



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

**Case Reference** : **GM/LON/OOAQ/OLR/2013/08304**

**Property** : **Flat 14 Queens Court, Kenton Lane,  
Kenton, Harrow, Middlesex HA3  
8RN**

**Applicants** : **Razia Begum and Sheraz Kaleem**

**Representative** : **Gupta Law Solicitors**

**Respondent** : **Daejan Properties Ltd.**

**Representative** : **Wallace LLP Solicitors**

**Type of Application** : **Costs pursuant to S60 of the  
Leasehold Reform and Housing  
Development Act 1993**

**Tribunal Members** : **Judge Goulden  
Mr S A Manson FRICS**

**Date and venue of  
Hearing** : **Tuesday 20 August 2013  
10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **20 August 2013**

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**DECISION**

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## **Background**

1 The Applicants, who are the lessees of Flat 14 Queens Court, Kenton Lane, Kenton, Harrow, Middlesex HA3 8RN ("the property") as shown on the front sheet, had exercised their right to a lease extension under S48 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act").

2. The Applicants had served a Notice of Claim dated 31 July 2012 on the Respondent as landlord in respect of the property pursuant to S42 of the Act.

3. The Respondent had served a Counter Notice dated 8 October 2012 on the Applicants as tenants in respect of the property pursuant to S45 of the Act.

4. It appears that the premium had been agreed between the parties on 13 December 2012 and completion had taken place on 11 April 2013.

5. However, costs remain in issue between the parties and by an application dated 4 June 2013, the Applicants requested a determination in respect of valuation fees and legal costs in respect of the property:

6. The legal fees challenged were in the sum of £2,170 plus VAT and plus land registry fees of £52 and courier fees of £12.26 plus VAT.

7. The valuation fees challenged were £795 plus VAT

8. An oral hearing had been requested but, by a later application, the parties requested a paper determination which was held on Tuesday 20 August 2013.

## **The Applicants' case**

9. No written submissions were provided on behalf of the Applicants in accordance with paragraph 3 of the Tribunal's Directions of 25 June 2013. The Tribunal must therefore rely on the Applicants' statement as shown in paragraph 9 of their application which is produced verbatim., and which states the following:-

*"The Applicants and the Respondent served upon each other S 42 and S45 Notices dated 31/07/2012 and 30/10/2012. Thereafter premium and other terms and conditions for extension of lease were agreed between the parties except for the Respondent's costs. The lease was extended on 11/04/2013.*

*On 04/04/2013, the Respondent's solicitors sent to the Applicant's solicitors a completion statement which included its costs under S60 LRHUDA 1993 ("Act"). The Respondent seeks from the Applicants (a) its solicitors costs of £1850 plus VAT (£2220), (b) its surveyors costs of £795 plus VAT (£954), (c) HMLR's costs of £52 and (d) its courier costs of £12.26 plus VAT (£14.71) respectively.*

*The Applicants believe that the said costs are wholly unreasonable given that they are obliged to pay the Respondent's reasonable costs of and incidental to (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; and (c) the grant of a new lease under that section. The Applicants say that costs of right to a new lease and grant of new lease of £1850 are wholly excessive given that investigation on part of the Respondent involved considering S42 notice, official copy of the register and lease but later was not necessary. These consisted of 4-14 pages. Grant of the new lease consisted of drafting a standard deed of surrender and re-grant. The Applicants believe that the Respondent's solicitors and surveyors costs are wholly excessive and offers the sums of (a) £1000 plus VAT for its solicitors and (b) £500 plus VAT for its surveyors. The Tribunal should also bear in mind that the Respondent's surveyor requested and the Applicant paid a sum of £500 in respect of a valuation some 6 or more months before their S42 notice but no report was produced to them by the Landlord's surveyor, Mr Green.

The Applicants office copy and lease were sent to the Respondent's solicitors on 22/10/2012. In any event HMLR and Courier costs are disbursements and not costs of the Respondent's solicitors and the Applicant is not liable to them under s 60 the Act. Moreover, the Respondent having sent ground rent and other demands to the Applicants since they acquired the Property in December 1996, surely knew who its tenants were, but if they did not, which is denied, then the Respondent is not entitled to claim its disbursements from the Applicant."

#### **The Respondent's case**

10. Written submissions were provided by Wallace LLP, Solicitors, in which it was stated that a detailed statement of costs had been provided to the Applicants' solicitors on or about 9 July 2013 in accordance with the Tribunal's Directions, together with copies of the invoices for land registry fees and courier fees. An additional statement relating to valuation fees was also supplied.

11. In respect of the legal fees challenged, it was contended that the Respondent's solicitor was a partner in the property litigation department ( a Grade A fee earner) and at the relevant time had a charge out rate of £375 plus VAT per hour. The conveyancing partner (also a Grade A fee earner) had, at the relevant time, a charge out rate of £400 plus VAT per hour. An associate in the property litigation department ( a Grade B fee earner) "also undertook work on the matter" and at the relevant time had a charge out rate of £275 per hour. In addition a paralegal with a charge out rate of £150 per hour "also undertook work on the matter".

12. It was stated that Wallace LLP was the Respondent's choice of solicitors, having been instructed by the Respondent, together with other companies within the Freshwater Group of Companies, for many years. It was stated that "the rates charged by Daejan's solicitors are entirely consistent with the usual charge out rate for solicitors in Central London". It was contended "it is reasonable for a fee earner with the relevant experience to have conduct of the matter and to perform on the same". Case law was cited in support and the work carried out was set out fully.

13. In the particularised response to the Applicants' solicitors statement in the application, it was contended, inter alia, "provisions of the Act are in general terms

*complex” ,. The duties of the relevantly experienced fee earner following receipt of a claim was set out. It was stated, “based on the technical nature of the legislation, the time spent by Daejan’s solicitors is reasonable and accurately sets out the work required to be undertaken following receipt of the Notice of Claim”.*

14. It was argued *“it is noted that the tenants have not raised any issues in respect to individual items contained in the cost schedule provided. On that basis, it is considered that there is no dispute in respect to any of the individual items claimed, nor any dispute that the actions set out in the costs schedule were undertaken”.*

15. Specific arguments were put forward in respect of the time engaged in reviewing the Notice of Claim and preparation of the draft Lease.

16. In respect of the valuer's fees, the qualifications of the valuer, Mr M Green, together with his experience was set out. It was stated that his charge out rate of £180 per hour *“equates to approximately 4 hours (including time for inspecting the property and preparing the report) and was reasonable in the circumstances and proportionate to the time taken to consider the Notice of Claim, the lease, inspection of the property, conducting the relevant research and prepare a valuation report and, “in this case, Mr Green was required to expend additional time and effort as numerous calls and emails were required with the Tenants’ representative in order to obtain access to the Flat. Daejan asks the Tribunal to note that Valuer’s fees for an individual lease extension usually range between £600-£1,250 plus VAT. The fees in this case are £795 plus VAT”.*

17. As to the challenge by the Applications in respect of valuation fees of £500 being paid 6 or more months prior to the service of the Notice of claim, it was stated *“Mr Myron Green has confirmed that is (sic) not aware of any previous payment being made to him by the Tenants in respect to valuation fees, and without further information being supplied cannot comment further in respect to the same. In any event, it is Daejan’s submission that any valuation fees paid in respect to the Tenants’ application for a lease outside the terms of the Act (and not connected with the Notice served) are not relevant to the determination of any valuation fees incurred following service of the Notice in this case”.*

18. As to courier fees, it was contended that there were draconian consequences of failing to serve a Counter Notice by the date specified in the Notice of Claim and *“in order to ensure safe delivery it is the standard practice of Daejan’s solicitors to engage a courier to effect service of a Counter Notice.....service of a Counter Notice by recorded delivery or DX by the date required cannot be guarantee, and accordingly personal delivery by way of courier is used for service of all Counter Notices issued by Daejan’s solicitors”.* Case law was cited.

19. The land registry fees were for obtaining up to date office copy entries of the freehold and leasehold interest, together with a copy of the lease It was argued *“the title documents obtained were required to review the Tenants’ entitlement to the grant of a new lease and were required to allow the Instructed valuer to produce a valuation report.....it is not reasonable for Daejan to rely on administrative details held by them regarding the Tenants proprietorship of the Flat. The only way to confirm a tenant’s entitlement is for evidence to be supplied*

*of their proprietorship from the Land Registry*". that it was standard practice to obtain and review office copy entries on the

### **The Tribunal's determination**

20. S 60(1)(b) of the Act provides that where a tenant's notice to exercise the right to a new lease is served under S42 of the Act, "**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;...."**

21. Section S60(2) of the Act provides "**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...."**

22. The presentation of the Applicants' case was poor. The Applicants' legal representatives had supplied no statement of case as Directed so to do by the Tribunal (see paragraph 9 above) and such representations as there were, were merely those in the application and were sparse. Save for contending that the costs were considered to be excessive, there were no grounds in support of that contention. Fees, regarded as reasonable, both for the Respondent's solicitors and valuer were put forward, but with no explanation. It was alleged that the Respondent's valuer had been paid £500 for a previous valuation with no evidence in support. The suggestion that the Respondent's solicitors should not incur disbursements is rejected as is the suggestion that the Respondent "*surely knew who its tenants were, but if they did not, which is denied, then the Respondent is not entitled to claim its disbursements from the Applicant*". This appears to indicate that the Applicants do not fully understand the legislation.

23. A landlord is entitled to instruct solicitors of its own choice. This is an important Client, it is quite understandable that a partner should carry out all the work. The hourly charging rate is on the high side, but the solicitors are a Central London firm with high overheads and therefore the hourly rate is not excessive. There has been no challenge on behalf of the Applicants to the charge out rate, any individual items or the number of hours worked. It is not for the Tribunal to do the Applicants' work for them. The same criticism is levelled at the Applicants in respect of the valuer's fees.

24. This matter does not seem complex. The amounts charged are high.

25. However, for the reasons as set out in paragraphs 22 and 23, the Tribunal determines the solicitors' fees at £2,170 plus VAT and disbursements of £52 land registry fees and courier fees of £12.26 plus VAT. It also determines the valuer's fees at £795 plus VAT.

26. The Tribunal wishes to make it clear that its Decision is based on the paucity of the evidence supplied on behalf of the Applicants in the particular circumstances of this case, and provides no guidance on costs determinations in similar cases.

**Name:** J Goulden

**Date:** 20 August 2013