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

**Case Reference** : LON/00AY/0C9/2016/0102

**Property** : Upper Flat, 10 Mandalay Road,  
SW4 9ED

**Applicant** : Timothy Phillip Hume

**Representative** : Ashley Wilson Solicitors LLP

**Respondents** : Alistair John Brannen & Ian  
William Brannen

**Representative** : Woodfords Solicitors LLP

**Type of Application** : Application for determination of  
reasonable costs – Section 91(2)(d)  
Leasehold Reform, Housing and  
Urban Development Act 1993

**Tribunal** : Mr M Martynski (Tribunal Judge)  
Mrs S Redmond BSc MRICS

**Date of Decision:** : 11 May 2016

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**DECISION**

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**Background**

1. This matter arises out of the Applicant's claim for a new lease of the subject premises from the Respondents. The Notice of Claim is dated 26 March 2015. The Counter-notice is dated 27 May 2015. The Counter

Notice admitted the right to a new lease but disputed the premium payable and some of the suggested lease terms.

2. The costs demanded by the Respondents' solicitors amount to £2,415.00 plus VAT with Surveyor's fees of £950 plus VAT.

### **The Application**

3. The Applicant's application to this tribunal is dated 14 March 2016. Following directions given on the application, both parties filed Statements of Case. Neither party requested a hearing for the determination. We therefore dealt with the application on the papers alone.

### **Decision**

4. The Respondents' witness statement (filed by their Solicitor) was filed out of time. We have however had regard to that statement in order to understand fully the dispute between the parties.
5. We summarise the disputed costs and our decisions in the table below.

<b>Item</b>	<b>Applicant's objection</b>	<b>Respondents' response</b>	<b>Our decision</b>
Surveyor's fees - £950 plus VAT	The Applicant asserted that these fees had been agreed at £850 plus VAT	The Surveyor gave an estimate only of his fees in the region of £850 plus VAT.	There is no evidence of a binding agreement for fees of £850 plus VAT. The fee of £950 plus VAT appears reasonable and is allowed.
Initial investigations – 1 hour at £250 p.h.	No objection		
Consideration of valuation report – 30 minutes at £250 p.h.	No objection		
Drafting and serving s.45 notice – 30 minutes at £250 p.h. and 1 hour at trainee solicitor rate of £165 p.h.	The Trainee Solicitor rate is too high and should be £125 p.h.	The rate is reasonable	We consider that £165 p.h. for a Trainee Solicitor being supervised by a partner is not reasonable. £150 p.h. allowed.

Drafting deed of surrender and re-grant – 0.7 hours at £250 p.h. and 1.8 hours at £165 p.h.	The tenant's notice specifically required a new lease incorporating all previous terms (the original lease had been varied). A new lease incorporating all previous terms was eventually agreed.	The surrender and re-grant was suitable.	The terms of the notice were clear, a surrender and re-grant was not going to meet those terms. This work is disallowed.
Drafting a new lease incorporating all terms – 1 hour at £250 p.h. and 2.5 hours at £165 p.h.	The lease drafted was inadequate and did not contain all the necessary terms.	The lease was adequate. However, concession offered to waive the trainee's time.	See below
Checking and amending the lease provided by the tenant's solicitors – 0.5 hours at £250 p.h. and 0.7 hours at £165 p.h.	As above, and; this was the lease drafted by the tenant	The tenant wanted a lease drafted in a style suited to him.	Whatever the rights and wrongs of the situation, the landlord ultimately had to consider a substantial lease containing all previous lease terms and this would have taken some time. We accept the concession made as to the trainee's time. The further time of 0.7 hours for the trainee is allowed at the reduced rate of £150. The partner's time is allowed.
Advising client in relation to the lease and valuation – 1.5 hours at £250 p.h.	This work would have been absorbed in the other work charged for.	This was separate work.	We consider that it is not unreasonable to spend this time separately advising a client landlord in these circumstances and the work is allowed.

6. We conclude therefore that the costs payable by the Applicant are:
  - (a) Surveyor's fees of £950.00 plus VAT
  - (b) Solicitor's fees of £1,505.00 plus VAT.
7. Within the Applicant's Solicitor's witness statement filed in support of the application there was a claim for costs (£350.00) pursuant to Rule 13<sup>1</sup>. The basis of the application is not clear. The application appears to be in respect of the original claiming of (in the Applicant's view) excessive costs forcing the Applicant to make the application to the tribunal for a determination on the costs.
8. Given that the tribunal can only award costs if it is of the view that one party has behaved unreasonably in defending proceedings, it cannot take account of the actions of one party prior to the proceedings taking place. In our view there was nothing so unreasonable in the manner in which the proceedings were defended that would cause the tribunal to exercise its power to award costs. That power is used sparingly and for those cases where there is no reasonable explanation for a seemingly unreasonable act or course of dealing. Applications for such orders should only be made in appropriate circumstances and should set out, in detail, exactly what actions are said to be unreasonable and why those actions are such as to merit an award of costs. The application should set out how the wasted costs have been calculated and what unreasonable behaviour they relate to.
9. The claim for costs is therefore refused.

**Mark Martynski, Tribunal Judge**  
**11 May 2016**

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<sup>1</sup> The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013