2975



FIRST - TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

		•
Case Reference	:	BIR/00CN/OC9/2013/0003
Property	:	10 Solent Court, Garrard Gardens, Sutton Coldfield, B73 6AE
Applicant	:	Mr M L Jones
Representations	:	Mr Richard Bakewell F.R.I.C.S
First Respondent	:	Friends Life Limited
Second Respondent	:	The Halliard Property Company Limited
Type of Application	:	To determine the amount of costs payable by the Applicant under section 60 of the Leasehold Reform Housing and Urban Redevelopment Act 1993
Tribunal Members	:	Judge W J Martin Mr V Ward F.R.I.C.S
Date of Decision	:	21 January 2015

DECISION

© CROWN COPYRIGHT 2015

DECISION

The section 60 legal costs payable by the Applicant to the
Respondents are:(1) First Respondent:£2,263.00(2) Second Respondent:£1084.20 plus £72 Land registry fees.

<u>Reasons For the Tribunal's Decision</u> Background

- 1 On 14th February 2013, the Applicant (by his Valuer Richard Bakewell) submitted an Application ('the Application') to the Tribunal for a determination of the legal costs payable by virtue of section 60 of the Act in connection with the Applicant's claim for a Lease Extension under Chapter 2 of the Act.
- 2 Prior to the submission of the Application the parties had agreed the acquisition terms in respect of the new lease, and the valuers' costs.
- 3 On 21^{st} February 2013 the solicitors for the First Respondent issued a completion statement setting out the amount required to complete the transaction, including amounts of £2,400 each net of VAT and disbursements in respect of the legal costs of the First Respondent (whose solicitors are Gardner Austin LLP) and the Second Respondent (whose solicitors are Wallace LLP).
- 4 Following legal completion of the transaction, the Respondents' contended that the Tribunal had no jurisdiction to consider the Application, as the Applicant, by the payment of the completion monies (which included the costs of both solicitors) had agreed the amount of the fees. Section 91 of the Act provides:

91 Jurisdiction

(1) Any question arising in relation to any of the matters specified in subsection (2) shall, in default of agreement, be determined by the appropriate tribunal.

(2) Those matters are:

(d) the amount of any costs payable by a person or persons by virtue of any provision of Chapter I or II and, in the case of costs to which section 33 (1) or 60 (1) applies, the liability of any person by virtue of any such provision to pay such costs...

•••

- (12) For the purposes of this section 'appropriate tribunal' means –
- (a) in relation to property in England, the First-tier Tribunal...

5 Because of the challenge by the Respondents, the matter was heard as a preliminary issue by the Tribunal, which issued its Decision on 6th August 2013 that despite the payment of the completion monies, there had been no 'agreement' within the terms of section 91 of the Act which would oust its jurisdiction. The Tribunal's Decision was appealed to the Upper Tribunal, which, by its Decision dated 30th September 2014 also determined that there had been no such agreement. Accordingly, the Tribunal, with the agreement of the parties, decided that the amount of the legal costs should be determined on the basis of written submissions.

Submissions

- 6 In accordance with the Tribunal's Directions, both Respondents solicitors provided a full statement of their costs. Wallace LLP, solicitors for the Second Respondent also made detailed written submissions. Other than the statement of costs, there were no general written submissions received from Gardner Austin.
- 7 For the Applicant, Mr Bakewell made the following submissions:

Freeholder's costs (Gardner Austin)

- 01. It is submitted that the costs claimed by Gardner Austin are wholly excessive. The Tribunal's attention is drawn to the case in respect of Church Road, Erdington, Birmingham where an award of £760 was made and also 33 Beaufort House, Water Orton, B46 1SX where £779 was awarded, in both cases inclusive. Allowing for the three abortive notices, a further £450 would be appropriate. Therefore the counter-proposal of the Applicant is for costs of £1319 inclusive.
- 02. The Applicant was caused stress as a result of the challenge to the Tribunal's jurisdiction, when Mr Sheftel of counsel was appointed by Gardner Austin.

Head Leaseholder's costs (Wallace LLP)

- 01. The level of fee earner is high, given that this is a relatively easy matter. Out of the six hours total time charged 4 hours 42 minutes were charged at partner rate.
- 02. The charge out rate is high and would produce a total income of £604,800 based on a 7 hour day for 48 weeks.
- 03. The usual fee for a head leaseholder would be £400. Allowing £450 for the abortive notices produces a total of £850 plus VAT.
- 8 Wallace LLP's submissions are summarised below:
 - 01. Section 60 of the Act provides that the Applicant shall be responsible for the reasonable cost of the Respondents relating to 'any investigation reasonably undertaken of the tenant's right to a new lease' and 'the grant of a new lease under that Section'.
 - 02. It is contended that the reasonable costs are £1,865 plus VAT and Land Registry fees of £72. The basis upon which legal fees

are charged is by reference to relevant fee earners. The work was carried out in the main by a partner in the firm who is a Grade A fee earner with a charge out rate of £360 per hour plus VAT. The conveyancing partner who carried out the lease work has a charge out rate of £400 per hour. An assistant also worked on the case who had a charge our rate of £275 per hour, as did a paralegal at a rate of £150 per hour.

- 03. Wallace LLP have acted for the Second Respondent for many years. The rates charged by Wallace LLP are entirely consistent with other central London firms. It is submitted that it is reasonable that experienced fee earners should have conduct of the case. The Tribunal's attention is brought to the cases of *Daejan Investments Limited v Parkside 78 Limited* (LON/00BK/2007/0026) and other cases which establish this principal.
- 04. In the present case there were four Notices of Claim, the first three being defective. As a result of this, the Second Respondent is entitled to seek recovery of its costs in accordance with section 60 of the Act. On each occasion Wallace LLP was required to carry out the various tasks listed below.
- 05. The use of a Partner is reasonable in the present case. A partner will carry out the tasks required in less time than a more junior fee earner, and it is also submitted that the experience of a Partner is required. The use of a Partner, it is also submitted, fits with the 'reasonable expectation' test. The provisions of the Act are complex and it was necessary that a Partner was used to ensure that the provisions of the Act were complied with.
- 9 The tasks listed by Wallace LLP that were required to be carried out are as follows:
 - 01. Consider the tenant's entitlement to the new lease and the validity of the Notice of Claim.
 - 02. Communicate with the client to obtain information.
 - 03. Carry out and consider land registry searches.
 - 04. Correspond with the Competent Landlord's solicitors.
 - 05. To instruct and correspond with the valuer.
 - 06.To consider the valuation and take client's instructions.
 - 07. To review the Counter-Notice served.
 - o8. To assist with the completion of the new lease.

Section 60 of the Act

10 '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 the appropriate 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's Determination

11 The Tribunal considers that the appropriate principle for the determination of the costs is the time spent, as submitted by the Second Respondent. However, the Tribunal considers that the charge out rates applied by both Respondents are excessive. Although the provisions of the Act are relatively complex, the Tribunal finds that work involved could have been accomplished by a Band 'B' fee earner. Taking account

of the rates allowed by the County Court, the Tribunal finds that the appropriate charge out rates for the three grades of fee earner employed Respondents in the present case are follows: bv the as

£296 (reduced to Band 'B' rate). Partner: Assistant: £226 Paralegal: £138

The Tribunal has considered the costs schedules on an item by item basis

12

and its findings, with the total amount allowed in respect of the First and Second Respondent's solicitors' Statements of Costs are set out in the Schedule to this Decision. However, in addition the adjustments required by the application of the above rates to the Statements of Costs, the Tribunal provides the following explanations for the items it has adjusted:

The Freeholder's Costs

25 th October 2011:	(Partner's time engaged concerning the second Notice of 0.5 hours). The Tribunal finds that 0.2
	hours ought to have been sufficient, given that
	the fee earner concerned ought to have been very
	familiar with Notices of Claim.
21 st December 2011:	The assistant's time of 1.1 hours engaged in perusing and considering the title and lease is excessive for the same reasons. The Tribunal
	allows 0.5 hours for this task.
21 st December 2011:	Three items relating to the preparation and service of the Counter-notice in respect of the first Notice. The Act does not provide that the
	costs of the Counter-Notice are to be paid by the tenant, and these items are all disallowed.
8 th March 2012:	There are 2 time units for perusal of the Second
0 March 2012.	Notice by a solicitor and the Partner. The solicitor's time is disallowed as a duplication.
30 th March 2012:	The solicitor's time for perusing the third Notice is reduced to 0.2 hours (the same as for the Second Notice).
18 th April 2012	There is an item for 3 units of time further perusing all three Notices. This is disallowed as a duplication.
25 th March 2012	Letter sending sample of correct Notice to tenant's solicitors. This is reduced to 1 unit.
4 th May 2012:	The solicitor's time for perusing the fourth Notice is reduced to 0.2 hours (the same as for the Second Notice).
6 th June 2012:	There are identical entries for this day for letter
	to client, and one is disallowed as a duplication.
28 th June 2012:	3 units of Partner's time disallowed for preparation of Counter-notice

22 nd January 2013:	Letter sending draft Lease - time reduced to 0.1 hour.
21 st February 2013	Letter to tenant's solicitor and head tenant's solicitor both reduced to 0.1 hour
27 th February 2013	0.2 hours 'checking tenant's execution of lease' disallowed
10 th April 2013	Compliance report to freeholder reduced from 0.5 hour to 0.1 hour because far too long, given all the other letters.

The Head Leaseholder's Costs

In addition the adjustments required by the application of the above rates to the Statement of Costs, the Tribunal finds that the following items should also be adjusted:

27 th October 2011	(Partner's time engaged 'further' claim notice of 0.5 hours). The Tribunal finds that 0.2 hours ought to have been sufficient, given that the fee earner concerned ought to have been very familiar with Notices of Claim. The notice must have been the first, given that there are three more.
20 th December 2011	Partner's time to consider the Counter-notice. The Act does not provide that the costs of the Counter- Notice are to be paid by the tenant, and this item is disallowed.
21 st December 2011	Partner's time letter to client. On the balance of probabilities this related to the Counter-notice so is disallowed.
7 th March 2011	Partner's time 'second notice'. Adjusted as above.
20 th March 2011	Paralegal time to obtain copy lease is disallowed as a duplication
21 st March 2011	Partner's time 'third notice'. Adjusted as above.
21 st March 2011	Partner's time of 5 units for letter to competent landlord's solicitors reduced to 1 unit in the absence of an explanation.
2 nd April 2011	Letter re completion disallowed as no valid notice had been served by this time.
3 rd May 2011	Partner's time 'fourth notice'. Adjusted as above.
4 th July 2011	Partner's time to consider the Counter-notice. The Act does not provide that the costs of the Counter- Notice are to be paid by the tenant, and this item is disallowed.
4 th July 2011	Letters to client and valuer disallowed as on the balance of probabilities they related to the Counter-notice.

13 In the present case the Tribunal notes that there was considerable more work required from both solicitors that normal, owing to the fact that no less than four Notices of Claim were served.

- 14 The Tribunal's determinations are net of Value Added Tax. The Tribunal assumes that both of the Respondents are registered for Value Added Tax, and that therefore, the tax upon the legal costs can be reclaimed by each of them. Accordingly, the amount payable by the Applicant is as shown in the Schedule, unless evidence is provided to the Applicant that the Respondent(s) are not registered for Value Added Tax. In the case of the Second Respondent, the Tribunal also allows the sum of £72 in respect of Land Registry fees.
- 15 If either party is dissatisfied with this decision they may apply for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be made within 28 days of this decision (regulation 52 (2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

21 January 2015 Judge W.J. Martin – Chairman

THE SCHEDULE

Date	Item	Fee Earner	Time Claimed	Time Allowed	Rate Claimed	Rate Allowed	Allowed by Tribunal
25/10/11	Initial perusal of Notice	Partner	0.5	0.2	£320	£296	£59.20
26/10/11	Letter to tenant's solicitor		0.1	0.1	£250	£226	£22.60
26/10/11	Letter to head tenant's solicitor		0.1	0.1	£250	£226	£22.60
26/10/11	Letter to freeholder	Solicitor	0.1	0.1	£250	£226	£22.60
18/11/11	Letter to valuer	Solicitor	0.1	0.1	£250	£226	£22.60
15/12/11	Letter to head tenant's solicitor	Solicitor	0.2	0.2	£250	£226	£45.20
15/12/11	Letter to freeholder's valuer	Solicitor	0.1	0.1	£250	£226	£22.60
21/12/11	Perusal and consideration of title/lease		1.1	0.5	£250	£226	£113
21/12/11	Preparation of counter- notice	Solicitor	0.7	0	£250	£226	Nil
21/12/11	Letter to tenant's solicitor with counter notice	Solicitor	0.1	0	£250	£226	Nil
21/12/11	Letter to head tenant's solicitor with copies of above	Solicitor	0.1	0	£250	£226	Nil
28/12/11	Letter to tenants solicitor on invalidity		0.2	0.2	£250	£226	£45.20
08/03/12	Perusal further Notice	Solicitor	0.2	0	£250	£226	Nil
08/03/12	Perusal head tenant's solicitor's comments	Solicitor	0.1	0.1	£250	£226	£22.60
08/03/12	Perusal further Notice etc	Partner	0.2	0.2	£320	£296	£59.20
09/03/12	Letter to tenant's solicitor	Solicitor	0.1	0.1	£250	£226	£22.60
30/03/12	Perusal of 3 rd Notice	Solicitor	0.3	0.2	£250	£226	£45.20

(1) Gardner Austin's Schedule of Costs

30/03/12	Letter to head tenant's solicitor	Solicitor	0.1	0.1	£250	£226	£22.60
10/04/12	Letter to head tenant's solicitor	Solicitor	0.1	0.1	£250	£226	£22.60
18/04/12	Further perusal of all 3 Notices of Claim	Solicitor	0.3	0	£250	£226	Nil
18/04/12	Letter to head tenant's solicitor	Solicitor	0.1	0.1	£250	£226	£22.60
25/04/12	correct Notice	Solicitor	0.2	0.2	£250	£226	£45.20
25/04/12	Letter sending same to tenant's solicitor	Solicitor	0.2	0.1	£250	£226	£22.60
04/05/12	Perusal of 4 th Notice	Solicitor	0.3	0.2	£250	£226	£45.20
04/05/12	Letter to freeholder	Solicitor	0.1	0.1	£250	£226	£22.60
04/05/12	Letter to freeholder's valuer	Solicitor	0.1	0.1	£250	£226	£22.60
06/06/12	Letter to freeholder	Partner	0.1	0.1	£320	£296	£29.60
06/06/12	Letter to freeholder's valuer		0.1	0.1	£250	£226	£22.60
27/06/12	Letter to freeholder	Partner	0.2	0.2	£320	£296	£59.20
28/06/12	Preparation of Counter- notice		0.3	0	£320	£296	Nil
29/06/12	Letter sending above	Partner	0.1	0	£320	£296	Nil
29/06/12	Letter with copies to head tenant's solicitor	Partner	0.3	0	£320	£296	Nil
06/06/12	Letter to freeholder	Partner	0.1	0	£320	£296	Nil
21/01/13	Draft Lease	Partner	0.9	0.1	£320	£296	£266.40
22/01/13	Letter to tenant's solicitor explaining above	Partner	0.2	0.1	£320	£296	£29.60
22/01/13	Letter to head tenant's solicitor	Partner	0.1	0.1	£320	£296	£29.60
31/01/13	Letter freeholder	Partner	0.1	0.1	£320	£296	£29.60
31/03/13	Letter tenant's solicitor	Partner	0.1	0.1	£320	£296	£29.60
04/02/13	Consider points raised by tenant's solicitor	Partner	0.3	0.3	£320	£296	£88.80
04/02/13	Letter tenant's solicitor	Partner	0.2	0.2	£320	£296	£59.20
04/02/13	Letter head tenant's solicitor	Partner	0.1	0.1	£320	£296	£29.60
11/02/13	Letter tenant's solicitor	Partner	0.2	0.2	£320	£296	£59.20
21/02/13	Final drafting	Partner	0.2	0.2	£320	£296	£59.20
21/02/12	Letter tenant's solicitor	Partner	0.2	0.1	£320	£296	£29.60
21/02/12	Prepare engrossment x3 with plans	Solicitor	0.3	0.3	£260	£226	£67.80
21/02/13	Letter head tenant's solicitor	Partner	0.2	0.1	£320	£296	£29.60
21/02/13	Completion statement	Partner	0.2	0.2	£320	£296	£59.20
27/02/13	Check tenant's execution of lease	Partner	0.2	0.0	£320	£296	Nil
27/02/13	Letter head tenant's solicitor with lease	Partner	0.1	0.1	£320	£296	£29.60
27/02/13	Letter tenant's solicitor confirming above	Partner	0.1	0.1	£320	£296	£29.60
01/03/13	Letter tenant's solicitor	Partner	0.1	0.1	£320	£296	£29.60
21/03/13	Letter freeholder	Partner	0.1	0.1	£320	£296	£29.60
22/03/13		Partner	0.1	0.1	£320	£296	£29.60
22/03/13	Telephone call tenant's solicitor re delay	Partner	0.1	0.1	£320	£296	£29.60

22/03/13	Report freeholder re above	Partner	0.1	0.1	£320	£296	£29.60
27/03/13	Letter head tenant's solicitor	Partner	0.1	0.1	£320	£296	£29.60
02/04/13	Letter tenant's solicitor re execution of lease	Partner	0.1	0.1	£320	£296	£29.60
02/04/13	Letter head tenant's solicitor to confirm safe receipt	Partner	0.1	0.1	£320	£296	£29.60
02/04/13	Letter freeholder	Partner	0.1	0.1	£320	£296	£29.60
10/04/13	Compliance report to freeholder re lease	Partner	0.5	0.1	£320	£296	£29.60
10/04/13	Letter to tenant's solicitor	Partner	0.1	0.1	£320	£296	£29.60
24/04/13	Letter freeholder	Partner	0.1	0.1	£320	£296	£29.60
30/04/13	Telephone freeholder	Partner	0,1	0.1	£320	£296	£29.60
30/04/13	Completion letter	Partner	0.1	0.1	£320	£296	£29.60
30/04/13	Letter head tenant's solicitor accounting for premium and s 60 costs		0.2	0.2	£320	£296	£59.20
30/04/13	Letter freeholder's valuer	Partner	0.1	0.1	£320	£296	£29.60
30/04/13	Letter freeholder accounting	Partner	0.1	0.1	£320	£296	£29.60
TOTAL							£2263.00

(2) Wallace LLP's Schedule of Costs

Date	Item	Fee	Time	Time	Rate	Rate	Allowed by
		Earner	Claimed	Allowed	Claimed	Allowed	Tribunal
27/10/11	Consider further Claim Notice	Partner	0.6	0.2	£360	£296	£59.20
27/10/11	Letter to client	Partner	0.1	0.1	£360	£296	£29.60
28/10/11	Letter competent landlord's solicitor	Partner	0.1	0.1	£360	£296	£29.60
28/10/11	Obtain office copies	Paralegal	0.2	0.1	£150	£138	£13.80
28/10/11	Consider same	Partner	0.1	0.1	£360	£296	£29.60
13/12/11	Letter competent landlord's solicitor	Partner	0.1	0.1	£360	£296	£29.60
13/12/11	Letter competent landlord's valuer	Partner	0.1	0.1	£360	£296	£29.60
16/12/11	Letter competent landlord's solicitor	Partner	0.1	0.1	£360	£296	£29.60
16/12/11	Letter client	Partner	0.1	0.1	£360	£296	£29.60
20/12/11	Letter competent landlord's solicitors	Partner	0.1	0.1	£360	£296	£29.60
21/12/11	Consider Counter- Notice	Partner	0.1	0.0	£360	£296	Nil
22/12/11	Letter client	Partner	0.1	0.0	£360	£296	Nil
07/3/12	Consider Notice of Claim (2)	Partner	0.3	0.2	£360	£296	£59.20
07/3/12	Letter Lessee's solicitor	Partner	0.1	0.1	£360	£296	£29.60
13/3/12	Letter to valuer	Partner	0.1	0.1	£360	£296	£29.60
20/3/12	Obtain copy head lease and lease	Paralegal	0.2	0.0	£150	£138	Nil
21/3/12	Consider Notice of Claim (3)	Partner	0.3	0.2	£360	£296	£59.20

21/3/12	Letter competent landlord's solicitors	Partner	0.5	0.1	£360	£296	£29.60
21/3/12	Letter to valuer	Partner	0.1	0.1	£360	£296	£29.60
21/3/12	Letter client	Partner	0.1	0.1	£360	£296	£29.60
22/3/12	Letter to valuer	Partner	0.1	0.1	£360	£296	£29.60
02/4/12	Letter competent landlord's solicitors re completion	Partner	0.1	0.0	£360	£296	Nil
03/4/12	Letter competent landlord's solicitors	Partner	0.1	0.1	£360	£296	£29.60
27/4/12	Letter client	Partner	0.1	0.1	£360	£296	£29.60
03/5/12	Consider Notice of Claim (4)	Partner	0.3	0.2	£360	£296	£59.20
03/5/12	Letter client	Partner	0.1	0.1	£360	£296	£29.60
10/5/12	Letter client	Partner	0.1	0.1	£360	£296	£29.60
24/5/12	Letter competent landlord's solicitors	Partner	0.1	0.1	£360	£296	£29.60
04/7/12	Consider Counter- Notice	Partner	0.1	0.0	£360	£296	Nil
04/7/12	Letter client	Partner	0.1	0.0	£360	£296	Nil
04/7/12	Letter to valuer	Partner	0.1	0.0	£360	£296	Nil
23/1/13	Review draft lease	Assistant	0.2	0.2	£275	£226	£45.20
24/1/13	Letter competent landlord's solicitors	Assistant	0.1	0.1	£275	£226	£22.60
01/2/13	Letter to valuer	Assistant	0.1	0.1	£275	£226	£22.60
07/3/13	Letter competent landlord's solicitors	Assistant	0.1	0.1	£275	£226	£22.60
04/3/13	Letter client	Assistant	0.1	0.1	£275	£226	£22.60
22/3/13	Letter client	Assistant	0.1	0.1	£275	£226	£22.60
28/3/13	Letter competent landlord's solicitors	Assistant	0.1	0.1	£275	£226	£22.60
16/3/13	Deal with completion monies	Assistant	0.2	0.2	£275	£226	£45.20
21/3/13	Letter client	Assistant	0.1	0.1	£275	£226	£22.60
21/3/13	Letter valuer	Assistant	0.1	0.1	£275	£226	£22.60
TOTAL							£1,084.20