



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

Case Reference : **BIR/00CN/OC9/2013/0006**

Property : **13 Thames Court, Manor Road,
Sutton Coldfield, B73 6EF**

Applicant : **Mrs. L J Webb**

**Represented by Mr. K Anderson
MRICS (Anderson Professional
Services)**

Respondent : **The Halliard Property Company Ltd**

**Represented by Ms. F Neale
(Wallace LLP)**

Date of Application : **3rd April 2013**

Type of Application : **Section 91(2)(d) Leasehold Reform
and Urban Development Act 1993
Determination of the costs payable by
the lessee under section 60 of the Act**

Tribunal : **Mr. R T Brown FRICS
Mr. J H Dove**

**Date and venue of
Hearing** : **5th June 2013
Priory Court, Bull Street,
Birmingham**

DECISION

1. The Tribunal determines that the reasonable legal costs of the Respondent in dealing with the matters in section 60 of the Act are £682.40 plus VAT (if applicable) plus Land Registry fee of £80.00 and courier fee £20.81

Introduction

2. The Decision recorded in this document was made by the First-tier Tribunal (Property Chamber) rather than the leasehold valuation tribunal, to whom the application had been made, because by virtue of The Transfer of Tribunals Function Order (2013 No 1036) ('the Transfer Order') the functions of leasehold valuation tribunals were, on 1st July 2013, transferred to the First-tier Tribunal (Property Chamber). By virtue of the transitional provisions, applications to leasehold valuation tribunals in respect of which a decision had not been issued before the 1st July 2013, automatically became proceedings before the First-tier Tribunal (Property Chamber). The Transfer Order also amended the relevant legislation under which leasehold valuation tribunals were referred to by substituting the words 'First-tier Tribunal' for 'leasehold valuation tribunal' within the relevant parts of the legislation. The extracts from the legislation applicable to the present applications that appear below incorporate the changes made by the Transfer Order. In this Decision the expression 'the Tribunal' means the First-tier Tribunal (Property Chamber).
3. This is an application under section 91(2)(d) of the Leasehold Reform and Urban Development Act 1993 for the determination of the Freeholders reasonable legal costs.
4. Directions were issued on 16th April 2013 and the Applicant supplied a late bundle on 24th May 2013 some 11 days before the hearing, the Respondent submitted a late bundle on 30th May 2013 some 5 days before the hearing. The Tribunal admitted both parties' bundles.
5. The Applicant (leaseholder) contends for legal costs of £629.20 plus disbursements and VAT and the Respondent (Freeholder) for cost of £1,787.50 plus disbursements of £100.81 and VAT.
6. The valuer's fees are agreed.

The Law

7. The relevant law is set out below:

Leasehold Reform and Urban Development Act 1993

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.

Hearing

The Applicant's case

8. Mr Anderson attended the hearing on behalf of the Applicant. The Respondents did not attend nor were they represented however their solicitors, Wallace LLP, made written representations.
9. At the hearing Mr Anderson made verbal representation to the Tribunal and relied upon his application and a bundle of correspondence forwarded to the Tribunal and the Respondent.
10. Mr Anderson said that the liability to pay was admitted and that he considered it was up to the Respondent to demonstrate to the Tribunal why the costs should be any more than those determined by the Tribunal in respect of *5 Isis Court* on the same development under reference BIR/00CN/OLR/2011/0080 and BIR/00CN/OC9/2011/0001. This case set the legal fees of the Freeholder at £629.20 plus disbursement of £24.00 and VAT if applicable.

11. The Respondent's fees were to be paid by a 3rd party and this implies a duty on their solicitors to keep fees to a minimum. The right to appoint a solicitor of the Respondent's choosing was not denied however the choice of a London solicitor should not mean that it is reasonable that London rates as opposed to Birmingham rates should be paid.
12. His client's solicitor had advised that the work was not complex and could be carried out by a Band B solicitor as opposed to the more expensive Band A solicitor used by the Respondent.
13. Mr Anderson explained that he had spoken to various Birmingham solicitors who said that about £650.00 plus VAT was appropriate. The checks and balances available in the market place were not available in this type of case.

The Respondent's reply

14. Ms Neale a solicitor with the Respondent's solicitors Wallace LLP had prepared a statement in reply which is summarised below in paragraph 15.
15. The basis on which fees are charged is by reference to the time spent. Halliard's solicitor is a Partner and a Grade A (8 years post qualification experience) fee earner at £375.00 per hour. A Paralegal who assists is charged out at £150.00 per hour. Additionally a conveyancing partner is required who also is Grade A but charges £400.00 per hour.
16. The principles the Tribunal is asked to consider in connection with reasonableness of costs, charge out rates and the use of a partners are set out in *Daejan Investments v Parkside 78 limited LON/ENF/1005/03*, *Daejan Investments Limited v Steven Kenneth Twin LON?00BK/2007/0026* and *Andrew Allen v Daejan Properties SB/LON/00AH/OLR/2009/0343*.
17. The provisions of the Act are complex and accordingly it is necessary for the relevantly experienced fee earner to deal with the following: consider tenant's entitlement, communicate with client, carry out and consider Land Registry searches, correspond with tenant's solicitors, instruct and correspond with valuer, consider valuation and take instructions, prepare and serve counter notice, prepare and agree new form of lease.
18. The costs incurred by Halliard in accordance with section 60(2) are the costs it would incur if it were personally liable.
19. In *Daejan v Parkside* (paragraph 16 above) the Tribunal agreed that enfranchisement was a form of compulsory purchase and on this basis provision was made in the Act for the recovery of reasonable professional costs incurred by a landlord. The test of what is reasonable did not turn on what the tenant might reasonably expect their liability to be and accordingly the landlord was not required to find the cheapest but simply to give the instructions it would ordinarily give if they were bearing the costs themselves.

20. Based on the technical nature of the legislation the time spent is reasonable and accurately sets out the work required. A detailed timesheet is attached to the reply.
21. The determination of the Tribunal in *5 Isis Court* (above) disallowed costs claimed by both landlords after a stated date on the basis that insufficient detail had been provided. The same was considered to be in respect of work relating to an application to the Tribunal and not recoverable.

The Tribunal's deliberations

22. The Tribunal considered all the relevant written and oral evidence presented summarised above in its deliberations.
23. The Tribunal considered the proposition that these matters are *complex in nature and accordingly the involvement of a partner was required*. The Act has been in place since 1993 and many transactions have been completed without the use of a partner at Grade A level. The Tribunal accepts the principle that the Respondent may appoint whomsoever they please (and this may be a solicitor outside the region) but it does not however accept that this automatically entitles that person to charge at Grade A level for work which can, and often is carried out, by an assistant at Grade B(4 years post qualification experience) level.
24. The Tribunal looked for guidance to the County Court rates published by HM Courts Service by and the current applicable level for a Grade B solicitor in London 1 is £296.00 per hour and this is the rate the Tribunal finds appropriate for the carrying out of this type of routine work where no doubt a firm the size of Wallace LLP has a clear set of procedures to follow. The Tribunal adopts this as the appropriate rate for the work requiring a legally qualified person. The Tribunal accepts the rate proposed by the Respondent of £150.00 per hour for a Paralegal.
25. The parties refer to various decisions of the Tribunal and the Tribunal finds that it is not bound by such decisions. However it did consider the principles in those cases and finds that save for *5 Isis Court* they are not persuasive because they consider matters where the value of the transactions are significantly higher and this might justify the use of a partner as opposed to a qualified assistant. The Respondent suggests that part of the fees in *Isis* were discounted as being in preparation for the Tribunal proceedings and this is correct. What is not mentioned is that the Tribunal in that case did make allowances for the time needed to complete the matter. The Tribunal finds to that extent the cases are comparable so far as the Freeholders legal costs are concerned.

26. In the light of those findings the Tribunal considered the schedule put forward by the Respondent. Applying the rate of £296.00 per hour, adjusting for items which are disallowed as not being recoverable or in the Tribunal's opinion on which excessive time has been spent, and based on the Tribunal's experience of the reasonable time for each process the Tribunal sets out its determination in the table below:

Date	Process	Fee Earner	Hours	Rate	Amount
21/08/12	Perusal of Notice of Claim	Grade B	0.2	296.00	59.20
22/08/12	Obtain Office copy entries	Assistant	0.1	150.00	15.00
22/08/12	Letter to Lessees solicitor	Grade B	0.1	296.00	29.60
22/08/12	Letter to Client	Grade B	0.1	296.00	29.60
22/08/12	Letter to Valuer	Grade B	0.1	296.00	29.60
29/08/12	Consider office copy entries	Grade B	0.1	296.00	29.60
24/09/12	Draft Lease	Grade B	0.3	296.00	88.80
24/09/12	letter to client	Grade B	0.1	296.00	29.60
05/10/12	Prepare Counter Notice	Grade B	0.3	296.00	88.80
05/10/12	Letter to Client	Grade B	0.1	296.00	29.60
10/10/12	Letter to lessee's solicitor	Grade B	0.1	296.00	29.60
14/01/13	Review amendments to lease	Grade B	0.1	296.00	29.60
15/01/13	Letter to lessee's solicitor	Grade B	0.1	296.00	29.60
15/01/13	Letter to Client	Grade B	0.1	296.00	29.60
01/02/13	Letter to lessee's solicitor	Grade B	0.1	296.00	29.60
06/02/13	Letter to lessee's solicitor	Assistant	0.1	150.00	15.00
TBA	Further correspondence to complete	Assistant	0.2	150.00	30.00
TBA	Anticipated time to complete	Assistant	0.4	150.00	60.00
					682.40
	Plus Vat (if applicable)				
	Land Registry Fee				80.00
	Courier Fees				20.81

27. If the Respondent is registered for VAT purposes, it will be able to recover the VAT on those fees because those services will have been supplied to the Respondent, not the Applicants. In such circumstances VAT will not be payable by the Applicants.
28. 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.

**Robert T Brown
Chairman**

16 July 2013