



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

Case reference : **JM/LON/00AX/0C9/2021/0172**

HMCTS code (paper, video, audio) : **P: PAPERREMOTE**

Property : **57 Coombe Road, New Malden, Surrey
KT3 4QN**

Applicant : **Barbara Sheila Moody**

Representative : **Malcolm Girdler**

Respondent : **The Mayor & Burgesses of the Royal
Borough of Kingston-upon-Thames**

Representative : **South London Legal Partnership
(SLLP)
Property and Commercial Team
Ms Bernadette Reid**

Type of application : **A determination of reasonable costs
under Section 60(1) of the Leasehold
Reform, Housing and Urban
Development Act 1993**

Tribunal members : **Judge D Brandler
Mr K Ridgeway MRICS**

Venue : **10 Alfred Place, London WC1E 7LR**

**Date and venue of
paper
determination** : **15th December 2021**

DECISION

Decision of the tribunal

The Tribunal determines that pursuant to section 60(1) of the Leasehold Reform, Housing and Urban Development Act 1993 the following statutory costs are payable to the tenant:

- (1) The Respondent is entitled to legal costs in the sum of £542

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because it was not practicable and no-one requested the same. The documents that we were referred to are in two bundles of electronic documents produced, the contents of which we have noted. The order made is described at the end of these reasons.

Introduction

1. This is an application by the tenant under sections 60(1) of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) for the Respondent’s statutory costs incurred in relation to the new lease.
2. The statutory costs were not agreed.

The Background

3. Barbara Sheila Moody (“the Applicant”), holds a long lease of 57 Coombe Road, New Malden, Surrey, KT3 4QN (The Flat) for term of 125 years from 16/08/1982.
4. The Mayor and Burgesses of the Royal Borough Kingston-upon-Thames (“the Respondent”) is the freehold owner of the premises known as 57 Coombe Road of which the Flat forms a part.
5. On or about 20/04/2020 the Applicant made an application for the grant of a new Lease by way of Notice of Claim pursuant to the provisions of Chapter II of the Act.
6. The Respondent failed to serve a Counter Notice pursuant to section 45 of the Act by 28/06/2020, the deadline for service of such Notice.
7. The Applicant made a Part 8 claim to the County Court. Following the initial hearing on 2/6/2021, on its own volition, the Respondent drafted a new Lease in accordance with the Terms of Acquisition, and on 3/08/2021 DDJ Wood sitting at the County Court at Central London, ordered

- (1) The Defendant shall execute and deliver to the Claimant an engrossed copy of the Lease by 4.00 p.m. on 17 August 2021.
 - (2) The Defendant shall pay the Claimant her costs of £308 (representing the issue fee).
8. The statutory costs payable to the Respondent have not been agreed and accordingly the Applicant made an application to the Tribunal seeking a determination pursuant to section 60 of the Act.

The Landlords' legal fees

9. The Respondent claims total legal fees of £1500 as a fixed fee, from which they have deducted £308 which the Respondent was ordered to pay the Applicant. They also claim a fee for the Borough Surveyor in the sum of £700. The Respondent's schedule of costs dated 12/10/2021 amounts to a total of £1192. No charge is made for VAT.
10. The work was charged by a variety of fee earners. All are charged at a rate of £67 per hour. The fee earners include Bernadette Reid and Lisa Wilson, both charged at Grade A; Ismet Munir, charged at Grade B; Joy Warrell and Alison Fuller both charged at Grade D.
11. The landlord's submissions state that costs are reasonable.

The Applicant's points of dispute

12. The Applicant states that the Respondent's costs do not reflect the work that was required to be carried out and are excessive.

The Statutory Provisions

13. The tenant's liability for payment of the Landlords' costs is governed by Section 60(1), the relevant provisions of which are as follows:

“(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. “

Reasons for the Tribunal’s Determination

14. The Tribunal has fully considered the legal costs claimed by the Respondent, as well as the Borough Surveyors fees claimed at £700.
15. Before turning to the legal fees in more detail, it should be noted that this is not a detailed assessment under the Civil Procedure Rules rather an assessment of the Respondent’s fees in the round.
16. The Tribunal notes that the Respondent’s legal department does not charge commercial rates, choosing instead to charge a fixed fee of £1500 for legal fees and £700 for the Surveyor. Nevertheless, any costs charged in respect of professional services 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.
17. The Tribunal further notes that considering the very low premium fee paid in the sum of £3,320, the Respondent’s fees charged appear disproportionate.
18. The Respondent does not deny that they failed to serve a Counter Notice on the Applicant. It is difficult to understand therefore why a charge is made for the Borough Surveyor at £700. No evidence of his fee could be located in any costs submitted by the Respondent. Even if the Surveyor did attend the property, for which there is no evidence, there would have been no reason to do so. The fee of £700 claimed for the Borough Surveyor is therefore disallowed.
19. Moving to the legal costs claimed. As stated above, five fee earners are named on the schedule of costs. The majority of the costs charged appear to be under the heading of Attendances on officers and opponents, under “*Letters out/emails*” a total of 6.2 hours were charged, a Grade A fee earner claimed 0.2 of an hour, Grade B claimed 0.9 of an hour, Grade C claimed 5 hours and Grade D claimed 0.1 of an hour.
20. Under the heading of “telephone” a total of 3 hours was charged.

21. Under the schedule of work done on documents covering the period from 6/07/2020 to 27/08/2021, amounting to 30.1 hours at a total charge of £2,032.30. Much of the detail set out in that report is very vague. There are many entries describing the work as “*Looked at the file*”. Some examples of detail provided include sending or receiving an email from another member of the legal team (without evidence of that other team member charging for sending/receiving the same). It is possible that this may be an undercharge, but the Tribunal were not satisfied. It was difficult to understand why so many people had “*looked at the file*” and spent so long on correspondence and telephone calls when it was clear that there was very little work for the Respondent to carry out further to their failure to serve a Counter Notice. The amounts claimed did not appear to correspond to the work that was necessary in the circumstances of this case.
22. The Tribunal notes the Applicants comments about unnecessary works post-dating the deadline for the Counter Notice in their statement of case.
23. The Tribunal noted the schedule of costs which amounts to £1,192, which is said to be the fixed costs of £1500 less the costs awarded to the Applicant by the County Court in the sum of £308.
24. It is accepted that some works were necessary for the Respondent to carry out in this case, as ordered by the County Court, i.e. the drafting of the new lease, making amendments etc. However, we had more difficulty reconciling the level and number of fee earners deployed and the amount of hours charged as set out above.
25. Taking an overall view of the circumstances of this case, and the charges demanded, the Tribunal determined that the items claimed under section 60 statutory costs by the Respondent are not reasonably incurred and the Respondent is entitled to £850. From that amount there must be a deduction of the costs awarded by the County Court on 3/08/2021 in the sum of £308.00, in the manner in which the Respondent has chosen to deal with that costs order against them. The total amount due from the Applicant to the Respondent for legal costs is therefore £542.00

Name: Judge D Brandler

Date: 15th December 2021

ANNEX - RIGHTS OF APPEAL

1. 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.

2. 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.
3. 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.
4. 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.