



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

1st Case Reference : **BIR/00CN/OC9/2016/0017**

2nd Case Reference : **BIR/00CN/OC9/2016/0016**

3rd Case Reference : **BIR/00CN/OC9/2016/0018**

1st Property : **4 Lomas Drive, Northfield Drive,
Birmingham B31 5LR**

2nd Property : **8 Lomas Drive, Northfield Drive,
Birmingham B31 5LR**

3rd Property : **55 Lomas Drive, Northfield Drive,
Birmingham B31 5LR**

1st Applicant : **Mr R.J. Guess & Ms C.A. McQuoid**

2nd Applicant : **Mr D.R. Williams**

3rd Applicant : **Mr R. Griffin**

Representative : **Mr Anthony W. Brunt**

Respondent : **Midland Freeholds Limited**

Representative : **None**

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

Tribunal Members : **Judge A.J. Verduyn
Mr S. Berg FRICS**

**Date and venue of
Determination** : **Paper Determination made on 11th
January 2017 - Centre City Tower,
5-7 Hill Street, Birmingham B5 4UU**

Date of Decision : **27th February 2017**

DECISION

1. The Tribunal determines that the reasonable legal costs of the Respondent in dealing with the matters in section 60 of the Leasehold Reform Act 1967 are **£750** for each lease and **£70** for notices (save for 4 Lomas Drive, at **£140** for notices) in each case plus VAT if applicable.

Reasons for Decision

Introduction

2. These are three cases relating to properties at Lomas Drive, Birmingham. In each the substantive application was for the determination of the premium payable for a new lease of the property concerned, pursuant to section 48 of the Leasehold Reform, Housing and Urban development Act 1993 ("the 1993 Act"). The substantive applications were determined by the Tribunal and all that remains are the ancillary applications under section 91(2)(d) of the 1993 Act for the determination of the freeholder's reasonable legal costs.
3. The applications were received by the Tribunal on 3rd and 14th June 2016, and directions given in the substantive proceedings. The costs applications were stayed, and then the stays were lifted when the premium for the new leases were agreed, and new directions were given on 9th November 2016. (including for determination without a hearing). The Respondent defaulted in providing the directed detailed statements of costs and by Order of 2nd December 2016, it was barred from taking further part in the proceedings. The Tribunal is, of course, still required to make an assessment and Mr Brunt for the Applicants filed a statement on 20th December 2016. The Tribunal considered the applications on 12th January 2017.

The Law

4. The relevant law is set in Section 60 of the 1993 Act:

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 Applicants' Submissions

5. Mr Brunt set out in his statement his many years of professional experience and his professional qualifications, qualifying as a Fellow of the Incorporated society of Valuers in 1980 and becoming a Chartered Surveyor in 2000. He was a member of the Royal Institution of Chartered Surveyors until his resignation in 2015. His statement carries the declaration necessary for expert evidence. In his statement he acknowledges the terms of Section 60 of the 1993 Act as set out above. The fees claimed must conform to the requirements of the section.
6. Mr Brunt accepts that Notices were served by the Respondent in respect of the statutory deposit and proof of title, and a sum is recoverable under Section 60(1)(a) of the 1993 Act. Copies were provided to the Tribunal. Failure of timely compliance by the Applicants in the case of 4 Lomas Drive (only) led to the issue of further notices. He contends that £50 in total is

appropriate to be awarded in respect of these notices regarding 4 Lomas Drive, and £25 in respect of the others.

7. In respect of valuation, M Brunt pointed out that there was no evidence that one was undertaken within the terms of section 60 of the 1993 Act and, unlike legal costs, one was not an inevitable cost for the Respondent. No award should be made under Section 60(1)(b) of the 1993 Act.
8. Mr Brunt contends that, in respect of the new lease, a reasonable level of experience in the work to be undertaken can be anticipated, the use of word processing by junior staff and checking by senior staff. He submits an appropriate sum under Section 60(1)(c) of the 1993 Act is £600 plus minor out of pocket expenses and VAT if applicable.

The Tribunal Decision

9. The Tribunal carefully considered the submissions of Mr Brunt and had regard to its own knowledge and experience (but no secret knowledge or information). The sums contended by Mr Brunt are considered by the Tribunal to be less than those properly due under the terms of the 1993 Act. Whilst the absence of any evidence for a survey precludes an award for the cost of one, the Tribunal considers that the sum which may properly be incurred for the cost of a new lease is £750 plus VAT (if the Respondent is not VAT registered), but inclusive of disbursements (for which, of course, no evidence has been submitted). The sum for the notices referred to is assessed at £140 in respect of 4 Lomas Drive (there being 4 notices in that case), and £70 for the others, which takes account of their simple form but the necessary costs of composition and issue. VAT may be added to the costs allowed for the notices if the Respondent is VAT registered.

Appeal Provisions

10. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

Judge Dr Anthony Verduyn

Dated 27th February 2017