

4242



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

Case Reference : **MI/LON/00AC/OC9/2015/0453**

Property : **Flat 10 Church Court, The Walks,
East Finchley, London N2 8DN**

Applicant : **Dineshkumar Maneklal Dalal and
Joshna Dalal**

Representative : **CG Naylor LLP of London N3 (S
Masters Esq.)**

Respondent : **Nicholas Nicholaou**

Representative : **Glinert Davis LLP of London W1
(Ms G Roberts)**

Type of Application : **Determination of the costs payable
under section 91(2)(d), Leasehold
Reform Housing and Urban
Development Act 1993**

Tribunal Member : **Charles Norman FRICS**

Date of Decision : **8 February 2016**

Determination by Written Representations

DECISION

Decisions of the Tribunal

- (1) The Tribunal makes the determinations as set out under the various headings in the appended Scott Schedule.
- (2) The Tribunal finds that the surveyor's fees incurred by the landlord of £750 plus VAT are payable by the respondent tenant.

Reasons

1. The applicant seeks a determination pursuant to s.91(2)(d) of the Leasehold Reform Housing and Urban Development Act 1993 ("the Act") as to the amount of costs payable under section 60(1) of the Act. The relevant legislation is given in the Appendix, attached.
2. A section 42 notice under the Act was served on 25 February 2015 followed by a counter-notice and application to the Tribunal. Subsequently, the substantive application was settled and the application to the Tribunal withdrawn. A separate application for determination of costs was made on 2 November 2015. Standard directions were issued on 5 November 2015. On 15 January 2016, I issued Further Directions requiring a Scott Schedule. I am grateful to both parties' solicitors for their assistance in that respect. Both parties through their solicitors made written submissions which I have considered.
3. The parties helpfully narrowed the issues in dispute and my determinations in respect of the unresolved legal costs are given on the Scott Schedule, appended.
4. As to the landlord's surveyor's costs, I am satisfied that the fee of £750 plus VAT incurred by the landlord was reasonable in this case although significantly higher than the tenant's surveyor's fee. In that regard I accept Paragraph 2 (a) to (d) of the landlord's submission.
5. The relevant legal provisions are set out in the Appendix to this decision.

Name: C Norman FRICS

Date: 8 February 2016

ANNEX - 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.

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Scott Schedule – Items of legal correspondence still in dispute

Page in bundle	Date	Task	Applicant's submissions	Respondent's submissions	Tribunal's decision	Amount Allowed
19-24	06/03/2015	letter in client w/h s.42	<p>Claimed under s.60 (a)</p> <p>Reading the Landlord's letter and enclosed s.42 notice is incidental to the matters referred to in s.60 (a) of the 1993 Act. It is reasonable to allow the Landlord to recover the 6 or so minutes spent by their solicitor receiving the s.42 notice and accompanying letter as the scheme of 1993 Act is that the landlord should not be left out of pocket provided they respond reasonably to the tenant's claim.</p> <p>In any event the general position regarding routine correspondence is set out in paragraph 5.22 of Practice Direction 47 of the Civil Procedure Rules.</p> <p>'Routine letters out, routine e-</p>	<p>Recoverable costs must be of and incidental to the matters referred to in s.60 (1) (a), (b) or (c). This item concerns receiving instructions to act and as such is not within the ambit of any investigation reasonably undertaken of the tenant's right to a new lease, any valuation of the tenant's flat or the grant of the lease as contemplated by s.60 and therefore should be disallowed.</p> <p>Deduction sought: £22.50 plus VAT</p>	<p>I consider that the applicant's case is correct. I find that it was reasonable and necessary for the landlord's solicitor to consider the s.42 notice. The s. 42 notice is very important and also appended a plan.</p> <p>The Civil Procedure rules do not apply directly in the Tribunal but I agree that they provide a clear guide as to the appropriate costs treatment for routine correspondence which I accept.</p>	£22.50

		<p>mails out and routine telephone calls will in general be allowed on a unit basis of 6 minutes each, the charge being calculated by reference to the appropriate hourly rate. The unit charge for letters out and e-mails out will include perusing and considering the routine letters in or e-mails in.'</p> <p>Routine letters and emails out are recoverable in units of 6 mins. Where there is related routine correspondence in, then that correspondence should be included within the 6 minute unit.</p> <p>For the purposes of this schedule, where routine correspondence out followed routine correspondence in, the Landlord admits that only one unit charge is permissible and the Landlord's costs have been reduced accordingly.</p> <p>Amount claimed: £22.50 plus VAT</p>				
					I find that this is	£22.50

25	06/03/2015	email in client	<p>Claimed under s.60 (a)</p> <p>The Landlord came into our offices to discuss the Tenant's notice and the validity of the claim. We have not chosen to include the time spent in the meeting although we feel we could reasonably do so. In the circumstances the email that was sent confirming we were instructed following the meeting is claimed.</p> <p>Amount claimed: £22.50 plus VAT</p>	<p>This item should be disallowed as it is not within the ambit of the matters referred to in s.60 (1) (a), (b) or (c).</p> <p>Deduction sought: £22.50 plus VAT</p>	<p>incidental to s.60(1)(a) and is allowable.</p>	
26	09/03/2015	email instructing valuer	<p>Claimed under s.60 (b)</p> <p>In an ideal world a paralegal might have been able to deal with this item. However, the paralegal working in this department was busy with a very large number of other matters and was not able to attend to this file. There was no one else to deal with it as there are only two people in this firm's leasehold reform department.</p>	<p>This could have been dealt with by the paralegal, thereby reducing the cost.</p> <p>Deduction sought: £7.50 plus VAT</p>	<p>Although I agree that this work could have been carried out by a paralegal I find that it was nevertheless reasonable for a solicitor to deal with it and that this would still fall within the scope of recoverability under s 60(2).</p>	£22.50

			Amount claimed: £22.50 plus VAT			
27	09/03/2015	email out valuer w/h lease	<p>Claimed under s.60 (b)</p> <p>The paralegal working in this department was busy with a large number of other matters and was not able to attend to this file. There was no one else to deal with it as there are only two people in our leasehold reform department.</p> <p>Amount claimed: £22.50 plus VAT</p>	<p>This could have been dealt with by the paralegal, thereby reducing the cost.</p> <p>Deduction sought: £7.50 plus VAT</p>	As per item 26	£22.50
28	09/03/2015	email in GD	<p>Claimed under s.60 (a)</p> <p>The paralegal working in this department was busy with a large number of other matters and was not able to attend to this file. There was no one else to deal with it as there are only two people in our leasehold reform department.</p>	<p>This could have been dealt with by the paralegal, thereby reducing the cost.</p> <p>Deduction sought £7.50 plus VAT</p>	As per item 26	£22.50

			Amount claimed: £22.50 plus VAT			
29-32	17/03/2015	Letter out GD w/h C notice	<p>Claimed under s.60 (a)</p> <p>A letter out attaching a counter notice is incidental to s.60 (a) of the 1993 Act and this cost should be allowed.</p> <p>Amount claimed: £22.50 plus VAT</p>	<p>Recoverable costs must be of and incidental to the matters referred to in s.60 (1) (a), (b) or (c). This item is not within the ambit of any investigation reasonably undertaken of the tenant's right to a new lease, any valuation of the tenant's flat or the grant of the lease as contemplated by s.60 and therefore should be disallowed.</p> <p>Deduction Sought: £22.50 plus VAT</p> <p>Alternatively, this could have been dealt with by the paralegal, thereby reducing the</p>	I find that the letter was incidental and the cost therefore recoverable under s 60(1)(a).	£22.50

				cost. Deduction sought: £7.50 plus VAT		
33	08/04/2015	email to client	<p>Claimed under s.60 (a)</p> <p>The wording in s.60 is usually interpreted widely enough to include work legitimately undertaken by a landlord's solicitor as a consequence of a tenant's claim. For example, drafting and serving a counter notice is generally accepted as being recoverable under s.60 even though s.60 (a) makes no specific mention of it. On that basis discussing the statutory time table with the Landlord should also be recoverable.</p> <p>Amount claimed: £22.50 plus VAT</p>	<p>Recoverable costs must be of and incidental to the matters referred to in s.60 (1) (a), (b) or (c). This item is not within the ambit of any investigation reasonably undertaken of the tenant's right to a new lease, any valuation of the tenant's flat or the grant of the lease as contemplated by s.60 and therefore should be disallowed.</p> <p>Deduction sought: £22.50 plus VAT</p>	I find that the counter notice is incidental to the claim, within s. 60(1)(a) and therefore recoverable.	£22.50
					I find that this is	£22.50

n/a	11/06/2015	call from client - Speaking to client about statutory timetable, general update	<p>Claimed under s.60 (a)</p> <p>The wording in s.60 is usually interpreted widely enough to include work legitimately undertaken by a landlord's solicitor as a consequence of a tenant's claim. For example, drafting and serving a counter notice is generally accepted as being recoverable under s.60 even though s.60 (a) makes no specific mention of it. On that basis fielding questions from the Landlord about the process should be recoverable.</p> <p>Amount claimed: £45 plus VAT</p>	<p>Recoverable costs must be of and incidental to the matters referred to in s.60 (1) (a), (b) or (c). This item is not within the ambit of any investigation reasonably undertaken of the tenant's right to a new lease, any valuation of the tenant's flat or the grant of the lease as contemplated by s.60 and therefore should be disallowed.</p> <p>Deduction sought: £45 plus VAT</p>	<p>incidental to s. 60(1) but that it could have been dealt with more speedily by email. I allow half the amount claimed (£22.50+VAT)</p>	
n/a	14/07/2015	reading existing lease, and titles drafting	<p>Claimed under s.60 (c)</p> <p>Considering all the titles, the existing lease, the notices and drafting a new lease took the</p>	<p>An excessive time has been recorded by an experienced solicitor</p>	<p>I consider that one hour is sufficient for these tasks and allow £250+VAT.</p>	£250

		lease	<p>Landlord's solicitor more than 1.5 hours but only 1.5 has been charged.</p> <p>Amount claimed: £337.50 plus VAT</p>	<p>for what should have been a straightforward task. The provisions for the new lease were to be the same, other than rent and term, as those in the existing lease. One hour is a reasonable time. Disallow 30 minutes.</p> <p>Deduction sought: £112.50 plus VAT</p>		
34	20/07/2015	email to client w/h draft lease	<p>Claimed under s.60 (c)</p> <p>The wording in s.60 is usually interpreted widely enough to include work legitimately undertaken by a landlord's solicitor as a consequence of a tenant's claim. For example, drafting and serving a counter notice is generally accepted as being recoverable under s.60 even though s.60 (a) makes no specific mention of it. On that basis explaining the content of</p>	<p>Recoverable costs must be of and incidental to the matters referred to in s.60 (1) (a), (b) or (c). This does not include advising the client and seeking instructions and therefore should be disallowed.</p>	I find that the email was incidental and the cost therefore recoverable under s 60(1)(a).	£22.50

			the draft lease and taking instructions should be allowed. Amount claimed: £22.50 plus VAT	Deduction sought: £22.50 plus VAT		
35	20/07/2015	letter out GD w/h draft lease	Claimed under s.60 (c) The paralegal working in this department was busy with a large number of other matters and was not able to attend to this file. There was no one else to deal with it as there are only two people in our leasehold reform department. Amount claimed: £22.50 plus VAT	This could have been dealt with by the paralegal, thereby reducing the cost. Deduction sought: £7.50 plus VAT	Although I agree that this work could have been carried out by a paralegal I find that it was nevertheless reasonable for a solicitor to deal with it and that this would still fall within the scope of recoverability under s 60(2)	£22.50
36	23/07/2015	Letter in GD re draft lease	Claimed under s.60 (c) The paralegal working in this department was busy with a large number of other matters	This could have been dealt with by the paralegal, thereby	As per 35	£22.50

			and was not able to attend to this file. There was no one else to deal with it as there are only two people in our leasehold reform department. Amount claimed: £22.50 plus VAT	reducing the cost. Deduction sought: £7.50 plus VAT		
37	10/08/2015	email out GD w/h draft lease	Claimed under s.60 (c) The paralegal working in this department was busy with a large number of other matters and was not able to attend to this file. There was no one else to deal with it as there are only two people in our leasehold reform department. Amount claimed: £22.50 plus VAT	This is a one line email and could have been dealt with by the paralegal, thereby reducing the cost. Deduction sought: £7.50 plus VAT	As per 35	£22.50
38	15/10/2015	Email in GD	Claimed under s.60 (c) The wording in s.60 is usually interpreted widely enough to include work legitimately undertaken by a landlord's	Recoverable costs must be of and incidental to the matters referred to in	I find that the email was incidental and the cost therefore recoverable under s 60(1)(a).	£22.50

			<p>solicitor as a consequence of a tenant's claim. For example, drafting and serving a counter notice is generally accepted as being recoverable under s.60 even though s.60 (a) makes no specific mention of it. On that basis confirmation that the premium has been agreed should be allowed.</p> <p>Amount claimed: £22.50 plus VAT</p>	<p>s.60 (1) (a), (b) or (c). This item is not within the ambit of the matters referred to in s.60 (1) (a), (b) or (c) and as such should be disallowed.</p> <p>Deduction sought: £22.50 plus VAT</p>		
n/a	n/a	completing the lease extension	<p>Claimed under s.60 (c)</p> <p>The costs of granting the new lease are recoverable under s.60 (b). This includes producing a completion statement and effecting completion which have not yet happened.</p> <p>Amount claimed: TBC</p>	<p>The Applicant's solicitors are already holding the Applicant's executed lease. There are no further costs within the ambit of the matters referred to in s.60 (1) (a), (b) or (c) to be incurred by the Applicant.</p> <p>Disallow</p>	<p>No sum has been claimed. The applicant was directed to produce evidence of costs in the standard directions and in the absence of evidence of a claim I cannot make an award of costs.</p>	nil
					subtotal	£542.50

					VAT	£108.50
					Total	£651.00

Appendix of relevant legislation
Leasehold Reform Housing and Urban Development Act 1993

s.91 Jurisdiction of . . . tribunals

(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—

(a) the terms of acquisition relating to—

(i) any interest which is to be acquired by a nominee purchaser [RTE company] in pursuance of Chapter I, or

(ii) any new lease which is to be granted to a tenant in pursuance of Chapter II,

including in particular any matter which needs to be determined for the purposes of any provision of Schedule 6 or 13;

(b) the terms of any lease which is to be granted in accordance with section 36 and Schedule 9;

(c) the amount of any payment falling to be made by virtue of section 18(2);

[(ca) the amount of any compensation payable under section 37A;]

[(cb) the amount of any compensation payable under section 61A;]

(d) the amount of any costs payable by any 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 or persons by virtue of any such provision to pay any such costs; and

(e) the apportionment between two or more persons of any amount (whether of costs or otherwise) payable by virtue of any such provision.

(3) . . .

(4) . . .

(5) . . .

(6) . . .

(7) . . .

(8) . . .

(9) [The appropriate tribunal] may, when determining the property in which any interest is to be acquired in pursuance of a notice under section 13 or 42, specify in its determination property which is less extensive than that specified in that notice.

(10) . . .

(11) In this section—

“the nominee purchaser” and “the participating tenants” have [“RTE company” has] the same meaning as in Chapter I;

“the terms of acquisition” shall be construed in accordance with section 24(8) or section 48(7), as appropriate;

. . . .

[(12) For the purposes of this section, “appropriate tribunal” means—

(a) in relation to property in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and

(b) in relation to property in Wales, a leasehold valuation tribunal.]

s.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.