



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

Case reference : **LON/00BK/OC9/2018/0262**

Property : **Flat 70, 105 Hallam Street, London
W1W 5HE**

Applicant : **Mr Kenneth Gold**

Representative : **Mr Christopher Last (Solicitor)
Leasehold Law LLP**

Respondent : **Mr Ian Sands (Enfranchisement
Director)
Howard De Walden Estates Limited**

Representative : **Charles Russell Speechlys LLP**

Type of application : **Application for determination of
reasonable costs**

Tribunal member(s) : **Mr Jeremy Donegan (Tribunal
Judge)
Mr Patrick Casey MRICS (Valuer
Member)**

**Date and venue of
hearing** : **03 October 2018
10 Alfred Place, London WC1E 7LR**

Date of decision : **03 October 2018**

DECISION

Decision of the Tribunal

The Tribunal determines that the costs payable by the applicant to Citystable Limited ('Citystable'), pursuant to section 60(1) of the Leasehold Reform, Housing and Urban Development Act 1993 ('the 1993 Act'), are £375 (Three Hundred and Seventy-Five Pounds) including any VAT.

The background

1. These proceedings arise from a new lease claim for Flat 70, 105 Hallam Street ('the Flat'), under the 1993 Act. The applicant is the leaseholder of the Flat and the respondent is the freeholder. Citystable is the intermediate landlord.
2. The applicant served a section 42 notice of claim on the respondent and Citystable on 02 June 2016, in which he proposed a premium of £149,200 and £800 as the "other amount" payable under schedule 13 of the 1993 Act. The respondent served a counter-notice on 01 August 2016, admitting the claim but proposing a higher premium of £274,700 but a lower sum of £650 as the "other amount" payable to Citystable.
3. The respondent submitted an application to the Tribunal under section 48 of the 1993 Act on 03 October 2018. The applicant withdrew his section 42 notice on 11 January 2017 and is liable to pay costs under section 60(1) of the 1993 Act. The Tribunal received an application to determine these costs ('the Costs Application') on 02 August 2018. Directions were issued on 09 August 2018 and revised on 18 September 2018.
4. The Costs Application was listed for hearing on 03 October 2018. The Tribunal was supplied with a bundle of documents that included the directions, the notice and counter-notice, the respondent's costs schedule, statements of case from both parties and various authorities.
5. The relevant legal provisions are set out in the appendix to this decision.

The hearing

6. Mr Last appeared for the applicant and Mr Sands appeared for the respondent. Citystable is not a party to the Costs Application proceedings and was not represented.
7. At the start of the hearing, the Judge queried why Citystable had not been named in the Costs Application. Mr Last explained that the respondent is "the competent landlord" and Tribunal's determination

would be binding on Citystable, pursuant to paragraph 6(1) of schedule 11 to the 1993 Act.

8. The Judge then identified the disputed costs before granting a adjournment for the parties to try and agree terms. This proved fruitful in that Mr Last and Mr Sands agreed the costs payable to the respondent in the total sum of £4,500 (Four Thousand Five Hundred Pounds) including VAT. The parties were unable to agree the legal costs claimed by Citystable of £840 (Eight Hundred and Forty Pounds) and the Tribunal heard brief oral submissions on these costs.
9. The respondent's statement of case did not provide a breakdown or details of Citystable's costs and no invoice was disclosed for the £840 fee. Mr Last submitted that the costs were disproportionate to the sum that Citystable stood to receive for the new lease. He relied on section 60(2) and argued that Citystable would not incur costs of £840, where the "other amount" was only £650, were it personally liable for these costs. He suggested an alternative figure of £375.
10. Mr Sands was unable comment on how the figure of £840 had been calculated but said this was a typical amount charged by Citystable's solicitors (Fuglers).

The Tribunal's decision

11. The Tribunal determines that the costs payable to Citystable are £375, including any VAT.

Reasons for the Tribunal's decision

12. The respondent is the "competent landlord" for the purposes of section 40(4)(b) of the 1993 Act and has conduct of these proceedings on behalf of itself and the Citystable. As stated by Mr Last, the Tribunal's decision is binding on Citystable (paragraph 6(1) of schedule 11).
13. The Tribunal agrees with Mr Last's reasoning. If an intermediate landlord is liable to pay its own costs of investigating a new lease claim, it would have regard to the sum it stood to receive. It is very unlikely it would incur costs exceeding the "other amount" proposed by the leaseholder (in this case £800). Rather, it would limit these costs so it could receive some financial benefit from the claim.
14. In the absence of a breakdown of Citystable's legal costs, the Tribunal accepts Mr Last's figure of £375. This is just under 50% of the "other amount" proposed in the section 42 notice and is reasonable.

Name: Tribunal Judge Donegan **Date:** 03 October 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).

Appendix of relevant legislation

Leasehold Reform, Housing and Urban Development Act

Section 60

(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.