



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

**Case reference** : **NAT/LON/00AS/OC9/2017/0198**

**Property** : **91A Dawley Road, Hayes,  
Middlesex UB3 1LX**

**Applicant** : **Mr Humayun Kabir Khan**

**Representative** : **Unrepresented**

**Respondent** : **Mr Mustafa Szurma-Hasani**

**Representative** : **Unrepresented**

**Type of application** : **Application for determination of  
reasonable costs**

**Tribunal member(s)** : **Mr Jeremy Donegan (Tribunal  
Judge)**

**Date and venue of  
paper determination** : **27 September 2017  
10 Alfred Place, London WC1E 7LR**

**Date of decision** : **27 September 2017**

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**DECISION**

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## Decision of the Tribunal

The Tribunal determines that the costs payable by the applicant pursuant to 60(1) of the Leasehold Reform, Housing and Urban Development Act 1993 ('the 1993 Act') are £1,440 (One Thousand, Four Hundred and Forty Pounds), including VAT.

## The background

1. The application concerns the costs payable on a statutory lease extension claim for 91A Dawley Road, Hayes, Middlesex UB3 1LX ('the Flat') under the 1993 Act. The applicant is one of the joint leaseholders of the Flat and the respondent is the freeholder.
2. The applicant and his fellow leaseholders, Shirin Khan and Asif Irfan Khan served a section 42 notice of claim on the respondent on 7 November 2016, in which they proposed a premium of £15,000 for a new lease of the Flat. The respondent served a counter-notice on 5 January 2017, in which he admitted the claim but proposed a higher premium of £32,815. The parties subsequently agreed the premium in the sum of £26,000 and the new lease completed on 10 July 2017.
3. On 28 July 2017 the Tribunal received an application to determine the reasonable costs payable to the respondent under section 60(1) of the 1993 Act. Directions were issued on 2 August 2017, which included allocation to the paper track with the application to be determined upon the basis of written representations. Neither of the parties has objected to this allocation or requested an oral hearing.
4. Paragraph 2 of the direction required the respondent to serve a schedule of costs, supporting invoices and copies of any other documents/reports upon which he relied, by 16 August 2017. The only documents disclosed by the respondent were invoices from his solicitors, Quality Solicitors Mirza ('QSM') and surveyors, Dunsin Surveyors Limited ('DSL') dated 3 August 2017 and 12 December 2016 respectively. No schedule of costs was served.
5. Paragraphs 3, 4 and 5 of the directions were varied by a letter from the Tribunal dated 7 August 2017, extending the deadlines for compliance. The applicant filed a bundle of documents in accordance with paragraph 5. This included copies of the application, directions, invoices and the applicant's statement of case and supporting documents. The Tribunal considered all of the documents in the bundle when deciding the application.
6. The relevant legal provisions are set out in the appendix to this decision.

## Evidence and submissions

7. The respondent's costs total £1,860, which is broken down as follows:
- Legal fees - £950 plus VAT (£1,140)
  - Valuation fee - £600 plus VAT (£720)

8. The only documents before the Tribunal giving any information about these costs are the invoices from QSM and DSL. The narrative on the QSM invoice reads:

*"For our Professional Charges in connection with dealing with Statutory Lease extension*

*Our legal fee"*

The invoice does not identify the fee earner that undertook the work, the time spent or his/her charging rate.

9. The narrative on the DSL invoice reads:

*"Fee for the Lease Extension Report (including the premiums to be paid for the Statutory 90 years extension and a new 99 year Lease) of:*

*91A Dawley Road, Hayes UB3 1LX"*

Again, the invoice does not identify the fee earner, time spent or charging rate.

10. The applicant contends that the respondent's costs are unreasonable and should be capped at:

- Legal fees - £550
- Valuation fee - £550

Although not explicitly stated, it appears these are gross figures (including VAT).

11. The applicant relies on two documents. Firstly, there is an invoice from his solicitors, Stillwells, dated 29 March 2017. This details their fees for negotiating; completing and registering a new lease for another flat at 144 Burket Close, Southall and is for a total of £440 plus VAT (total £528). Secondly, there is a further invoice from WSL dated 22 August relating to 144 Burket Close for £400 plus VAT (total £480). The applicant stated that the Flat and 144 Burket Close were similar in size

and location. He also made the point that DSL were not involved in any negotiation and had "...hindrance free access to the property."

### **The Tribunal's decision**

12. The Tribunal determines that the following sums are payable under section 60(1):
  - Legal fees - £700 plus VAT (total £840)
  - Valuation fee - £500 plus VAT (total £600)

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

13. The Tribunal has very little information to go on when determining the reasonable costs. There is no breakdown of the sums charged by QSM and DSL and the applicant has not explained how his figures have been calculated. The Tribunal Judge has relied on his own knowledge and experience, gained from hearing similar cases and practice as an enfranchisement solicitor, the guideline charging rates for solicitors used by the courts and the documents in the bundle.
14. The invoice from Stillwells is of little assistance, as it appears to relate to a voluntary lease extension where the solicitors were acting for the leaseholder. This application concerns a statutory lease extension, where the solicitors act for the freeholder.
15. The legal work could reasonably have been undertaken by a Grade B fee earner. QSM are based in Walthamstow, which is within London Grade 3. The Tribunal has allowed a charging rate of £200 per hour plus VAT, which is the approximate midway point in the relevant guideline range (£172-229).
16. The respondent is entitled to his solicitors' reasonable costs for investigating the new lease claim (section 60(1)(a)) and granting the new lease (section 60(1)(b)). The Tribunal allows 1.5 hours for investigating the claim, including service of the counter-notice together with 2 hours for the conveyancing on the grant of the new lease. This makes a total of 3.5 hours, which charged at £200 per hour comes to £700.
17. The respondent is also entitled to his surveyor's reasonable fees for preparing a valuation of the Flat with a view to fixing the premium (section 60(1)(b)). Based on the Tribunal Judge's knowledge and experience, DSL's fee of £600 plus VAT is relatively modest for a statutory lease extension valuation in outer London. However, the invoice reveals that DSL prepared two valuations; one for a statutory

extension (90 years on top of the existing term at a peppercorn ground rent) and one for a new 99-year lease. The cost of the latter is not recoverable under section 60(1)(b). The issue then is how much should be deducted for the irrecoverable valuation. Doing the best it could on the limited information available, the Tribunal has made a deduction of £100. This reduces the recoverable fee to £500 plus VAT, which represents the midway point between DSL's invoice for the Flat and their invoice for 144 Burket Close.

18. The total costs payable by the applicant come to £1,200 plus VAT. The Tribunal has allowed VAT upon the assumption that the respondent is not VAT registered. If this assumption is incorrect and the respondent is able to recover the VAT charged then the sum due should be adjusted accordingly.

**Name:** Tribunal Judge Donegan    **Date:** 27 September 2017

### 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).

## Appendix of relevant legislation

### Leasehold Reform, Housing and Urban Development Act

#### Section 60

(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.