



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

**Case Reference** : LON/OOAK/OC9/2106/0289

**Property** : 11, Cannock Lodge, Wellington Road, Enfield, EN1 2QT

**Applicant** : Alison Towler

**Representative** :

**Respondent** : John Kenneth Atkinson and Lindsay Prestage Atkinson

**Representative** : Singletons Austin Ryder solicitors

**Type of Application** : Determination of costs under s60 and s91 Leasehold Reform, Housing and Urban Development Act 1993

**Tribunal Members** : Tribunal Judge Dutton

**Date determination** : 13<sup>th</sup> September 2016

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**DECISION**

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## DECISION

**The Tribunal determines that the sum payable by the Applicant in respect of the Respondents costs under the provisions of section 60 of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act) is £1,998.00**

### **BACKGROUND**

1. By an application dated 11<sup>th</sup> July 2016 the Applicant sought a determination from the Tribunal on the costs that she should pay to the Respondents under the provisions of s60 of the Act.
2. Directions were issued by the Tribunal on 12<sup>th</sup> July 2016 confirming that the application would be considered on the documentation filed, without the need for a hearing.
3. In preparation for such determination the Applicant had lodged with the Tribunal a file of papers which included the landlords' schedule of the costs of Singletons Austin Ryder (SAR) and an invoice evidencing the costs of the valuation submitted by AEM Properties. In addition the Applicant's statement of case, copy correspondence, HM Land Registry entries and the existing and new lease. These documents were noted by me before making the decision in this case.

### **THE LAW**

4. The provisions of section 60 are set out in the appendix and have been applied by me in reaching this decision

### **FINDINGS**

5. There has been a helpful breakdown of the costs of SAR. The fee earner, Mr Selwyn appears, from the firm's headed note paper, to be a partner in the firm of SAR. His hourly rate is £230, which is not challenged by the Applicant. The total costs sought are £1,545.00 plus VAT. A narrative accompanies the breakdown at page 18 onwards of the bundle. In addition I have been provided with a copy of the invoice of AEM Properties, who it appears carried out a valuation of the subject property and for which a fee, inclusive of VAT, of £1,050 is sought.
6. There is no statement from SAR to the effect that these are the costs that the Respondents are required to pay, nor any evidence of the charging rates agreed with the Respondents. It is however clear from the Applicant's response that SAR has acted for the Respondents on a number of occasions. I therefore presume that they are the firm of choice on the part of the Respondents.
7. In an equally helpful statement from the Applicant commenting on the costs of SAR I see that she proposes a fee of £1,200 as opposed to the fee of £1,545 sought. Her reasons are set out in the statement of case. Essentially her submission is that this application under s48 of the Act was straight forward, one of many dealt with by the Respondents and

- SAR and that the fee should reflect this suggesting that it may have been fixed or discounted for volume.
8. The Applicant, under the heading Notice of claim accepts all charges save for the time spent in instructing the valuer, considering the Notice under s42, where she suggests 45 minutes would be reasonable as opposed to the one hour claimed, and in respect of the consideration of the valuation and discussions with the valuer. The Respondent seeks 1hour 15 minutes, the Applicant suggest 45 minutes.
  9. My findings in respect of these three issues are as follows. I have no evidence to confirm the level of fees agreed with the Respondents by SAR. The Applicants statement of case did not result in any response and I assume therefore that the comments concerning the use of SAR by the Respondents and the repetitive nature of the work is not necessarily denied. I must consider the provisions of s60(2). In principle I consider that the use of SAR is reasonable and the hourly rate is not in dispute.
  10. As to the instruction of the Valuer it seems to me that this is incidental to the valuation, which is recoverable in principle, under s60(1)(b). Fifteen minutes to prepare a letter of instruction I find is reasonable and I allow that element of the fee.
  11. The preparation of the Counter-Notice is important but the document produced is straight forward. The time suggested by the Applicant is 45 minutes. However, under the costs of conveyancing she seeks to reduce the amount for considering the lease by the sum claimed of £115. I deal with this below but given my findings I consider that time spent of one hour is not unreasonable for the preparation of the Counter-Notice. I consider that the time to consider the valuation report and discuss same, given that the proposal of the Applicant was only some £1,450 below the agreed price, on the high side. Doing the best I can on the information available to me I consider that the suggested time of 45 minutes by the Applicant is a reasonable proposal.
  12. In respect of the claim notice costs I reduce those from £989.17 to £874.17.
  13. Turning to the conveyancing I agree with the Applicant's comments that the consideration of the lease terms would be included in the Counter-Notice costs, the more so as the proposals in respect of the lease put forward by the Applicant in the initial notice were accepted and the findings I have made above. I therefore disallow the sum of £115. The remaining costs are not challenged. This gives a total for this section of £440.83
  14. Finally I turn to the valuation fee. No breakdown of the time spent is provided. Under the heading Valuation fee in the statement of case the Applicant makes several relevant points to which no comment has been made by the Respondent. The opportunity to provide more information has been scorned. Accordingly, doing the best I can on the information available to me I consider that the Applicant's assessment of this element at £350 plus VAT to be reasonable.
  15. Accordingly I find that the total payable in respect of the Respondent's costs under section 60 of the Act to be
    - In respect of the legal costs £1,315 with VAT of £263
    - In respect of the valuation fee the sum of £350 with VAT of £70

16. This gives a total payable by the Applicant of £1,998.00

*Andrew Dutton*

Tribunal Judge Dutton

13<sup>th</sup> September 2016

### **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.