



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

Case Reference	:	LON/00AP/OC9/2016/0260
Property	:	1B Crescent Road, Wood Green, London N22 7RP
Applicant	:	Benjamin Fry
Representative	:	Barnett Alexander Conway Ingram LLP
Respondent	:	Daejan Investments Limited
Representative	:	Wallace LLP
Type of Application	:	Determination of costs payable under s.60(1) of the Leasehold Reform, Housing and Urban Development Act 1993
Tribunal	:	Judge Dickie

DECISION

Decision of the Tribunal

Solicitors' fees of £2136.00 plus VAT and disbursements are payable by the Applicant to the Respondent, in addition to the agreed valuation fees.

The application

1. By an application made on 22 June 2016 the Applicant seeks a determination pursuant to section 60 of the Leasehold Reform, Housing and Urban Development Act 1993 ("The Act") of the costs to be paid by the Applicant. Directions were issued by the Tribunal on 23 June 2016. No party has requested an oral hearing and the Tribunal has determined the matter on the papers.

The Background

2. On or about 16 July 2015 the Applicant, being the owner of the leasehold interest the subject flat, served a Notice of Claim on the Respondent in accordance with section 42 of the Act. The landlord served a Counter Notice in accordance with section 45 on or about 22 September 2015.
3. The parties disagreeing as to the terms of acquisition, on 28 February 2016 the Applicant made an application to this Tribunal seeking a determination in respect of them. The terms of acquisition of a new lease were then agreed by the parties on 24 May 2016.
4. No agreement has been reached in respect of the statutory costs payable by the Applicant. The Applicant disputes the Respondent's solicitors' legal fees (not disbursements). Valuation fees are not challenged.
5. So far as is relevant, section 60(1) of the Act provides:

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;*
6. Section 60(2) provides that the costs claimed under section 60(1) will be 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.

Submissions, Determination and Reasons

7. The Respondent's solicitors seeks to justify costs payable by the Applicant under s.60 in the sum of £2,376.00 plus VAT and disbursements. A schedule of costs has been produced in support. The Respondent's solicitors have made lengthy written submissions, but these do not identify any complex features in this case.
8. The Applicant considers that given the extensive experience of the principal fee earner with conduct of this matter, 6.3 hours engaged (which included 3.3 hours of an assistant solicitor's time) is excessive, and that in any event the matter could have been dealt with in its entirety by the assistant solicitor. The Applicant believes that a maximum of 4.5 hours is reasonable for this straightforward lease extension (and have made a comparison with their own time engaged).
9. The decision of the Upper Tribunal in *Drax v Lawn Court Freehold Ltd.* [2010] UKUT 81 (LC) is applicable in relation to enfranchisement costs for a lease extension as well as those for a freehold purchase. Costs are limited to those the landlord would be prepared to pay if liable to pay those costs itself. The landlord should explain and substantiate its costs. In the present case, the costs are confirmed by the Respondent's solicitors to be the same rates charged to their client in respect of all non-recoverable work undertaken on their behalf (e.g. proceedings before the Tribunal).
10. The Respondent's solicitors have described the stages of work required upon receipt of each Notice of Claim. They have been acting for many years in dealing with enfranchisement matters on the Respondent's behalf. They submit that the charging rates are entirely consistent with those for solicitors in Central London, and that it is reasonable for a fee earner with the relevant experience to have conduct of the matter and perform work on the same.
11. The Respondent invites me to follow the reasoning in a non exhaustive selection of Tribunal costs determinations made under s.60 on applications in which these same solicitors were acting for the landlord. I have considered them, though they are of course not binding on me. Each decision relates to the facts in each case, the particular issues disputed and evidence produced.
12. I have considered both parties' submissions and determined the following:
 - (i) The Respondent in its written submissions on costs seeks to justify an hourly rate for the Grade A solicitor having conduct of the matter of £420. The schedule of costs shows that a figure of £450 per hour was charged from part way through the matter, but the Respondent does not seek to justify this and I have allowed the lower figure as within a the reasonable range (albeit at the upper end), and disallowed £42 in respect of 1.4 hours' attendance. Work was also undertaken by a

paralegal (with an hourly charging rate of £180) and an assistant solicitor (with an hourly charging rate of £330) who undertook work in preparing the draft lease forming part of the counter-proposal in the Respondent's counter notice. I have allowed these charging rates.

- (ii) I agree with the Respondent's general position that it is entitled to instruct the solicitor of its choice. This is a complex area of law and each case needs careful consideration by a fee earner of sufficient experience. I reject the Applicant's suggestion that it was unreasonable for a Grade A fee earner to handle this matter, since after the initial work the matter was allocated to an assistant solicitors which was appropriate given that it would have been identified as straightforward.
 - (iii) In paragraph 8 of the Respondent's submission on costs it is said that: "In the meanwhile the parties proceeded to completion...". Though this statement is not entirely unequivocal I understand from it that completion has taken place. However, the Respondent's schedule of costs records an estimate of 0.7 hours for the anticipated time of the assistant solicitor in dealing with completion. In the circumstances only actual time engaged should be recorded and in the absence of this record I have estimated and reduced this cost to 0.4 hours and disallowed £99.
 - (iv) Correspondence is not described in such a way on the schedule of costs as to demonstrate to me that it relates to a matter recoverable under s.60. This is something on which the Tribunal must be satisfied. The Applicant observes that a schedule of costs irrecoverable under s.60 and payable by the Respondent is not produced. At 23 items the correspondence is significant. However, the majority of it was to the Applicant's solicitors., who would surely have made me aware if costs were being claimed for any correspondence received which it considered might not relate to a matter for which statutory costs are payable. With regard to other correspondence, in light of the evidence I have considered it appropriate, based on the steps in this routine matter, to reduce from 9 to 6 the allowable items of correspondence to the client and have disallowed £99.
13. I am not persuaded by the Applicant's general challenge that further adjustments are necessary. Thus I find that the Respondent's bill should be reduced by £240 plus VAT to arrive at a figure for reasonable costs payable under s.60.

Name: F. Dickie

Date: 19 August 2016