FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	:	**BIR/37UJ/OC9/2018/0002**
Property	:	**149 Yale House Rivermead Wilford Lane Nottingham NG2 7RH**
Applicant	:	**Miss G Barney**
Representative	:	**Mr S Barney**
Respondent	:	**Deritend Investments (Birkdale) Limited**
Representative	:	**Wallace LLP**
Type of application	:	**Application under sections 60(1) and 91(2) of the Leasehold Reform, Housing and Urban Development Act 1993 to determine reasonable professional costs incurred by the landlord in connection with a new lease payable by the applicant and an Application under Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013**
Tribunal members	:	**G S Freckelton FRICS (Chairman) Judge P Ellis**
Venue	:	**The matter was dealt with by a Paper Determination**
Date of decision	:	**10 August 2018**

DECISION

BACKGROUND

1. This is a Leaseholder's application for a determination of costs pursuant to Sections 60(1) and 91(2) of the Leasehold Reform Housing and Urban Development Act 1993 ("the Act") and an application under Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Rules").

2. The Applicant is Miss Georgina Barney of 149 Yale House, Rivermead, Wilford Lame, Nottingham, NG7 7RH ("the Applicant"). The Applicant is represented by Mr S Barney.

3. The Respondent is Deritend Investments (Birkdale) Limited represented by Wallace LLP of One Portland Place, London W1B 1PN.

4. The Applicant applies for a determination of reasonable costs payable by her in respect of legal costs and disbursements incurred by the Respondent's in connection with the grant of a new lease of the property at 149 Yale House, Rivermead, Wilford Lane, Nottingham, NG7 7RH.

5. The application for Determination of Reasonable Costs pursuant to section 91(2) of the Act ("the Application") was issued on 8th January 2018 at the same time as the application for a determination of the premium payable under sections 48(1) and 91(2) of the Act.

6. Following a letter to the Applicant from the Tribunal dated 27th February 2018 the Tribunal determined that the determination of costs was stayed until all the other issues had been determined.

7. The Tribunal determined the application in respect of the premium payable (BIR/37UJ/OLR/2018/0002) following an oral hearing on 15th March 2018.

8. On 10th May 2018 the Tribunal issued directions which provided inter alia that the Tribunal would determine the Application on the basis of written statements, documentation and evidence previously submitted by the parties, but without an oral hearing. The parties were directed that if they wished the matter to be dealt with by an oral hearing written application should be made not later than 11th June 2018. In the event neither side made such an application. Accordingly this decision is a written determination issued in accordance with Rule 36 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Rules").

9. The Directions issued by the Tribunal were in respect of an application under section 91(2)(d) of the Act and also in respect of an application under Rule 13 of the Rules. Further correspondence was received from the parties, particularly in respect of the claim under Rule 13 and the Tribunal confirmed to the parties that this matter would be considered by the Tribunal as part of the determination.

10. The Tribunal received extensive and detailed submissions from both parties. The submissions were relied upon by the Tribunal in coming to its decision at the hearing on 23rd July 2018.

THE HISTORY OF THE APPLICATION FOR A NEW LEASE

11. The matter started when the Applicant issued a Notice of Claim under section 42 of the Act on 10th June 2017. The Respondent issued its Counter-Notice to the claim on 30th August 2017. The Respondent accepted the proposal contained in the Notice of Claim for a 90 year extension to the original lease with ground rent reduced to a peppercorn but put in issue the sum payable for the premium to the Respondent. The Respondent's Counter-Notice also claimed payment of the freeholder's legal and surveyors' fees in accordance with the Act.

12. The Tribunal determined the Premium payable in the sum of £13,100.00. At the Hearing on 15th March 2018 to determine the Premium, the Applicant submitted that she had been put to considerable un-necessary expense by the Respondent's Solicitor who had submitted a proposed new lease which was at considerable variance with the existing lease which she, (the Applicant), had to employ her solicitor to refute. This has resulted in the application by the Applicant under Rule 13 of the Rules.

THE RELEVANT LAW

13. Section 60 of the Act provides:

(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 investigations 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 purpose 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) .....
(4) .....
(5) .....
(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.

14. The test for determining the sum payable under this section is described as the 'reasonable expectation test'. See *Metropolitan Property Realizations Ltd V John Keith Moss [2013] UKUT 0415 (LC)*

APPLICATION UNDER RULE 13

15. Rule 13 of the Rules states:
13. – (1) The Tribunal may make an order in respect of costs only-
(a) Under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;
(b) If a person has acted unreasonably in bringing, defending or conducting proceedings in-
(i) .....
(ii) a residential property case, or
(iii) a leasehold case.....
(c) .....

THE COSTS IN DISPUTE

16. The Respondent claims costs of £3956.40 made up as follows:

Legal Fees	2702.00
VAT thereon	540.40
Land Registry Fees	24.00
Valuers Fees	575.00
VAT thereon	115.00
Total	£3956.40

17. The Respondent adopts the following fee structure in respect of legal fees:

Partner:	£465.00 - £475.00 per hour
Paralegal:	£200.00 per hour
Assistant:	£365.00 per hour

18. Based on the detailed schedule provided the Respondent submitted that overall the following time was spent in respect of legal fees:

Partner – 2.4 hours
Paralegal – 0.2 hours
Assistant – 4.2 hours

19. The Applicant submitted that a reasonable legal fee would be £950.00 plus Land Registry Fees which, the Applicant submits, is the fee quoted to her by the Respondent's solicitor at the outset.

20. The Tribunal has been presented with extremely detailed and sometimes confusing submissions by both parties. The Tribunal therefore summarises the relevant points below.

THE APPLICANT'S SUBMISSIONS

21. The Applicant submitted that the property is of relatively low value and being situated in Nottingham is close to many experienced and affordable property lawyers and surveyors. The Applicant also submitted that the rate for a partner of £465.00 per hour is well above the government's recommended rates within London of around £317.00 per hour whereas the rates for Nottingham would be

around £201.00 per hour. With regard to paralegals, the Applicant submitted the local rate should be £126.00 per hour and for assistants £196.00 – £242.00 per hour. The Applicant therefore submitted that the rates charged are excessive.

22. The Applicant further submitted that as the landlord is part of a major property company that routinely deals in leasehold extensions, documents such as the Counter-Notice should be standard templates and should not require expert professional advice such as a senior lawyer (partner) to prepare.

23. The Applicant submitted that the Respondent's initial quotation for executing the lease was £950.00 plus VAT and whilst this took place prior to legal proceedings the Applicant contends that in the context of the Rule 13 application (which the Applicant alleges, comprised of a false statement on the Counter-Notice) the Tribunal application was made unavoidable. The protracted negotiations therefore provides a relevant benchmark to the level the costs should have been had the process progressed in a reasonable way

24. The Applicant further submitted in respect of the application under Rule 13, that the Respondent's solicitor used a false statement on the Counter-Notice with a significantly inflated proposed price for the premium payable and provided a very different lease with over 50 amendments which the Respondent had no right to expect.

25. Despite being given the opportunity to reissue the lease, the Applicant submitted that the Respondent chose not to do so but insisted upon protracted negotiations (agreeing all but one of the outstanding disputed clauses the day before the initial Tribunal hearing on 15th March 2018). The Applicant therefore submitted that she should not be expected to pay for the Respondent's costs in attempting to impose non-compliant changes which the Respondent was not entitled to. At the same time she should be entitled to recompense for her legal expenses in dealing with the non-compliant lease.

26. The Applicant's submissions go into considerable detail regarding their application under Rule 13. These were alluded to at the previous Tribunal hearing and the Tribunal understands that the Applicant's submission is that she has faced legal charges of some £2400.00 including VAT in dealing with the Respondent's proposal for a completely new and re-drafted lease. The Applicant does not distinguish between costs wasted (Rule 13(1)(a) or those unreasonably incurred (Rule 13(1)(b).

THE RESPONDENT'S SUBMISSIONS

27. The Respondent submitted that section 60 of the Act provides that the tenant shall be liable for reasonable costs of and incidental to any investigation reasonably taken of the tenant's rights to the lease; any valuation of the tenant's flat obtained for the purpose of fixing the premium and the grant of a new lease under section 60.

28. The Respondent contends that the reasonable cost of the work carried out in respect of the notice of claim is £3242.40 inclusive of VAT plus £24.00 land registry fees and £575.00 plus VAT for the valuation fee.

29. The Respondent submitted that the basis upon which legal fees are charged to the Applicant is by reference to the time spent by the relevant fee earners. The Respondent's solicitor is a partner in a London firm of solicitors with a charge out rate of £465.00 per hour rising to £475.00 per hour plus VAT. A paralegal was also employed with a charge out rate of £200.00 per hour as well as an assistant solicitor whose charge out rate was £365.00 per hour.

30. The solicitors and valuer acting on behalf of the Respondent and related companies have done so for many years dealing with enfranchisement matters. As such they are the Respondent's choice of professionals and, in the opinion of the Respondent's, the charge out rates are entirely consistent with the usual charge out rate for solicitors in central London.

31. The Respondent further submitted that the provisions of the Act in general terms are complex and that upon receipt of each Notice of Claim it is necessary for the relevant experienced fee earner to deal with many matters which are referred to in detail in the Respondent's submission. It was therefore submitted that it is reasonable to obtain the costs of the Respondent's solicitors on the basis that costs are paid by reference to time spent on the matter.

32. The Respondent submitted that the cases of *Daejan Investments Limited – v - Parkside 78 Limited* dated 4th May 2004 and *Daejan Properties Limited – v – Steven Kenneth Twin (LON/OOBK/2007/0026)* support the Respondent's submission that it is reasonable for a fee earner with the relevant experience to have conduct of the matter and to perform work on the same.

33. With regard to the Applicant's application in respect of costs under Rule 13 the Respondent submitted that in the absence of agreement between the parties regarding the terms of acquisition it is necessary to resolve the issue by way of litigation which includes the cost of professional legal and surveyors advice. The Respondent submitted that guidance was given in *Willow Court Management Company (1985) Limited v Alexander [2016] UKUT 290 (LC)* that the power is exercisable where there is unreasonable behaviour. The Respondent submitted that there was no conduct on behalf of the Respondent or their solicitors which could be deemed unreasonable and accordingly the threshold for making an order pursuant to Rule 13 had not been met.

34. The Respondent further submitted that it was a matter for the Applicant to obtain the appropriate advice regarding the process and to act accordingly. In the submission of Respondent, the Applicant chose to agree the form of the lease (save for one provision), but chose not to agree the premium proposed by the Respondent, therefore necessitating determination to be made by Tribunal. The Respondent also submitted that the outstanding lease clause sought by them was determined by the Tribunal as being reasonable and that the premium amount determined was at a figure very close to that proposed by the Respondent's valuer.

35. It was further submitted by the Respondent that the Applicant had the opportunity to avoid attending a hearing by agreeing the outstanding lease clauses and premium proposed by the Respondent but chose not to do so. It's was therefore the Respondent's submission that any costs incurred by the Applicant as a result of that choice was a matter for the Applicant and could not be attributed to any conduct of the Respondent.

36. In conclusion, the Respondent submitted that in its opinion the application under Rule 13 was doomed to fail and that the Applicant had acted unreasonably in bringing Rule 13 proceedings. The Respondent stated that the Applicant's representative was advised by letter dated 24th April 2018 that any Rule 13 application could not be justified and that the Respondent would seek the costs associated in dealing with the same from the Applicant. As such the Respondent submitted a claim for £1460.00 plus VAT being an Associate (Grade A) property litigator for 4 hours at £365.00 per hour to cover the cost of dealing with the Applicant's application under Rule 13.

THE TRIBUNAL'S DELIBERATIONS AND DECISION

37. The Tribunal therefore has three matters to consider:
    (i) the application by the Respondent for costs under section 60 of the Act
    (ii) the application by the Applicant for costs under Rule 13(1)(b)
    (iii) the counter claim by the Respondent in respect of costs under Rule 13(1)(b)

38. In the first instance the Tribunal determined the Application for Costs under Section 60 of the Act.

39. The Tribunal recognises that applications for a new lease involve work of legal complexity and that clients will prefer to use advisers who are familiar with and therefore skilled in that area of law. Therefore, it is reasonable for clients to use solicitors of their choosing.

40. However, the meaning and effect of section 60 is to ensure an effective balance is struck between the freedom of choice of solicitor on the part of landlords, who are typically likely to be skilled in the operation of the Act, with protection of tenants who are responsible for the costs of the landlords. The role of the Tribunal is to strike that balance and in doing so it has had regard not only to the cases the parties referred to it but also to guidance from the Upper Tribunal.

41. *Metropolitan Property Realizations Ltd V John Keith Moss [2013] UKUT 0415 (LC)* was a leasehold enfranchisement case in which the Upper Tribunal considered the tenant's statutory liability for costs under s 60(1).

42. The decision of Mr Martin Rodger QC the Deputy President giving the decision of the Upper Tribunal that the band of costs recoverable under the reasonable expectation test has a ceiling of the costs which would have been paid by the landlord if paying them itself and is not restricted to the costs which the Tribunal considers to be reasonable.

43. After reciting the relevant provisions of section 60 he said:
    9. These provisions are straightforward and their purpose is readily understandable. Part I of the 1993 Act is expropriatory, in that it confers valuable rights on tenants of leasehold flats to compel their landlords to grant new interests in those premises whether they are willing to do so or not. It is a matter of basic fairness, necessary to avoid the statute from becoming penal, that the tenant exercising those statutory rights should reimburse the costs necessarily incurred by an person in receipt of such a claim in satisfying themselves that the claim is properly made, in obtaining advice on the sum payable by the tenant in

consideration for the new interest and in completing the formal steps necessary to create it.
10. On the other hand, the statute is not intended to provide an opportunity for the professional advisers of landlords to charge excessive fees, nor are tenants expected to pay the landlords' costs of resolving disputes over the terms of acquisition of new leases. Thus the sums payable by a tenant under section 60 are restricted to those incurred by the landlord within the three categories identified in section 60(1) and are further restricted by the requirement that only reasonable costs are payable. Section 60(2) provides a ceiling by reference to the reasonable expectations of a person paying the costs from their own pocket; the costs of work which would not have been incurred, or which would have been carried out more cheaply, if the landlord was personally liable to meet them are not reasonable costs which the tenant is required to pay.
11. Section 60 therefore provides protection for both landlords and tenants: for landlords against being out of pocket when compelled to grant new interests under the Act, and for tenants against being required to pay more than is reasonable.

44. The decision of the Tribunal in connection with this case is not whether the use of London solicitors is reasonable but the reasonableness of the fees claimed by the Respondent from the Applicant. In *Sinclair Gardens v Wisbey [2016] UKUT 0203 (LC)* His Honour Judge Huskinson sitting with the Registrar as an assessor said:
"On a proper construction of Section 60 there is a burden upon the Respondents claiming costs for professional services (which therefore fall within section 60(2)) to prove that the costs are (and the extent to which the costs are) reasonable. This follows from the provision that costs "shall only be regarded as reasonable" if and to the extent provided for by the following".

45. The Upper Tribunal has further considered the meaning and effect of section 60 of the Act in another decision of Martin Rodger QC the Deputy President in *Sidewalk Properties Limited v Twinn[2015]UKUT 0122,* a case also involving, in part, the use of solicitors with higher charging rates than solicitors local to the property which was in Bury St Edmunds Suffolk. At paragraph 40 of his Decision he said:
"The question of the appropriate hourly rate to be used as a guide involves a choice between London and Bury St Edmunds rates. That choice cannot be determinative however, both because London rates are themselves a range, and because even after carrying out an arithmetical calculation based on one rate or the other it is still necessary to consider the ceiling imposed by s60(2) and to ask whether the resulting figure represents the cost which would have been incurred had the appellant been required to pay for the necessary legal services from its own pocket without the right to pass the charges to the respondents"

46. The use of guideline rates in detailed assessments in county court cases is helpful but not binding. The rates have not been adjusted since 2010 since when hourly rates charged by solicitors have steadily increased. However, at the same time local competition in the market would have exerted downward pressure on the rates.

47. Moreover, Part 44(3)(2)(a) Civil Procedure Rules provides that the court when making an assessment of costs will only allow costs which are proportionate to the matters in issue. Although the obligation to pay costs under section 60 is a separate basis of appraising what costs are payable, the ceiling imposed by section 60(2) and its application by the First-tier Tribunal and the Upper Tribunal means that there is no right to an indemnity for the costs which the landlord has agreed to pay its

professional advisers. Therefore, just as the court guidelines are helpful in identifying hourly rates, so to the general principle of proportionality is helpful in deciding the reasonableness of costs payable by the leaseholders.

48. The Tribunal is of the opinion that the rates proposed by the Respondent in this case are excessive. The Tribunal therefore substitutes the hourly rate of £345.00 for a partner, £220.00 for an assistant and £115.00 for a paralegal.

49. The Tribunal is also of the opinion that total time taken of 6.8 hours is excessive and that some of the items quoted for in the Respondent's schedule as being completed by a Partner could have been carried out by an Assistant.

50. The Tribunal therefore determines the cost schedule provided by the Respondent as follows:

Date	Activity	Fee Earner	Time
18 July 2017	Documents – Notice of Claim	Partner	0.5
18 July 2017	Letter to Client	Assistant	0.1
18 July 2017	Letter to Valuer	Assistant	0.1
18 July 2017	Letter to Lessee's solicitors	Assistant	0.1
20 July 2017	Obtain Office Copy entry	Paralegal	0.2
20 July 2017	Consider Office Copy entry	Partner	0.2
20 July 2017	Email to Valuer		0.0
16 August 2017	Prepare draft Counter-Notice	Assistant	0.4
17 August 2017	Prepare draft Lease	Assistant	0.9
30 August 2017	Finalise Counter-Notice and letters to parties	Partner	0.3
05 February 2018	Email to Lessee's solicitors	Assistant	0.1
09 February 2018	Email to client		0.0
15 February 2018	Email to Lessee's Solicitor		0.0
15 February 2018	Amend draft Lease	Assistant	0.2
27 February 2018	Letter to Client		0.0
27 February 2018	Email to Client		0.0
17 May 2018	Prepare claim form	Assistant	0.4
17 May 2018	Email to Lessee's solicitors	Assistant	0.1
30 May 2018	Email to Lessee's solicitors	Assistant	0.1
04 June 2018	Lease Engrossment	Assistant	0.2
04 June 2018	Letter to Client	Assistant	0.1
04 June 2018	Letter to Lessee's solicitor	Assistant	0.1
TBC	Prepare Completion Statement	Assistant	0.2
TBC	Further correspondence		0.0
TBC	Completion	Assistant	0.4

51. In summary the Tribunal therefore determines the cost as follows:

Partner 1 hour @ £345.00 per hour = £345.00
Assistant 3.5 hours @ £220.00 per hour = £770.00
Paralegal 0.2 hours @ £115.00 per hour = £ 23.00
Total £1138.00

52. In addition to this the Applicant is liable to pay VAT and the Land Registry Fee of £24.00.

53. With regard to the Valuation fee the Tribunal determines that the sum of £575.00 plus VAT is reasonable.

54. The total costs payable by the Applicant under Section 60 as determined by the Tribunal therefore are:

Legal costs	1138.00
VAT thereon	227.60
Land Registry fee	24.00
Valuation fee	575.00
VAT thereon	115.00
Total	£2079.60

55. The Tribunal then considered the application by the Applicant and counter claim by the Respondent under Rule 13(1)(b). This is an application for costs if a person has acted unreasonably in bringing, defending or conducting proceedings before the Tribunal. In this case it is an application under Rule 13(1)(b) of the Rules. Although the Applicant did not distinguish between wasted costs and costs unreasonably incurred the Tribunal is satisfied that the Applicant is making an application based upon the alleged unreasonable behaviour of the Respondent.

56. In essence the Applicant submitted that the Respondent acted unreasonably in submitting a lease which was at considerable variance with the original lease of the property and which the Applicant (who was not legally qualified) therefore had to employ her own solicitor (at considerable cost) to deal with. The Applicant submits that she had therefore been faced with unexpected costs of some £2400.00 which she should not have to pay.

57. The Respondent submitted that the draft lease was submitted with the Counter-Notice for consideration by the Applicant on a 'Without Prejudice' basis and was part of the negotiating process. At the same time the Respondent contends that all but one clause was accepted by the Applicant and that, that outstanding clause was determined by the Tribunal essentially as drafted by the Respondent at the hearing on 15th March 2018.

58. The Tribunal has considerable sympathy with the Applicant in this matter. The submission of the Respondent on this point is at variance with the facts. The Tribunal is in no doubt that the draft lease as originally submitted was in the form described by the Applicant. In fact the lease and the numerous amendments were both referred to and shown to the Tribunal at the previous hearing for the determination of the premium on 15th March 2018. As such it is therefore incorrect for the Respondent to say that the Applicant agreed the form of the Lease. In fact the opposite is the case and many of the proposed terms were rejected by the Applicant, that position only being accepted by the Respondent immediately prior to the previous hearing.

59. At the same time it is clear to the Tribunal that although the Premium determined by the Tribunal (£13,100.00) was close to the Respondent's valuation of £13,583.00, the Premium proposed by the Respondent in its Counter-Notice was greatly inflated being £18,750.00. The valuation carried out by the Respondent's valuer as addressed to the Tribunal was dated 19th February 2018, after the application to the Tribunal on 8th January 2018 and some five months after the Counter-Notice was served. The Tribunal has no way of knowing whether or not the Respondent had obtained any other valuation advice prior to that date, although it is not unreasonable to assume that it might have done so.

60. This, in the opinion of the Tribunal would inevitably result in the Applicant having no realistic option but to make an application to the Tribunal, as the two figures were so far apart.

61. The Tribunal is therefore of the opinion that this could be considered to be a cynical claim by the Respondent designed to 'browbeat' the Applicant (who was not a professional person) into accepting its proposals in respect of lease terms and premium without the scrutiny of the Tribunal in order to avoid the costs of a Tribunal hearing. The cynical approach to the valuation exercise was illustrated by the Respondent's assertion that the sum proposed for the premium and the terms of the new lease were put forward for negotiation purposes only. Although it is legitimate to make opening offers that may not be accepted the Respondent must realise that by doing so the Applicant had little choice other than to obtain professional assistance thereby giving rise to this application.

62. The relevant consideration for the Tribunal is whether there was *'unreasonable conduct'* from the parties.

63. The Tribunal considered the Upper Tribunal (Lands Chamber) Decision in *The Kingsbridge Pension Fund Trust and David Michael Downs [2017] UKUT 0284 (LC)*. In this the President, Sir David Holgate said:

9. *"Unreasonable conduct"* includes *"conduct which is vexatious and designed to harass the other side rather than advance the resolution of the case".....It is not enough that the conduct leads to an unsuccessful outcome. The test may be expressed in different ways: would a reasonable person in the position of the party have conducted themselves in the manner complained of, or is there a reasonable explanation for the conduct complained of? This is an objective standard to be applied by the Tribunal to the facts of the case".*

10.....*"it was held that the phrase "the proceedings" in a provision similar.....relates to proceedings before the tribunal which has jurisdiction on the appeal whilst it has such jurisdiction. Thus the behaviour of a party which occurred before an appeal to the FTT began cannot constitute unreasonable behaviour which engages this particular power to award costs, nor can costs prior to an appeal be the subject of an order..... Nonetheless the behaviour of a party prior to the relevant proceedings is not to be disregarded altogether. Such actions "might well inform actions taken during [the relevant] proceedings".*

11. *"The power to award costs.....should be reserved for the clearest of cases".*

64. An Applicant is entitled to complain about the conduct of a Respondent in any case and vice-versa. In this case the Tribunal, as noted in paragraph 58 above, has considerable sympathy with the Applicant.

65. It is clear to the Tribunal that the conduct of the Respondent prior to the proceedings before the Tribunal put the Applicant to considerable additional expense although it is true to say that the Applicant would have been put to some legal expense in any event and the Tribunal does not therefore accept that the total invoice of £2400.00 including VAT could be regarded as *'additional fees'*. However, the Tribunal does not accept the Respondents submission that the Applicant could have avoided costs by agreeing to the premium and lease terms proposed as a realistic proposition having regard to the premium proposed in the Counter-Notice and the terms of the lease submitted.

66. The question then arises as to the conduct of the Respondent in relation to the proposed lease after the application had been made to the Tribunal on 8th January 2018. The Respondent continued to press for a substantially varied lease and only agreed to drop the majority of its demands on the day before the hearing on 15th March 2018. The Respondent therefore continued what the Applicant alleges was *"unreasonable behaviour"* after proceedings had commenced.

67. It is evident to the Tribunal that the purpose of Rule 13 is to give the Tribunal the power to reimburse costs, fees and interest on costs if a person has acted unreasonably in bringing, defending or conducting proceedings. That is, proceedings before the Tribunal. Proceedings commenced when the application was received by the Tribunal, in this case on 10th January 2018.

68. The Tribunal determined that the costs of any Applicant for their own legal advice in lease extension proceedings in connection with the proposed lease would be in the region of £1400.00 including VAT. In this case the Tribunal has a copy of an invoice from the Applicant's solicitors Gateley PLC of 58 The Ropewalk Nottingham, NG1 5DW in the sum of £2400.00.

69. The Respondent submits that this invoice is not detailed as to the work completed but it is dated 29th March 2018, some two weeks after the Tribunal hearing date. The Applicant's solicitors did not attend the hearing and it is therefore, in the opinion of the Tribunal, reasonable to conclude that the work referred to was carried out prior to the Tribunal Hearing and related to the proposed new lease as no other significant legal work would need to be undertaken. The Tribunal accepted the submission of the Applicant on this point at the hearing on 15th March 2018.

70. The Tribunal appreciates that matters in respect of the Premium payable and the lease are matters for negotiation. At the outset, prior to the application to the Tribunal, it is reasonable for both parties to try and obtain the best terms possible on what the Respondent describes as a *"Without Prejudice"* basis. However, once the application has been submitted it is incumbent on the parties to try and resolve as many issues as possible in order to narrow the issues before the Tribunal which is an obligation under paragraph 3(4) of the rules.

71. The question of the premium payable is often determined at a Tribunal hearing. The Counter-Notice was served on 30th August 2017 and there is no evidence that the Respondent obtained any valuation advice until it received a copy of the surveyors report dated 19th February 2018 as sent to the Tribunal.

72. The Tribunal therefore rejects the submission of the Applicant that there was a *'false statement'* included in the Counter-Notice. Although the Respondent is a 'professional landlord' it is unrealistic to suggest that they should have known what their surveyor was likely to advise regarding the premium payable before the valuation had actually been undertaken.

73. However, the Respondent (and in particular the Respondent's Representative) in this case would have been well aware that the new lease would be required to be substantially on the same terms as the existing lease. Indeed it would not be unreasonable to expect a relatively brief lease extension document, referring to the existing lease and any minor amendments rather than a wholly new lease being submitted.

74. The lease submitted to the Applicant was clearly in a substantially different form to the original lease. Whereas this might be considered acceptable in as far as initial negotiations were concerned it was not acceptable once proceedings had been issued and the Respondent (who is a professional landlord) should therefore have taken the opportunity to accept the Applicant's concerns in respect of the unresolved lease terms at an early date and not immediately prior to the hearing, particularly as the Respondent conceded on all but one of the outstanding terms previously proposed.

75. In the opinion of the Tribunal this constitutes *'unreasonable behaviour'* and put the Applicant to additional legal expense.

76. The Tribunal therefore determined to award costs of £1000.00 against the Respondent in favour of the Applicant to reimburse her with the legal costs incurred prior to the Tribunal hearing on 15th March but after the application was submitted on 8th January 2018. The Tribunal considers this to be reasonable and is of the opinion that the remaining costs of £1400.00 including VAT are reasonable for the Applicant to have to pay for their own legal fees in this matter.

77. With regard to the counter claim by the Respondent the Tribunal dismisses this as it finds that the Respondent's conduct has been *"vexatious and designed to harass the other side rather than advance the resolution of the case"*. This is due to the Respondent seeking a new lease at considerable variance with the original and not conceding until immediately prior to the hearing on 15th March 2018. This conduct is not considered to be acceptable by the Tribunal in this case.

78. The original assessment for costs under section 60 was £2079.60. The award in favour of the Applicant is £1000.00 leaving the sum of £1079.60 to be paid by the Applicant in respect of section 60 costs.

THE TRIBUNAL'S DECISION

79. To summarise the above the Tribunal determines:
    1) That the amount in respect of section 60 costs is £2079.60
    2) That the amount to be paid by the Respondent to the Applicant under Rule 13(1)(b) is £1000.00
    3) That the Respondent's counter claim under Rule 13(1)(b) is dismissed.

APPEAL

80. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

Graham Freckelton FRICS
Chairman
First-tier Tribunal (Property Chamber)