



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

Case reference : OT/LON/00BH/OC9/2016/0074

Property : 720a High Road Leytonstone
E11 3AJ

Applicant : David Madden

Representative : Comptons Solicitors LLP

Respondent : Imran Yousof

Representative : Archstone Solicitors

Type of application : Section 91(2)(d) of the Leasehold
Reform, Housing and Urban
Development Act 1993

Tribunal members : N. Martindale

**Date of determination
and venue** : 7 September 2016
10 Alfred Place, London WC1E 7LR

Date of decision : 7 September 2016

DECISION

Summary of the Tribunal's decisions

1. The Tribunal determines that the Section 60 statutory costs payable by the leaseholder applicant of flat 720a High Road E11, are £650, including VAT.

Background

2. This is an application under section 91(2)(d) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") in respect of flat 720a High Road London E11 3AJ.
3. The application is made by the tenant, "the Applicants", for the determination of the reasonable costs payable by them to the landlord, under section 60(1) of the Act. It follows service of a Notice of Claim to acquire a new lease for this flat. The freehold title is subject to a number of occupational long leases. There is apparently no overriding headlease.
4. By way of a Notice dated 17 July 2015 the Applicant, through their representatives, Comptons Solicitors LLP, made a claim to acquire a new lease of this flat. By way of Counter Noticed dated 8 September 2015, the recipient of the notice, through their representative Archstone Solicitors, admitted the entitlement, but made a counter proposal to the value of the lease extension.
5. It is apparent that a subsequent date, (undisclosed to the Tribunal) the premium was agreed at £4000. A letter dated 5 July 2016, from the Tribunal to the parties confirmed that the only remaining dispute was over the costs payable to the landlord by the tenant, under S.60 of the Act.

Directions and Schedule of costs

6. The Tribunal issued its standard costs directions on 12 July 2016, providing for the landlords to send the tenant a detailed schedule of costs for summary assessment by 26 July 2016; for the tenant to provide a statement of case in relation to those costs by 9 August 2016, and for the landlords to send any statement in response by 16 August 2016. It was the Applicants' responsibility to file hearing bundles by 23 August 2016. The Tribunal directed that it was content to determine the matter on the papers unless either party requested an oral hearing, in which case the matter would be dealt with at a hearing 7 September 2016. Neither party requested a hearing and the application was determined on the papers in the week commencing 5 September 2016.

The Tenant's Case

7. In the event, the Respondent (Landlord), failed to provide a detailed schedule of costs by the due date. Consequently we were informed by the Applicant (tenant) that he was unable to comply with a statement of case on those costs, as directed. Instead the Applicant provided a 'timeline' of events from the start of the lease extension process, by way of a letter dated 10 August 2016, to the Tribunal. In doing so this description identifies that in their letter dated 17 August 2015, the representatives for the landlord, identified the sum of £1950 plus VAT for 'legal fees'. They further asked

for this to be agreed, in a later letter dated 17 December 2015, to the Applicant. This was rejected by the tenant's solicitor "on the basis that insufficient work had been carried out to decide whether the fees would be reasonable."

8. The 'timeline' from the Applicant, then sets out a series of requests by email, telephone and letter to the Respondent's representative to progress the lease extension. However only tardy, if any, responses were said to have been made through the months of January to August 2016. Copy correspondence is set out in their bundle. In the process the Applicant's (tenant's) solicitor, rather than the Respondent (landlords) solicitor had to produce the draft deed of Surrender and Re-grant for the latter's approval. It was produced in April 2016 and finally approved in June 2016. No completion statement was provided by the Respondent and remained outstanding when the timeline document was produced.
9. The 'timeline' document concludes by inviting the Tribunal to assess the costs due to the Landlord under S.60, at £650 including VAT.

The Landlord's Case

10. The Tribunal did not receive any representations from the Landlord.

The statutory provisions

11. Section 60 of the Act provides:

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 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.

The principles

12. The proper basis of assessment of costs in enfranchisement cases under the 1993 Act, whether concerned with the purchase of a freehold or the extension of a lease, was set out in the Upper Tribunal decision of *Drax v Lawn Court Freehold Ltd* [2010] UKUT 81 (LC), LRA/58/2009. That decision (which related to the purchase of a freehold and, therefore, costs under section 33 of the Act, but which is equally applicable to a lease extension and costs under section 60) established that costs must be reasonable and have been incurred in pursuance of the initial notice and in connection with the purposes listed in sub-sections [60(1)(a) to (c)]. The applicant tenant is also protected by section 60(2) which limits recoverable costs to those that the respondent landlord would be prepared to pay if it were using its own money rather than being paid by the tenant.
13. In effect, this introduces 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 landlord should only receive its costs where it has explained and substantiated them.
14. It does not follow that this is an assessment of costs on the standard basis (let alone on the indemnity basis). This is not what section 60 says, nor is *Drax* an authority for that proposition. Section 60 is self-contained.

The Tribunal's determination and reasons

15. The Tribunal has considered such representations as it received from the parties, following its directions, on the conduct of the application for lease extension and its subsequent implementation by way of surrender and re-grant in relation to S.60 costs.
16. It appears to the Tribunal that only a minimal quantity of work was undertaken by the Landlord's solicitor, including receipt and

consideration of the initial Notice, investigation of title, preparation and service of Counter Notice and that the bulk of the conveyancing work was in response to the substantive work of the Applicant's solicitors.

17. The Tribunal notes that neither side appears to have instructed a Valuer to prepare a valuation of the interest to be transferred. No Valuer's fee nor related any disbursements are payable to the landlord.
18. The Tribunal notes that although mention was made in preparation for an earlier hearing (now vacated) regarding costs under Rule 13 by the Applicant's solicitors; this application and determination deals solely with statutory costs arising under S.60.
19. The Tribunal determines the costs payable to the landlord under S.60 at £650 including VAT: This sum to include all and any disbursements by the landlord's solicitors.

Name: Neil Martindale

Date: 7 September 2016