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

**Case reference** : LON/00AZ/OLR/2014/0257

**Property** : 3 Glenville Grove, London SE8 4BJ

**Applicant** : Ms Batmui Lisa Chang

**Representative** : Watts & Leeding, solicitors

**Respondent** : (1) Sinclair Gardens Investments  
(Kensington) Limited  
(2) Mornington Road (Block H)  
Management Company Limited

**Representative** : (1) W H Matthews & Co, solicitors

**Type of application** : Section 48 of the Leasehold  
Reform, Housing and Urban  
Development Act 1993

**Tribunal members** : Judge Timothy Powell  
Mr Phillip Tobin FRICS

**Date of determination  
and venue** : 9 July 2014 at  
10 Alfred Place, London WC1E 7LR

**Date of decision** : 15 July 2014

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**DECISION**

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## **Summary of the Tribunal's decisions**

- (1) The Tribunal determines that the terms of the new lease should be those set out in the amended draft lease in Appendix A to the respondent's "Submissions as to terms of the lease" dated 9 June 2014, ignoring the handwritten amendments and deletions and any references to a "rider", but with the three additions set out in the decision below;
- (2) The Tribunal determines that the section 60 statutory costs payable by the applicant tenant come to £1,560, including VAT, with an additional £800, including VAT, in respect of the valuer's fee; and
- (3) The Tribunal declines to make an order for costs against the respondent under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Procedure) Rules 2013.

## **Background**

1. This is an application made by the applicant leaseholder, Ms Chang, pursuant to section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") for a determination of the premium to be paid by her for the grant of a new lease of 3 Glenville Grove, London SE8 4BJ (the "property").
2. By a notice of a claim dated 16 July 2013, served pursuant to section 42 of the Act, Ms Chang exercised her right for the grant of a new lease in respect of the subject property. At the time, Ms Chang held the existing lease granted on 25 January 1991 for a term of 99 years from 25 June 1990 at an annual ground rent of £80 for the first 33-year period, £180 for the second 33-year period and £240 for the remainder of the term. Ms Chang proposed to pay a premium of £4,800 for the new lease.
3. On 11 September 2013, the first respondent freeholder's solicitors served a counter-notice admitting the validity of the claim and counter-proposed a premium of £9,786 for the grant of a new lease, together with some standard variations of the terms of the existing lease, largely relating to the Act and Land Registry practice.
4. On 19 February 2014, the applicant applied to the Tribunal for a determination of the price payable for the new lease, the terms and

form of the new lease, the statutory costs payable by the applicant and an order for costs against the first respondent.

### **The issues**

5. By the date of the hearing, the premium had been agreed at £7,867. However, as appeared from the correspondence and submissions of the parties, a dispute remained as to the terms and form of the new lease.

### **The hearing**

6. The hearing in this matter took place on 9 July 2014. The applicant was represented by Mr Ailsby, solicitor. There was no appearance by the first respondent, although the Tribunal had before it a letter from its solicitors, W H Mathews & Co, dated 3 July 2014, which explained that “The Respondent will be attending the hearing on 9th July solely by the written submissions as to its Solicitors” and which enclosed a four-page “Explanation as to Attendance” and other documents. There was and has been no involvement in the proceedings by the second respondent (named as “the Company” in the original lease). Accordingly, references hereafter to “the respondent” mean the first respondent.
7. For the applicant, the Tribunal had before it: a substantial hearing bundle prepared by the applicant’s solicitor and sent to the Tribunal and to the respondent by letter dated 10 June 2014, the applicant’s much thinner supplemental bundle sent by letter dated 11 June 2014 and two short letters filing additional documents, dated 25 and 26 June 2014.
8. For the respondent, the Tribunal had before it: the respondent’s Statement of Case, sent by letter dated 15 May 2014, the Response to the tenant’s statement of case and the respondent’s Submissions as to the terms of the lease, both identifying the issues in dispute to be determined by the Tribunal and both sent by letter dated 9 June 2014, and the “Explanation as to Attendance” referred to earlier.
9. There was a question at the beginning of the hearing as to whether Mr Ailsby had received all of the documents from the respondent’s solicitors. However, Mr Ailsby said that he was not concerned by this possibility, given the volume of documentation already before the Tribunal and, if the Tribunal was happy to proceed, then he would be too.

10. So far as the outstanding issues were concerned, the Tribunal had before it letters from the respondent's registered valuer, Mr G P Holden FRICS, one dated 16 April 2014 to Mr Ailsby confirming that the premium for the lease extension was agreed at £7,867, and the other dated 17 April 2014 addressed to the Tribunal confirming, firstly, that the premium had been agreed and, secondly, that the terms of the lease were still in dispute. In its "Explanation as to Attendance" the respondent stated that it had "fully detailed its position and will leave the Tribunal to decide the terms of the lease based on its written submissions." Non-attendance was "for economic reasons" and "no disrespect is intended."

### **Preliminary point**

11. Mr Ailsby complained that the respondent had not complied with the Tribunal's standard directions dated 6 March 2014, which required at paragraph 1 that "The landlord must by 20 March 2014 submit a draft lease to the tenant for approval." The respondent's position was that it had already submitted a draft lease well in advance of the proceedings, by letter dated 30 September 2013, and need not comply further with paragraph 1 of the directions. Mr Ailsby considered this to be a technical breach, which had affected the tenant's ability to agree terms with the respondent's solicitors. It had also caused him to have to draft and submit to the respondent's solicitors his own form of the proposed new lease, which had led to a number of disputes between the parties.
12. The Tribunal indicated that it thought Mr Ailsby was being a little over-technical in his approach. In the Tribunal's experience, landlords often submit draft leases to tenants' solicitors before proceedings are commenced or directions are issued. The essential point was that a document was in existence that could form the basis of negotiations for the terms of a new lease. Accordingly, the Tribunal considered that little, if anything, hung on the technical non-compliance of paragraph 1 of the directions by the respondent's solicitors, if it could even be characterised as such.

### **The terms and form of the lease**

13. The applicant's hearing bundle contained a copy of the original lease at page 109 onwards. Mr Ailsby agreed with the Tribunal that it seemed quite a full lease. He said that it was "not too bad" and "indeed a good lease" which he would be happy to "sign off" on a purchase, where he

had to approve a lease within the guidelines issued by the Council of Mortgage Lenders, assuming of course it had an extension of the term.

14. The hearing bundle also contained the landlord's proposed new lease at page 173 onwards, and the alternative draft lease prepared by the tenant's solicitors at page 5 onwards.
15. The Tribunal conducted a comparison of the two draft leases prepared by the parties. They were of a similar length and although the wording of the clauses and the order of the clauses differed, the two drafts covered much the same ground.
16. There was one point of difference that Mr Ailsby drew to the Tribunal's attention. In the original draft prepared by the landlord's solicitors, the definition of the "demise" in clause 3 appeared to re-incorporate in the new lease the tenant's covenant to pay the old ground rent in the original lease, when this should have been replaced by a peppercorn rent. Mr Ailsby had sought to agree an amendment to this provision, and this was dealt with by the landlord's solicitors in their letter dated 11 June 2014, when they proposed an amendment to clause 3. Mr Ailsby sought a consequential amendment to clause 4 of the landlord's draft lease but then said that, subject to those changes, he would now approve the landlord's draft lease and not insist on the draft that he had prepared.

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

17. The Tribunal determines that the terms of the new lease should be those set out in the amended draft lease in Appendix A to the respondent's "Submissions as to terms of the lease" dated 9 June 2014 (as also appears at pages 173-180 of the hearing bundle), ignoring the handwritten amendments and deletions and any references to a "rider", but with the following three additions:
  - (a) in prescribed clause LR7 the premium should be £7,867;
  - (b) in clause 3 (the Demise) replacing the words "YIELDING AND PAYING to the Landlord the Rent and all other monies payable as rent under the Existing Lease on the days and in the manner contained in the Existing Lease" with the words "YIELDING AND PAYING to the Landlord the Rent and all other monies payable as rent under Existing Lease save for the annual Ground Rent payable

pursuant to Part V (h) of the Schedule of the Existing Lease on the days and in the manner contained in the Existing Lease”; and

- (c) In clause 4, after the words “contained in the Existing Lease” insert the words “(excluding any Ground Rent)”, i.e. before the words “as if they were repeated in full in this Lease.”

### **The amount of the landlord’s statutory costs**

18. The Tribunal had jurisdiction to deal with the amount of the landlord’s statutory costs under section 60 of the Act, by virtue of paragraph 4.2 of the application dated 19 February 2014, which appeared at page 106 of the hearing bundle.
19. In its Landlord’s Statement of Costs dated 15 May 2014, the respondent’s solicitors dealt with the issue of the section 60 costs in considerable detail. The Statement included a schedule of the work carried out by the solicitors and the costs claimed in relation thereto, submissions in relation to the tenant’s liability for costs and the legal services that the work entailed, and submissions as to the basis of the assessment and the burden of proof. Several previous Tribunal decisions were quoted. The applicant’s comments on the landlord’s Statement of Costs were contained at pages 27-48 of the hearing bundle.
20. As to the costs claimed, the respondent’s solicitors sought £900 plus £180 VAT (a total of £1,080) for dealing with the notice of claim, instructing a valuer and drafting a counter-notice; and £1,100 plus £220 VAT (a total of £1,320) for drafting the new lease, considering revisions and completing the lease extension. The solicitor’s charging rate was £250 an hour. In addition, a valuer’s fee of £800 inclusive of VAT was sought in respect of work by Mr Holden.
21. Mr Ailsby took no issue with the charging rate of £250 per hour and the Tribunal accepted this as reasonable rate. However, Mr Ailsby took issue with the claim for costs on an indemnity basis, stating that the Civil Procedure Rules relied upon by the respondent did not apply to section 60 statutory costs claims.

### **The tribunal's determination**

22. The Tribunal determines that the section 60 statutory costs payable by the applicant tenant come to £1,560, including VAT, with an additional £800, including VAT, in respect of the valuer's fee.

### **Reasons for the tribunal's determination**

23. The proper basis of assessment of costs in enfranchisement cases under the 1993 Act, whether concerned with the purchase of the freehold or the extension of a lease, was set out in the Upper Tribunal decision of *Drax v Lawn Court Freehold Ltd* [2010] UKUT 81 (LC), LRA/58/2009. That decision (which related to the purchase of freehold and, therefore, costs under section 33 of the Act, but which is equally applicable to a lease extension and costs under section 60) established that costs must be reasonable and have been incurred in pursuance of the initial notice and in connection with the purposes listed in sub-sections [60(1)(a) to (c)]. The applicant tenant is also protected by section 60(2) which limits recoverable costs to those that the respondent landlord would be prepared to pay if it were using its own money rather than being paid by the tenant.
24. In effect, this introduces what was described in *Drax* as a "(limited) test of proportionality of a kind associated with the assessment of costs on the standard basis." It is also the case, as confirmed by *Drax*, that the landlord should only receive its costs where it has explained and substantiated them.
25. It does not follow that this is an assessment of costs on the standard basis (let alone on the indemnity basis). This is not what section 60 says, nor is *Drax* an authority for that proposition. Section 60 is self-contained.
26. The respondent relies upon comments of numerous previous Tribunal judges in support of its claim for costs. While none of those previous decisions is binding on this Tribunal, some of the findings may be of persuasive authority. In particular, the respondent quotes and relies upon the comments of Professor Farrand QC in the decision in *Hampden Court* (LON/ENF/785/02) where, at paragraph 27, he stated:

"In substance leasehold enfranchisement may be regarded as a form of compulsory purchase from an unwilling seller at a bargain price. Accordingly, it would be surprising if reversioners

were expected to be further out of pocket in respect of their inevitable incidental expenditure incurred in obtaining the professional services of valuers and lawyers for a transaction and proceedings forced upon them.

Parliament has indeed provided that this expenditure is recoverable from the Nominee Purchaser subject only to the requirement of reasonableness..."

27. This is not the same as saying that a landlord can recover all of his costs on an indemnity basis, regardless of what agreement it had reached with his professional advisers. Although enfranchisement is often characterised as a form of compulsory purchase from an unwilling seller, this concept does not sit easily with the reality of individuals and companies buying up tens, hundreds or thousands of freehold reversions by way of investments, on the basis of a business model which relies upon the income arising from enfranchisement sales under the Act.
28. The Tribunal's task is essentially to look at the work that was carried out, all the surrounding circumstances of the transactions and the parties involved. In the present case, the respondent's solicitor, by his own submissions, has worked for this particular landlord for 30 years and has acted in relation to 5,000 lease extensions/enfranchisements since 1993. The official copy of the freehold title of the property, at pages 141-145 of the hearing bundle, show that there have been four previous lease extensions on this site.
29. The Tribunal therefore takes the view that with a solicitor of such experience, expertise and familiarity with this type of work, the time spent should have been less than that claimed in the present case.

***(A) Costs in connection with the Notice of Claim - 30 units claimed***

30. It is hard to see how, against this background, the solicitor could have spent 5 units on personal attendances on his client obtaining instructions and advising, and the Tribunal allows 2 units. Two units considering the lease and office copy entries is about right. The no doubt standard letter to the valuer giving instructions merits only 1 unit, not 3. The freeholder was entitled to issue preliminary notices as to inspection and title, and the 2 units claimed are allowed. However, the preliminary notice as to the deposit only merits only 1 unit, not 3.



31. Items 6 and 7, for which 9 units are claimed, both relate to different aspects of the validity of the tenant's notice and 6 units is reasonable for this. However, 3 units are allowed for drafting the counter-notice, since this document requires extra special care.
32. Accordingly, of the 30 units claimed for this item, the Tribunal allows 17 units, which at £250 per hour equal £425. Once £85 VAT is added, the total allowed for this item is £510.

***(B) Costs in connection with the grant of the lease - 44 units claimed***

33. With regard to the subsequent and/or anticipated costs in section (B) of the Schedule of Costs, the applicant agrees and the Tribunal does not disturb the 2 and 3 units claimed respectively for considering the terms of the lease and drafting the new lease. Thereafter, the consideration of revisions, the long letter setting out objections and agreeing the final form of the lease, for which 26 units are claimed, ought reasonably to have been carried out against the above background in 2 hours, or 20 units. Similarly, the preparation of engrossments and a completion statement, and the attendance upon completion and letters, for which 13 units are claimed, ought reasonably to be carried out within 1 hour, or 10 units.
34. Accordingly, of the 44 units claimed for this item, the Tribunal allows 35 units, which at £250 per hour equal £875. Once £175 VAT is added, the total allowed for this item is £1,050.

***The valuer's fee - £800 including VAT claimed***

35. With regard to the costs of the valuer, Mr Holden, the Tribunal had regard to his witness statement in Appendix E of the respondent's Statement of Costs, together with the tenant's comments about the time spent and the fees claimed.
36. Although Mr Holden's valuation report was not exhibited and was not before the Tribunal, the tenant's initial offer of £4,800 for the new lease was substantially less than the final amount agreed, £7,867, which figure was somewhat closer to the figure in the counter-notice. Mr Holden's report was therefore of significant value to the landlord and, since the time spent and the fees claimed were unexceptional and generally within the range of fees seen by this Tribunal, they are not disturbed but allowed at £800 including VAT.

## The tenant's application for costs

37. The application to the Tribunal dated 19 February 2014 included at paragraph 4.3 the applicant's request for an order that the respondent landlord contribute the maximum amount permissible towards the applicant's costs, further to Schedule 12 of the Commonhold and Leasehold Reform Act 2002. That provision is no longer in force with the regard to tribunals in England, following the creation of the First-tier Tribunal on 1 July 2013, but it has been replaced by similar provisions under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Procedure) Rules 2013 (where the limit on the costs that may be awarded is unlimited). The tenant's application was therefore treated as being made under this rule. So far as material, rule 13 reads:

“13(1) the Tribunal may make an order in respect of costs only –

- (a) [wasted costs];
- (b) If a person has acted unreasonably in bringing, defending or conducting proceedings in .... (iii) a leasehold case ...”

38. As Mr Ailsby made clear at the outset of the hearing, he suffers from dyslexia which, in his case, amounted to a significant disability. The effect was that he needed to articulate his thoughts verbally and he found that easier than in writing. This meant that he generally tended to be more “wordy” than other people and it took him longer to express his thoughts.
39. Mr Ailsby had made his disability clear to the respondent's solicitors, W H Mathews & Co but, he claimed, they had acted unreasonably in not making reasonable adjustments for his disability during the negotiations for the new lease. In particular, Mr Ailsby complained that his opposite number at that firm, Mr Paul Chevalier, had acted unreasonably by refusing to take his telephone calls. Had he done so, Mr Ailsby said, he considered that all of the outstanding issues could have been resolved without a need for a hearing.
40. Mr Ailsby took exception to the way that he had been treated by W H Mathews & Co after informing them of his disability and he cited what he regarded as two “insulting” letters from that firm dated 23 April 2014 and 11 June 2014.
41. The first letter was a response to Mr Ailsby's request for a telephone conversation, which invited him to “give us 3 dates on which you are

available at 3.00pm after 12th May next.” Mr Ailsby did not do this, because he felt that the limited opportunities offered to him by Mr Chevalier were so prescribed. Be that as it may, the Tribunal was somewhat concerned by the penultimate paragraph of that letter, which appeared to be a veiled threat that the ultimate section 60 costs would be increased by reason of the need “to assist” Mr Ailsby, by taking a hand-written note of his objections to the new lease over the telephone.

42. Mr Ailsby then made a complaint to the senior partner of W H Matthews & Co, Mr Richard Lawrence, which was later characterised in the letter of 11 June 2014 as having been “a 30 minute unstructured and impromptu telephone conversation with Richard Lawrence which produced nothing constructive at all.” While Mr Ailsby, perhaps understandably, took that as being an insult, the letter did then go on to deal with matters of substance in relation to Mr Ailsby’s earlier complaint about alleged non-compliance with directions and in relation to a drafting aspect of the new lease.
43. Mr Ailsby also complained that Mr Chevalier had not turned up at the hearing which, he said, had caused him difficulty and had prevented him from asking questions to support his case. He said that Mr Chevalier had made no allowance for his dyslexia or for the fact that he had to verbally articulate his thoughts.

#### **The tribunal’s determination**

44. The Tribunal declines to make an order for costs against the respondent.

#### **Reasons for the tribunal’s determination**

45. Mr Ailsby’s disabilities were and are very real and there is no room for complacency, when it comes to solicitors making reasonable adjustments to accommodate disability. The Solicitors Regulation Authority (SRA) Handbook establishes a Code on Equality and Diversity, which requires solicitors to make such adjustments.
46. While the wording of their letters leaves a lot to be desired, the Tribunal is not able to say on the evidence provided that W H Matthews & Co or Mr Chevalier are in breach of the Code; nor is the Tribunal in a position to conduct a more detailed investigation into Mr

Ailsby's complaints. That would be a matter for the SRA itself, if Mr Ailsby chose to take his complaints further.

47. Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Procedure) Rules 2013 sets a high bar. The letters from W H Mathews & Co may not have been as helpful as they might, and the suggestion that the costs of the case might increase as a result of assisting Mr Ailsby with his disability may have been misguided or even reprehensible, but on these facts and in this case it could not be said that the respondent or its solicitors had "acted unreasonably in bringing, defending or conducting proceedings" within the meaning of rule 13.

### **Conclusion**

48. The parties should now take steps to engross and complete the new lease, without further delay.

**Name:** Judge Timothy Powell

**Date:** 15 July 2014