



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

**Case Reference** : LON/00AP/OC9/2013/0076

**Property** : 284B Archway Road London N6  
5AU

**Applicants** : Mr P Richards and Miss J Hannon

**Representative** :

**Respondent** : Mr R Cannell

**Representative** : Wilson Barca LLP

**Type of Application** : Application under section 91  
Leasehold Reform, Housing and  
Urban Development Act 1993 (the  
"Act") for a determination of the  
costs to be paid under s60(1) of the  
Act.

**Tribunal Members** : Judge Pittaway

**Date of Decision** : 29 January 2014

Determination without an oral  
hearing in accordance with  
Regulation 31 The Tribunal  
Procedure (First-tier Tribunal)  
(Property Chamber) Rules 2013

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**DECISION**

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## SUMMARY OF DECISION

Section 60 costs in the sum of £2,050.00 plus VAT are payable.

## PRELIMINARY

1. This is an application for a determination of legal costs payable by the Applicants under section 60 (1) of the Act. Valuation costs are not in dispute.
2. The legal costs invoiced by the Respondents are £4,920 plus VAT at 20%, in total £5,904.00.
3. The Applicants consider that legal fees of £1,250 plus VAT to be reasonable;
4. The Applicants represented themselves in the application. The Respondent is represented by Wilson Barca LLP, solicitors.
5. The Tribunal issued Directions on 2 December 2013, which provided for this matter to be determined on paper unless a hearing was requested. No such request has been received and the tribunal have reached its decision without an oral hearing in accordance with Regulation 31 The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
6. The Tribunal received written statements of case from both parties.

## THE LAW

Section 60 of the Act provides

- “(1) Where a notice is given under section 42, then...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....*
- (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 the costs in respect of such*

*services might reasonably be expected to have been incurred by him if the circumstances were such that he was personally liable for all such costs.”*

## **EVIDENCE**

1. Wilson Barca LLP provided the Applicants with a schedule of their costs on 16 December 2013. In their accompanying statement of costs they state that time was spent drafting a lease in the form of a 999 year head lease of Flat B which had been granted as an overriding lease in 2011/2012 (i.e. after the Applicants' existing lease had been granted). They also referred to the time it had taken to agree the lease plan for the extended lease.
2. The Applicants set out in their Statement of Case sent to Wilson Barca under cover of a letter dated 20 December 2013 the background to their application as follows;
  - 2.1. In 2011 there had been discussions with the Respondent in 2011 as to the possible collective enfranchisement of the freehold, then the subject of three leases of which the Applicants' lease was one. These discussions had not resulted in the Applicants participating in such enfranchisement. As part of that process the Respondent was granted a 999 year lease of Flat B, the Applicants' flat.
  - 2.2. In 2012 there were negotiations between the Respondent and the Applicants for the Applicants to buy the Respondent's 999 year lease of Flat B. These were not concluded, the Applicants stating that this was because they considered various terms of the 999 year lease to be onerous.
  - 2.3. The Applicants therefore served a notice under section 42 of the Act requesting a statutory lease extension to their existing lease. They submit that the Respondent made the negotiations for that lease extension unduly protracted thereby adding to the cost, and necessitating an application to the Tribunal to determine the terms of the extended lease which the Applicants state was decided in their favour. Following the Tribunal's decision the Applicants submit that the Respondent delayed granting the lease for four months, the maximum time permitted by statute. They state that the lease extension process was started in August 2012 and not completed until November 2013.
3. In response to the Statement of Costs provided by Wilson Barca LLP the Applicants;
  - 3.1 submit that the breakdown of Wilson Barca's costs does not clarify to what they relate nor how they are recoverable under section 60 (1).
  - 3.2 submit that establishing their title to Flat B should not have been complicated. It would have been evidenced by official copies of the title

from the Land Registry and the Respondent's solicitor raised no questions on their title.

- 3.3 submit that it is apparent, from a copy of the terms in dispute when the form of extended lease was submitted to the Tribunal for determination, that the Respondent was likely to have incurred considerable legal costs in endeavouring to include in the extended lease terms that did not appear in their existing lease. As the Respondent was not entitled by statute to insist upon including these in the extended lease such costs do not fall within the costs recoverable under section 60(1).
- 3.4 do not dispute the Respondent's solicitor's hourly charges of £150 for a solicitor and £300 for the supervising partner.
- 3.5 include in the Exhibits attached to their Statement of Case (and referred to in it) a letter from Wilson Barca LLP of 21 March 2013 in which Wilson Barca state that their costs to that date in connection with the lease extension were approximately £2115 plus VAT.
- 3.6 refer to other cost cases determined by tribunals and on the basis of what the legal work required in this case in connection with their lease extension under section 42 they submit that legal costs of £1,250.00 plus VAT would be reasonable in the circumstances to cover the Respondent's costs under section 60 (1) (a) and (c).
4. Wilson Barca LLP issued a Statement of Response on 7 January 2013.
  - 4.1 In it they disputed some of the statements made by the Applicants in connection with the collective enfranchisement in which the Applicants did not participate and why the Applicants did not purchase the 999 year lease of Flat B from the Respondent.
  - 4.2 They refer to a letter from the Applicants' solicitors of 9 November 2012 (included with their statement) as evidence that by then the Applicants' solicitors had incurred fees in the region of £1500.00 which they compared to the Applicants' offer of costs of £1250.
  - 4.3 They submit that there were delays on the part of the Applicants in completing the extended lease once its terms had been settled by the Tribunal, referring to correspondence (attached to their Response) between August 2012 and September 2012 and referring to breaches of the Applicants' existing lease.
  - 4.4 They consider that their statement of costs provides sufficient information for summary assessment "as required by the Tribunal's directions".
  - 4.5 They submit that the time spent investigating title was not excessive.
  - 4.6 They state that their letter of 21 March 2012 contained an estimate only, that the Respondent had been billed separately for any costs in connection

with the hearing and that the Respondent is not precluded from recovering under s60 any costs of agreeing the lease terms prior to the hearing.

### **TRIBUNAL'S DETERMINATION**

1. Legal costs incurred in connection with
  - 1.1 a draft extended lease in the form of the 999 year lease of Flat B which did not follow the form of the Applicants' existing lease;
  - 1.2 the delay in completing the extended lease;
  - 1.3 alleged breaches of the existing lease; and
  - 1.4 the s 60 costs themselves
 are not recoverable under section 60 (1).

Wilson Barca state that they have not included their costs in connection with the breaches of the existing lease but a number of the letters included in their Response refer to these.

2. To the extent that the correspondence included with Wilson Barca's Response relates to the plan to be attached to the extended lease the cost incurred may be taken into account, to the extent that it is reasonable, as it relates to the grant of the lease.
3. In the absence of a detailed breakdown by Wilson Barca of the dates upon which their costs were incurred and to what they relate, and given that they appear to have included correspondence in their response which does not relate to the extended lease the Tribunal consider that an element of their correspondence and attendance costs must be ignored.
4. The Tribunal note that the letter of 9 November 2012 from the Applicants' solicitors referred to above at paragraph 4.2 states that the costs referred to relate to the abortive negotiations in connection with the assignment to the Applicants of the 999 year lease of Flat B, not the grant of the new lease pursuant to the Act.
5. The Applicants have not made any submission as to the costs of approximately £2115 plus VAT referred to at paragraph 3.5 above.
7. The Applicants do not dispute the Respondent's solicitor's hourly charges of £150 for a solicitor and £300 for the supervising partner.
8. The Tribunal consider in the absence of any evidence to the contrary, and on the balance of probabilities, that the time spent by the partner David Wilson related to the grant of the new lease and determine that his costs of £270 plus VAT were reasonably incurred.

The Tribunal also consider that the costs incurred by the solicitor under the heading, "Attending on file" in Wilson Barca's Statement of Costs of £780.00 plus VAT to be incurred reasonably in connection with costs recoverable under section 60 (1) of the Act.

In the absence of a breakdown of the attendances on "client" and "others" in a way which would enable the Tribunal to analyse to what these relate the Tribunal considers, from its own knowledge as an expert Tribunal that a reasonable sum to have been charged in respect of these matters would be in the region of £1,000 plus VAT. The Tribunal has not relied upon the previous decisions on costs provided by the Applicants.

The Tribunal accordingly determines that legal fees of £2,050 plus VAT have been incurred reasonably and are payable by the Applicants under section 60 (1) of the Act.

Judge Pittaway