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

**Case Reference** : LON/00AC/OLR/2014/0059  
LON/00AC/OC9/2014/0027

**Property** : 10 Henley Court Watford Way  
London NW4 4SR

**Applicant** : L K Bandara and I K Bandara

**Representative** : Preuveneers LLP

**Respondent** : Henley Court Properties Ltd

**Representative** : Hurndalls

**Type of Application** : Costs under s60 Leasehold Reform  
Housing and Urban Development  
Act 1993 and under Rule 13  
Tribunal Rules of Procedure

**Tribunal Members** : Mrs F J Silverman Dip Fr LLM  
Mr R Shaw FRICS

**Date and venue of hearing** : 13 August 2014, 10 Alfred Place,  
London WC1E 7LR

**Date of Decision** : 18 August 2014

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**DECISION**

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The Tribunal allows the Respondent the sum of £1,340 plus VAT in respect of its costs under s60 Leasehold Reform Housing and Urban Development Act 1993. This sum is payable by the Applicant. The Tribunal also orders the Respondent to pay to the Applicant the sum of £175.50 plus VAT by way of

wasted costs under Rule 13 of the Tribunal Rules of Procedure. The Tribunal declines to award any costs to the Respondent under its own application under Rule 13.

## REASONS

- 1 This decision relates to an application for costs assessable under s60(1) Leasehold Reform Housing and Urban Development Act 1993 (the Act) made by the tenants of the property situated and known as 10 Henley Court Watford Way London NW4 4SR (the property) in relation to a claim for an extended lease by them. The costs in question are those arising out of the landlord's investigation of title and legal costs in connection with the grant of the new lease, the landlord having served a schedule of costs which is disputed by the tenants. The tenants also asked the Tribunal to make an award in their favour under Rule 13 of the Tribunal Rules of Procedure having regard to the Respondent landlord's conduct of the proceedings. The Tribunal was further asked to consider a cross application for costs under Rule 13 made by the Respondent against the Applicant. Directions relating to the costs application were issued on 18 June 2014.
- 2 An oral hearing of this matter took place on 23 August 2014 at which the Applicants were represented by Ms Pears of Counsel and the Respondent by Mr Hurndall, solicitor. The parties had failed to agree as directed, a single bundle of documents for the hearing and the Tribunal was required to consider two separate bundles each of which comprised essentially the same documentation but under different pagination. The Applicant's bundle contained some documents relevant to their arguments which the Respondent had refused to include in its bundle.
- 3 The issues before the Tribunal were firstly whether the Respondent was entitled to costs at all and secondly, if so, whether the costs demanded by the Applicant were reasonable. The Tribunal then went on to consider the conduct of each party in relation to the cross-applications for wasted costs under Rule 13 (s29 (4) Tribunals and Courts Enforcement Act 2007).
- 4 The factual background to the application is that the Applicants served a notice on the Respondent asking for an extended lease of the property. Following protracted discussions and correspondence between the parties' solicitors a settlement of the negotiations took place and the scheduled Tribunal hearing was vacated at short notice in May 2014. As at the date of the costs hearing the tenants' new lease had still not been completed owing to the Respondent's refusal to complete until the Applicant paid its costs in full.
- 5 The Respondent's detailed schedule of costs (pages R12-18) claims the sum of £12,266.58 by way of legal costs, £10,195.17 in respect

of valuation expenses and £5,460.50 under the heading 'Tribunal'. The Applicant considers that these sums are excessive.

- 6 The Tribunal cannot allow under s60 any of the costs which relate to the Tribunal hearing or preparation for it. The sum of £5,460.50 is therefore disallowed.
  - 7 The Respondent solicitor's charging rate as shown on their schedule is £335 per hour which in the view of the Tribunal is on the high side of normal for a London solicitor undertaking work of this particular type. It considers that a number of the tasks itemised by the Respondent's schedule could have been undertaken by more junior staff at a lower hourly rate but in this case is prepared to allow the claimed rate of £335 per hour to stand without deduction.
  - 8 The Respondent's total bill for legal work of £12,266.58 however, demonstrates an excessive number of hours devoted to what should have been a simple and straightforward conveyancing transaction where title was registered and the new lease comprised standard documentation.
  - 9 In the Tribunal's experience it is unlikely that the Applicant would have needed to spend more than 2 hours in total dealing with the Applicant's notice, proof of title and drafting of counter notice, given that the property enjoys a registered title. A similar amount of time might have been devoted to the conveyancing aspects of the transaction giving a total of 4 hours at the Respondent's rate of £335 per hour and this is the total which the Tribunal is prepared to allow in this case: 4 hours at £335 = £1340 (plus VAT).
- 10 The Respondent claimed to have spent 1826 minutes on the valuation aspects of this case. All of this time was spent by the Respondent's solicitor (not its valuer) and most of it seems to relate to negotiation because no valuation per se has ever been produced by the Respondent in relation to this matter and there is no evidence that the Respondent ever inspected the property for the purposes of preparing a valuation. Any sums allowed under s 60 for valuation must relate to the preparation of a valuation for the purposes of calculating the premium payable by the tenant for the new lease. The costs of negotiation are not claimable. Since no valuation in accordance with statutory principles has ever been produced by the Respondent it follows that no costs are allowable under this head. The Respondent's claim under this head for £10,195.17 is disallowed in full.

10 The Applicant also asked the Tribunal to award a sum of costs under Rule 13 of the Tribunal Rules of Procedure on the basis that the Applicant's conduct of the proceedings had been unreasonable.

11 It is evident from the documentation placed before the Tribunal (and this includes the Respondent's own bundle as well as that prepared by the Applicant) that the Respondent had procrastinated and delayed the transaction and had created additional time problems by not providing the tenant with a 1993 Act compliant lease and by failing to amend the draft lease

to be 1993 Act compliant when asked by the Applicant's solicitor to do so . The Respondent affected to save costs by not instructing a qualified valuer to prepare a valuation and in so doing appears to have created problems with time and costs by complicating the transaction through a misapprehension of the relevant principles of valuation. The Respondent also appears to have been reluctant to allow the tenant to proceed with their application for a new lease under the 1993 Act because on a number of occasions it offered to complete but on terms which would only give the tenants a new 99 year term and not the 90 year extension given by statute (pages A 14 and 37). The Respondent's solicitor also behaved in a manner contrary to the Solicitors' Code of Conduct by contacting the Applicants directly despite being asked not to do so by their solicitor (page A46). Throughout the Respondent's solicitor's correspondence there are frequent references and threats to the Applicant having to bear the Respondent's costs of the transaction. Of particular note is the email from the Respondent's solicitor to the Applicant's solicitor dated 7 May 2014 (page A 24) which reads as follows:

*' Our client is adamant it should recover its costs. At present it will only secure a premium of £22,000, way below its expectations. Out of this it appears it will now have to meet costs of over £13,000 exclusive of VAT. This it is not prepared to do. We note your view on s 60 (1). Our client does not accept your interpretation of the recoverability of costs and has instructed us that if we are unsuccessful on this point, as there is no case authority we should appeal to the High Court. We will also be seeking an order for these costs under Rule 13. One way or the other our client intends to recover its costs in the light of the low premium. To avoid this our client would though accept a solution on the lines of its earlier proposal to grant a 99 year lease with rent as set out in our initial draft and an option to purchase this extended lease at its full value. The premium could then be reduced to £15,000. Costs would be waived. Alternatively our client will grant this shorter lease without the purchase option for £24,000. In view of the hearing next week the offer will need to be accepted by close on Friday.'*

**12** The Tribunal considers that the email cited above demonstrates the Respondent's attitude towards the tenant's claim and in particular their attitude towards costs . This is not acceptable conduct and the Tribunal makes an order against the Respondent for its vexatious and unreasonable conduct of the transaction in the sum of £175.50. This comprises 54 minutes of the Applicant's solicitor's time (at her charging rate of £195 per hour) which has been wasted since the aborted Tribunal hearing and in respect of the Respondent's repeated refusal to complete the new lease.

**13** The Respondent also asked the Tribunal to award a sum of costs under Rule 13 of the Tribunal Rules of Procedure on the basis that the Applicant's conduct of the proceedings had been unreasonable. Having examined the documentation provided by both parties the Tribunal cannot find any evidence of unreasonable conduct on the part of the Applicant and declines to award costs against the Applicant under Rule 13.

#### **14 The Law**

Leasehold Reform Housing and Urban Development Act 1993 s 60(1)

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.'

The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013

Orders for costs, reimbursement of fees and interest on costs 13.—

'(1) The Tribunal may make an order in respect of costs only—

(a) (b) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;

if a person has acted unreasonably in bringing, defending or conducting proceedings in— (i) an agricultural land and drainage case,

(ii) a residential property case, or (iii) a leasehold case; or

(c) in a land registration case.'

**15** The total sum allowed to the Respondent and payable by the Applicant is therefore : £1340 solicitors' costs plus VAT . The Respondent is to pay the Applicant the sum of £175.50 plus VAT under Rule 13.

Judge F J Silverman as Chairman  
**Date 18 August 2014**

Note:  
Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.