



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

**Case Reference** : LON/00BK/OC9/2017/0244

**Property** : First Floor Flat and Front Flat, 403 Harrow Road, London W9 3NF

**Applicant** : 403 Harrow Road Limited

**Representative** : YVA LLP

**Respondent** : Ms Alina Murphy

**Representative** : Curwens LLP

**Type of Application** : Enfranchisement - costs

**Tribunal Members** : Judge Robert Latham

**Date and venue of paper determination** : 20 March 2018 at 10 Alfred Place, London WC1E 7LR

**Date of Decision** : 21 March 2018

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**DECISION**

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The Tribunal determines the section 60 statutory costs in the sum of £200 + VAT for legal fees and £500 + VAT for surveyor's fees, a total of £840.

## **Introduction**

1. This is an application under section 91 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act"). The current application by the freeholder/landlord is for the determination of the costs payable by the tenants under section 60(1) of the Act. The costs claimed in the application are modest:

(i) Legal fees of £750 (+ VAT);

(ii) Surveyor's Fees of £500 + VAT.

- There is a discrete issue as to whether the landlord is entitled to recover VAT.
2. The procedural background to this application is complex. The legal costs incurred by both parties on this application are now likely to far exceed the sums that this Tribunal is required to determine. A Procedural Judge has determined that this application has not been struck out and that the statutory costs payable by the tenant should be determined.
3. On 3 October 2017, the Tribunal issued its standard Directions, pursuant to which:
  - (i) The landlord has served a Statement of Costs, dated 25 January 2018. Legal costs are now claimed in the sum of £500.
  - (ii) The tenant has served its Statement in Response, dated 1 February 2018.

## **The Background**

4. On 7 December 2016, the tenant served her Section 42 Notice applying for a new lease of the First Floor Flat and the Front Flat at 403 Harrow Road, London, W9 3NF. A premium of £16,000 was proposed.
5. The Act required the landlord to serve its Counter Notice by 9 February 2017. The landlord failed to do so. The effect of this is that the landlord is taken as accepting the terms of the lease proposed by the tenant. On 3 March 2017, YVA Solicitors ("YVA") notified the tenant's Solicitors, Curwens LLP ("Curwens") that they were now acting for the landlord and suggested that the Initial Notice was invalid as it had been served on the wrong address.
6. On 9 March 2017, the tenant issued proceedings at the Central London County Court seeking a declaration in respect of the terms of acquisition. These proceedings were determined on 21 August 2017 by an Order made by District Judge Langley. The Order recited that the tenant should be granted a 90 year lease extension at a premium of £16,000.

7. The District Judge ordered the landlord to pay the tenant costs of £5,127.90 which was 75% of the tenant's "reasonable and proportionate costs". The Order further records that Curwins had undertaken to hold security in respect of tenant's Section 60 costs "pending assessment by the First-tier Tribunal if not agreed".
8. The parties disagree how this Order should be interpreted. Having considered all the papers in the County Court proceedings, the Tribunal is satisfied as to how it should be construed. The District Judge determined the costs payable in respect of the County Court proceedings and ordered the landlord to pay £5,127.90. She had no jurisdiction to determine the Section 60 costs which are a matter for this tribunal. The landlord would not be obliged to complete the lease extension until these statutory costs had been assessed and paid. The Court therefore required the tenant's solicitor to undertake to hold an appropriate sum as security in respect the determination of the Section 60 costs which tenant was obliged to pay.

### **The Statutory Provisions**

9. Section 60 provides, insofar as relevant for the purposes of this decision:

"(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.

.....

(5) A tenant shall not be liable under this section for any costs which a party to any proceedings under this Chapter before a leasehold valuation 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... or any third party to the tenant’s lease.”

### **The Principles**

10. *Drax v Lawn Court Freehold Limited* [2010] UKUT 81 (LC) dealt with costs under section 33 of the 1993 Act, rather than section 60, but the principles established in *Drax* have a direct bearing on costs under section 60. In summary, costs must be reasonable and have been incurred in pursuance of the section 42 notice in connection with the purposes listed in sub-paragraphs 60(1)(a) to (c). The nominee purchaser is also protected by section 60(2), which limits recoverable costs to those that the lessor would be prepared to pay if he were using his own money rather than being paid by the nominee purchaser.
11. 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 lessor should only receive his costs where it has explained and substantiated them. It does not follow that this is an assessment of costs on the standard basis. That is not what section 60 says, nor is *Drax* an authority for that proposition. Section 60 is self-contained.

### **The Tribunal’s Determination**

#### Legal Fees

12. The landlord claims solicitor’s costs in the sum of £750 + VAT at 20%. The landlord’s Statement of Costs claims the following at an hourly rate of £250 for a Grade A fee earner:
  - (i) Attendances on Opponent (Curwins): £125 for letters out/e-mails.
  - (ii) Attendances on Client: £250 for personal attendances; £180 for letters out/e-mails; £125 for telephone attendances.
  - (iii) £125 for reviewing and considering draft deed of surrender and lease (28 April 2017).

These sums total £805 and exceed the sum sought in the application.

13. The tenant notes that no dates have been provided as to when the work was done save in respect of the sum of £125. Neither have any particulars been provided of the work. YVA were not instructed until after the terms of the conveyance had been determined (by default) on 9 February 2017. The

tenant suggests that the hourly rate should be capped at £195 per hour, namely the rate for a Grade C fee earner. This was the rate and grade assessed by the County Court. The tenant conceded that the equivalent of 1 hour should be allowed for "pre and post 21 August 2017 hearing work, advice and compliance with the Order for completion formalities and registration of the new lease, namely £195".

14. The Tribunal assesses legal costs in the sum of £200. The landlord has provided no details as to when the work was done or the nature of the work. There is no evidence that YVA were involved prior to 9 February 2017. Thus no costs would be allowable under sub-paragraph (a), namely any investigation reasonably undertaken of the tenant's right to a new lease. By this date, the tenant's right to a new lease had been resolved.
15. Costs would only be allowable under sub-paragraph (c), namely the costs incidental to the grant of the new lease. The landlord claims £125 "for reviewing and considering draft deed of surrender and lease". Modest additional costs would be incurred in executing the new lease. A total of £200 is assessed.

#### Surveyor's Fees

16. The landlord claims £500 in respect of surveyor's fees of Alex Kirkham. The work is described as "inspecting the property on 24 November 2016, taking measurements and considering the area, size, style and location and comparable values to include researching and providing report in accordance with RICS Valuation Professional Standards (the Red Book)". The fee is based on 2.77 hours work at £180 per hour.
17. The tenant challenges the landlord's right to recover this. Complaint is made that no receipt has been produced. The existence of the report is not accepted. The invoice pre-dates the initial notice when the parties were seeking to negotiate the lease extension outside the terms of the lease.
18. The Tribunal is satisfied that this sum is payable and that a valuation was obtained. It is accepted that the report was obtained before the tenant's Initial Notice. However, this is not fatal to the landlord's contention that the costs come within sub-paragraph (c), namely "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". Hague "Leasehold Enfranchisement" 6<sup>th</sup> Edition (at 32-24) notes that valuation fees have been allowed in these circumstances even though the valuation had been carried out earlier when a voluntary lease extension was being discussed. The fact that the landlord did not get round to serving a Counter Notice is not fatal. The sum claimed is manifestly reasonable.

#### VAT

19. The Tribunal is satisfied that both YVA and the Surveyor are registered for VAT and are therefore obliged to charge VAT. Statutory costs are intended to indemnify the landlord for the costs that he would otherwise be obliged to pay. VAT must therefore be added to the costs assessed by the Tribunal.

Judge Robert Latham,  
21 March 2018

### Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).