**

**Type of Application** : **Assessment of costs under section  
60(1) of the Leasehold Reform  
Housing and Urban Development  
Act 1993**

**Tribunal members** : **Sonya O'Sullivan  
Duncan Jagger MRICS**

**Date of Decision** : **10 August 2016**

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**DECISION**

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## **The background**

1. The Applicant is the long leaseholder of Flat E Melcombe Regis Court, 59 Weymouth Street, London, W1G 8NS.
2. The Respondent is freeholder of the building and the competent landlord for the purposes of the Leasehold Reform, Housing and Urban Development Act 1992 (the "1993 Act").
3. The leaseholder served a section 42 notice seeking to exercise his right to a lease extension under S48 of the 1993 Act and a Counter notice was served which admitted the right but did not agree the proposed premium.

## **The application**

4. By an application dated 10 November 2015 the leaseholder has now applied for an assessment of the landlord's costs under section 60(1) of the 1993 Act.
5. Directions were issued dated 3 June 2016 to those directions a bundle was lodged containing the Respondent's costs schedule and submissions made on behalf of both parties.
6. Neither party having requested an oral hearing, the application was considered by way of a paper determination on 9 August 2016.

## **The Legal costs**

7. Legal costs are in issue in the sum of £2,500 plus Vat.
8. Ashfords LLP act on behalf of the Respondent and act on a fixed fee basis rather than hourly rate basis. The fixed fee for this matter is £2,500 plus Vat. This sum is said to cover accepting the section 42 notice, investigating title, preparing and serving a counter notice, drafting and agreeing the terms of the new lease and completing the lease. It is said that there was little negotiation on the draft lease as they were agreed in line with those agreed with another tenant at Melcombe Regis Court. The fixed fee is also said to be undertaken at Melcombe Regis Court. The hourly rate charged is £365 and the solicitor with conduct is said to have been experienced and thus economical.

## **Time spent**

9. As this is a fixed fee there is no schedule of costs. As such the Applicant says it is impossible to comment given the lack of breakdown.
10. The time spent is challenged by the Applicant who says that the case was relatively straightforward with no dispute to the Applicant's entitlement to a new lease.
11. The Applicant says that the hourly rate of the solicitor with conduct at £365 is very high even among the hourly rates charged in enfranchisement cases. He submits that a rate of no more than £350 per hour would be sufficient.
12. The Applicant says that the fixed fee of £2,500 is disproportionate and unreasonable.

## **The tribunal's decision**

13. The provisions of section 60 are well known to the parties and the tribunal does not propose to set the legislation out in full. However costs under that section are limited to the recovery of reasonable costs of an incidental to any of the following matters, namely:-
  - i. Any investigation reasonably undertaken of the tenant's right to a new lease;
  - ii. Any valuation of the tenant's flat obtained for the purpose of fixing the premium or amount payable by virtue of Schedule 13 in connection with the grant of a new lease under section 56
  - iii. The grant of a new lease under that section.
14. Subsection 2 of section 60 provides that *"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"*.
15. The tribunal faced some difficulty given the lack of information in relation to the costs produced, no information was provided as to the time spent on the different elements of the transaction, by way of example details of time spent on the counter notice, time spent on the lease, time spent considering the claim notice and the right to a new lease and so on would have been extremely useful to the tribunal.
16. The tribunal does accept that the rate charged by the fee earners falls within the range generally adopted by the tribunal in cases of this kind.

17. The Applicant argues generally that the time spent is excessive. The view of the tribunal having taken all the matters set out in the parties' statements into account and having regard to the breakdown provided is that the amount charged by way of a fixed fee appears to be excessive for what was a straightforward case.
18. The tribunal agreed that reasonable costs under section 60 in this matter should be limited to 4 hours work for such a straightforward transaction to include the costs of completion. The tribunal therefore allows the sum of £1,460 plus Vat in respect of legal costs.

### **Valuation costs**

19. Valuation costs are claimed in the sum of £2,000 plus Vat. The landlord has produced an invoice dated 7 July 2016. The hourly rate charged is £300 and the total charged was 7 hours at £300 per hour rounded to £2,000 plus Vat.
20. The description of the work carried out is described as follows;  
  
*“Receiving your instructions, carrying out an inspection of the above property, investigating comparable evidence and reporting to you as to the likely premium to be paid for a lease extension under the assumed application Leasehold Reform Housing and Urban Development Act 1993.”*
21. The Applicant says that the inspection of the property took place on 23 April 2015. The Applicant's managing agent says that the valuer spent no more than 10 minutes at the property and that the average travel time from this office would be 20-25 minutes. The reasonable time element for the inspection is said to be 45 minutes/0.75 hours. A further 0.25 hours/15 minutes is said to be reasonable for the extraction of details given the surveyor acts for the Respondent in relation to all property in the same building. Investigation of comparable sales is said to be excessive and should have taken 0.5 hours/30 minutes. Considering case law and rent FTT decisions is said to have taken 2 hours whereas the Applicant says this should be no more than 0.75 hours/45 minutes. Carrying out the valuation itself is said to have taken 1 hour whereas the Applicant says it should have taken no more than 0.5 hours/30 minutes. Finally reporting in connection with the claim and figure for counter notice is claimed at 0.5 hours and the Applicant says that 0.25 hours/15 minutes is sufficient. The Applicant accepts the hourly rate but submits that an allowance of 3 hours is more than sufficient.

22. The tribunal agrees that the time spent is excessive. No time is allowed for research of recent FTT decisions etc as the tribunal considers an experienced surveyor should be fully abreast of such information. We also consider that we should take into account the surveyor's familiarity with the block given we understand that he deals with all property matters there. We therefore allow 3.5 hours at the hourly rate of £300 making a total of £1050 plus Vat.

**Name:** Sonya O'Sullivan

**Date:** 10 August 2016