



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

HMCTS CODE : **PAPER REMOTE**

Case reference : **LON/00AB/OC9/2022/0087**

Property : **301 Gurney Close, Barking, Essex
IG11 8LD**

Applicant : **Sinclair Gardens Investments
(Kensington) Limited**

Representative : **PDC Law**

Respondent : **Henry Ajayi**

Representative :

Type of application : **An application under section
91(2)(d) of the Leasehold Reform,
Housing and Urban Development
Act 1993 for a determination as to
costs to be paid under s60 (1) of the
Act**

Tribunal members : **Judge Dutton
Miss M Krisko BSc (Est Man)M
FRICS**

Date of determination : **11 October 2022**

DECISION

This has been a determination on the papers which has been consented to by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because no-one requested the same, or it was not practicable, and all issues could be determined on paper. The documents that we were referred to are in a bundle of 25 pages, the contents of which we have noted.

Background

1. This is an application made by the applicant landlord pursuant to the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) for a determination of the reasonable costs to be paid under the provisions of sections 91(2)(d) and 60(1) of the Act in respect of the abortive attempt at a lease extension for the property 301 Gurney Close, Barking, Essex IG11 8LD .
2. The application is dated 27 April 2022. Directions were issued dated 18 July 2022 providing for the matter to be dealt with on the papers. The matter came before us for determination on 11 October 2022.
3. We had before us a bundle containing the Applicant’s costs in the form of a spread sheet, invoices and a statement from Mr G P Holden FRICS, the Applicant’s valuer. The Notices were included and an email advising the Respondent’s solicitors of the deemed withdrawal of the application and the costs associated therewith. There was no response from the Respondent.
4. We have read the contents of the bundle.
5. The bundle includes a copy of notice under s42 of the Act and a counter notice under s45 . The initial notice proposed a premium of £14,500 and was dated 1 September 2020. The Counter Notice dated 19 October 2020, issued by the Applicant, proposed a premium of £43,126 and attached a draft lease. It is assumed that terms had been agreed but the matter did not conclude, and the Applicant’s solicitors emailed the Respondent’s solicitors on 23 September 2022, setting out the law relating to deemed withdrawal. It is not wholly clear to us how this email sits with the fact that the application had been sent to the Tribunal for issue some five months before.
6. The Statement of costs provided by PDC Law is somewhat simplistic, comprising a spread sheet of time spent by two fee earners, Natasha Price and Rick Coleman. It would appear that Natasha Price’s charge out rate was £135 per hour and Rick Coleman’s rate was £280 per hour. We have no further information save that there appears to be a separate breakdown of costs at page 13 of the bundle declaring a grade D fee earner rate of £120 plus VAT. It is not clear whether this breakdown is in addition to the time spent as shown on the spread sheet. We think it

must be as the two added together come to the sum being claimed for solicitor's costs of £1,600, and this latter breakdown would appear to relate to completion issues. More clarity would have assisted and had the Applicant followed the directions that should have been available to us.

7. The fees of the Applicant's valuer are more appropriately covered in the statement of Mr Holden, who explains what he has done and how the charge has been calculated. He indicates a global fee for dealing with the five properties in Gurney Close of £1,800 inclusive of VAT and divided that between the five properties to give an individual charge of £360 including VAT for each flat.
8. The provisions of s60 of the Act are set out below and have been borne in mind by me in reaching this decision.

The tribunal's determination

9. **The tribunal determines that the costs payable under the provisions of s60(1) of the Act are £1,324.70 inclusive of VAT and disbursements together with the valuers fee of £360 inclusive, making a total payable by the Respondent of £1,684.70**

Reasons for the tribunal's determination

10. We have considered all that has been said on behalf of the Applicant, the Respondent playing no part in this application. We intend to take a broad-brush approach. We have not been provided with the full details of the fee earners, their grade and experience. We see an invoice to the client from PDC Law in the sum of £1,618.50, including VAT. It is not known whether the VAT is recoverable by the client.
11. The spread sheet indicates that some £960.50 has been spent on the matter to 2 February 2022. The attached breakdown, which is undated, would appear to refer to work completed after terms had been agreed and a lease format approved by the parties. There is no indication as to why the matter did not then complete.
12. Whatever the reason for the non-completion it does not appear to be challenged that the provisions of s48 of the Act applied and further under the provisions of s53(1) the application was deemed to have been withdrawn and costs payable for the period up to the expiration of the time scales set out in s48(5).
13. We have reviewed the spread sheet and find that the following items should be disallowed.

- The costs of opening the file is purely administrative and does not in our finding fall within s60 - £27.00 disallowed
 - The diarising of dates, both on 9 September 2020 and 28.10.20 are again administrative and do not fall within s60 - £56 disallowed
 - Contact with the agents both on 9 September and 19 October 2020 do not, we find, fall within the provisions of s60. There is no explanation as to their involvement. - £41.50 disallowed
 - Given that one hour is claimed for the draft lease extension we do not see why there would be a further 2 units for reviewing for s57 modifications - £56 disallowed
 - There should be only one letter in respect of the s42 notice - £28 disallowed
 - the email to Kelly Grant is not understood as it appears she was the author of the email on 23.9.22 and presumably is employed with PDC Law - £13.50 disallowed.
14. This is a reduction of £222. This gives a fee we allow as per the spread sheet of £738.50. In so far as the Breakdown of additional costs totalling £372 plus VAT is concerned there appears to be some duplication in the completion figures, and we would therefore reduce the sum claimed to £350 plus VAT (£420) .
15. Accordingly, we find that the correct sum in respect of the costs of PDC Law should be £1,306.20 inclusive of VAT plus disbursements of £18.50
16. We turn then to the valuers fees. We have carefully noted all that was said by Mr Holden. His fees appear to us to be reasonable and the division between the five properties equitable. Accordingly, we allow the sum claim of £360 including VAT, for this aspect of the costs.

Name: Tribunal Judge Dutton **Date:** 11 October 2022

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).

The relevant law

60 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 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, any other landlord (as defined by section 40(4)) or any third party to the tenant's lease.

