



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

<b>Case reference</b>	:	<b>LON/00BK/OC9/2017/0178</b>
<b>Property</b>	:	<b>4 Hatherley Court, Hatherley Grove, London W2 5RD</b>
<b>Applicant</b>	:	<b>Bonita Elizabeth Martin and John Grist Taylor ("the tenants")</b>
<b>Representative</b>	:	<b>Clarke Willmott LLP</b>
<b>Respondent</b>	:	<b>Central and Metropolitan Estates Ltd ("the landlord")</b>
<b>Representative</b>	:	<b>Tolhurst Fisher LLP</b>
<b>Type of application</b>	:	<b>A determination of reasonable cost under section 60(1) of the Leasehold Reform, Housing and Urban Development Act 1993</b>
<b>Tribunal member</b>	:	<b>Angus Andrew Marina Krisko BSc (Est Man) FRICS</b>
<b>Date and Venue of hearing</b>	:	<b>10 Alfred Place, London WC1E 7LR</b>
<b>Date of decision</b>	:	<b>20 September 2017</b>

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**DECISION**

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**Decision**

1. Pursuant to 60(1) of the Leasehold Reform, Housing and Urban Development Act 1993 the following statutory cost are payable by the tenants to the landlord:
  - a. Legal costs of £1,514 plus VAT

- b. Valuation costs of £800 plus VAT
- c. Disbursements of £48.20 inclusive of VAT

### **The application and determination**

- 2. By application received on 7 July 2017 the tenants sought a determination under section 60(1) of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) of the landlord’s statutory costs incurred in their new lease claim.
- 3. Standard directions were issued on 10 July 2017. The directions stated that the application was suitable for determination on the basis of written submissions and without an oral hearing, but they informed the parties of their right to request an oral hearing. No such request was received and accordingly we have determined the statutory cost on the basis of the written submissions and other documents included in the comprehensive document bundle that was submitted in accordance with the directions.

### **Background**

- 4. By an initial notice dated 19 May 2016, the tenants claimed the right to a new lease. The initial notice proposed a purchase price of £8,500. The initial notice gave 27 July 2016 as the last day for the service of the landlord’s counter notice.
- 5. The landlord’s counter notice is dated 12 July 2016. The counter notice admitted the tenants’ claim and proposed a purchase price of £11,000.
- 6. It seems that the parties eventually agreed a premium £9,000 and the new lease was completed on or about 2 June 2017. The parties were however unable to agree the statutory costs that are payable to the landlord under section 60(1) of the Act.

### **The statutory framework**

- 7. The relevant provisions of section 60(1) of the Act provides:

#### ***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 Bone 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.*

### **The claimed costs**

8. The Tribunal standard directions required the landlord to send the following documents to the tenants:

- A schedule of costs sufficient for a summary assessment.

*The schedule shall identify the basis for charging legal and/or valuation costs. If costs are assessed by reference to hourly rates, detail shall be given of fee earners/case workers, time spent, hourly rates applied and disbursements. The schedule should identify and explain any unusual or complex features of the case.*

- Copies of the invoices substantiating the claimed costs.
  - Copies of any other documents/reports upon which reliance is placed.
9. As far as the legal costs are concerned the landlord provided a detailed six column schedule itemising all the activities completed during the transaction. The total time spent in completing the work was 8 hours 48 minutes. The schedule records that all the work was undertaken by Robert Plant who is a partner in Tolhurst Fisher LLP. His hourly charging rate is £217 and consequently the total claimed costs are £1,906.80 plus VAT.
10. As far as the valuation costs were concerned the landlord simply provided a copy of the valuer's invoice in the sum of £1,250 plus VAT: £1,500 in total.
11. The disbursements consist of a special delivery fee of £6.20 and a telegraphic transfer fee of £35 plus VAT: £48.20 in total.

### **The tenants' proposed costs**

12. In their application the tenants disputed the costs claimed by the landlord and proposed the following alternative costs:
  - a. Legal fees of £750 plus VAT
  - b. Valuation fees of £750 plus VAT
  - c. The disbursements are disputed in their entirety on the basis that they are not recoverable under the Act.
13. Although the tenants clearly object to the valuation fees and the disbursements their statement of case concentrate exclusively on the legal costs. The tenants have three broad objections to the legal costs. The first is that much of the work was undertaken by a Mr Rubin who is a trainee solicitor but has been claimed at Mr Plant's hourly rate as a partner. The second is that much time was spent in negotiating lease terms to which the landlord was not entitled under the Act. The final ground of objection is that the time spent by the landlord's solicitor in corresponding and communicating with the valuer is excessive and should be discounted. In this respect the tenants rely on the Upper Tribunal decision in Sinclair Gardens Investments (Kensington) Ltd v Wisbey [2016] UKUT 0203 (LC).

### **Reasons for our decision**

14. Before turning to the specific costs we make three preliminary points. The first relates to the time spent by the landlord's professional team that was at the heart of this dispute. In assessing a reasonable time to undertake the tasks identified in sections 60(1) we have regard to our considerable experience both as specialist practitioners and more recently as members of this expert tribunal: we can do no other.
15. The second relates to the basis of our assessment. We remind ourselves that we are not assessing costs on either the standard basis or the indemnity basis. The landlord's costs must nevertheless be reasonable and this has been described as a limited test of proportionality.
16. Thirdly this tribunal has neither the expertise nor the resources to conduct a detailed assessment. We can only assess the costs in the round.

### **Legal costs**

17. We do not accept the tenants' second and third objections. The Act does permit variations from the existing lease in limited circumstances. It is by no means either unusual or unreasonable for a landlord to seek variations often by the substitution of more modern lease. The correspondence between the two solicitors agreement was simply part of the cut and thrust of the negotiations that invariably occurs in cases such as this. The

landlord's solicitor was seeking to obtain the best outcome for his client and we do not consider that he should be criticised for that.

18. We have read the Sinclair Gardens case to which our attention was drawn and in particular to paragraph 25 that deals with the solicitor's costs incurred in instructing a valuer. There is an ambiguity in that paragraph. Nevertheless the nub of the decision is contained in the following sentence:

*"If a solicitor instructs a valuer to produce a valuation and then considers the valuation once it is provided, then the solicitor's costs are "incidental to the valuation"."*

On that basis we are satisfied that the landlord is entitled to recover the reasonable costs incurred by its solicitor in both instructing the valuer and in considering the valuer's report.

19. There is however merit in the tenant's first objection. It is apparent from the emails included in the hearing bundle that the landlord has claimed at a partner's rate for a work that was undertaken by a trainee solicitor. In its reply the landlord deals with this objection by asserting that the partner *"has reviewed, amended where necessary and signed off any correspondence prepared by Mr Rubin, therefore incurring two sets of costs"*. The emails sent by the trainee solicitor are straightforward and the suggestion that they were first checked by a partner before being sent does not strike us as credible.
20. Even if we were wrong about that a privately paying client would not expect to pay at a partner's rate for all the time spent in completing a straightforward transaction with a very small premium. Such a landlord would expect and would be entitled to expect that much of the routine work would be undertaken by a trainee or paralegal.
21. The total time spent of 8 hours 48 minutes for a straightforward case of this type is excessive where all the work is undertaken by an experienced partner. It is however not unreasonable where the basic preparation work is undertaken by a trainee or paralegal as one would expect in a case of this nature. The hourly rate of £217 for a partner is reasonable and indeed the tenants do not object to it. On the basis of the partner's rate we would expect a trainee's or paralegal's time to be charged at £125 per hour. We consider it reasonable to allow 4 hours 30 minutes at the partner's rate and the balance of 4 hours 18 minutes at the lower rate. We therefore allow legal costs of £1,514 plus VAT.

#### Valuation costs

22. The landlord ignored the tribunal directions recited above. The basis for charging the valuation fee is not explained. We not know for example if it was an agreed fixed fee or if it reflected the time spent.
23. This was a straightforward case. For any valuer undertaking valuations under the Act it was *"bread and butter"* work. The starting point should be

the times spent by the valuer and the hourly rate applied, neither of which are disclosed.

24. This is the sort of work which should be undertaken by an associate partner and no privately paying landlord would either expect or be prepared to pay an hourly rate of more than £200 plus VAT for a valuation of this type.
25. As to the time spent a competent valuer should have been able to complete the valuation within four hours. That allows one hour for taking instructions and reading the lease, two hours for the inspection, half an hour any relevant internet research and half an hour for completing a simple valuation report. Consequently we allow valuation costs of £800 plus VAT.

### **Disbursements**

26. We assume that the special delivery be of £6.20 related to the service of the counter notice. A prudent solicitor will always ensure that service can be proved and we are satisfied that a landlord would be prepared to pay this fee and it is allowed.
27. Section 60 permits the landlord to recover the reasonable costs incurred in the grant of the new lease. That encompasses its conveyancing costs. It is standard practice to remit the sale proceeds to the client by means of a telegraphic transfer and it is equally standard practice to recover that costs from the client. A privately paying landlord would expect to pay that fee and we allow it.

**Name: Angus Andrew**

**Date: 20 September 2017**