



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

**Case Reference** : GM/LON/00BD/OC9/2021/0059  
**HMCTS code (paper, video, audio)** : P: PAPER REMOTE  
**Property** : Flat 2, Manor Court, Manor Road,  
Twickenham, TW2 5DL  
**Applicant** : Bastion Limited  
**Representative** : Wallace LLP  
**First Respondent** : Regional Investments Properties Limited  
**Representative** : Keyston Law  
**Second Respondent** : Aurel Cirdei  
**Representative** : Axiom Stone Solicitors  
**Type of Application** : Enfranchisement - costs  
**Tribunal Members** : Judge Robert Latham  
Richard Waterhouse MA LLM FRICS  
**Date and venue of paper determination** : 14 July 2021 at  
10 Alfred Place, London WC1E 7LR

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**DECISION**

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The Tribunal determines the section 60 statutory costs in respect of legal fees in the sum of £1,250 + VAT; valuation fees at £750 + VAT and Land Registry fees at £6 + VAT, a total of £2,407.20.

**Covid-19 pandemic: description of hearing**

This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was P:PAPER REMOTE. The Directions provided for the application to be determined on the papers unless any party requested a hearing. No party has requested a hearing. The Applicant has provided a Bundle of Documents of 211 pages.

## **Introduction**

1. This is an application, by the intermediate landlord, under section 91 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”). The current application by the Applicant tenant is for the determination of the costs payable by the tenants under section 60(1) of the Act. The landlord seeks costs in the sum of £3,487.20, namely: (i) Legal Fees: £2,000 + VAT; (ii) Valuation Fees: £900 + VAT; and (iii) Land Registry fees: £6 + VAT.
2. On 21 June, the Tribunal issued its standard Directions. Pursuant to these, the Applicant has provided a Schedule of Costs (at p.64-66). The Applicant is also claiming £900 + VAT for Valuation Fees (at p.67). Particulars are also provided of the Land Registry fees (at p.68-9). The Applicant was asked to identify any unusual or complex features to the case. No such features have been identified.
3. On 4 June, the Second Respondent served its Statement of Case. It argues that the legal costs are unreasonably high because the Partner has spent 61% of the total number of the hours billed. Much of this work could have been delegated. The Second Respondent also contends that the costs of the Valuer are unreasonably high. It accepts the Land Registry fees.
4. On 15 June, the Applicant served its Submissions on Costs. The Applicant has annexed a number of authorities. It does not identify the principles which it seeks to extract from these authorities. Its exhibits total 120 pages.
5. On 30 June, the First Respondent served submission seeking to argue that it is the Second and not the First Respondent who is liable for the statutory costs. This turns on whether there has been a valid assignment of the Notice of Claim. There is also an issue of who is holding the statutory deposit. The Second Respondent has not responded to this. The Tribunal is determining the application on the basis that the First and Second Respondent are jointly and severally liable for the statutory costs. If they are unable to agree on who bears the liability, it is open to them to apply to this tribunal for directions.

## **The Background**

6. On about 3 June 2018, the SRB Trustee Company Limited (as executor of the deceased tenant, served its Section 42 Notice of Claim applying for a new lease of Flat 2, Manor Court, Manor Road, Twickenham, TW2 5DL (“the Flat”). A premium of £4,936.13 was proposed for Northumberland & Durham Property Trust Limited (the freeholder and Competent Landlord) and £104,756.81 for the Applicant (the intermediate landlord).
7. On about 7 June 2019, the Flat and the benefit of the Notice of Claim were assigned to the First Respondent.

8. On about 9 August 2019, the Competent Landlord (on behalf of both landlords) served their Section 45 Counter Notice admitting the tenant's right to a new lease. Various amendments to the lease were proposed. The following proposal was made in respect of the premium: £86,935.00 to the Competent Landlord and £114,864.00 to the Applicant.
9. On about 14 August 2019, the Applicant served a Landlord's Notice to Act Independently.
10. On about 9 September 2019, the Flat and the benefit of the Notice of Claim were assigned to the Second Respondent. There is a dispute as to the effect of this assignment.
11. On 8 February 2020, the Notice of Claim was deemed withdrawn pursuant to Section 53 of the Act, as no application had been made to this tribunal. The Second Respondent states that it is the innocent victim of the negligence of its professional advisors. This cannot affect the assessment of the costs that are payable.

### **The Statutory Provisions**

12. Section 60 provides, insofar as relevant for the purposes of this decision:

“(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.

.....

(5) A tenant shall not be liable under this section for any costs which a party to any proceedings under this Chapter before a leasehold valuation 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... or any third party to the tenant's lease.”

## **The Principles**

13. In *Metropolitan Property Realisations v Moss [2013] UKUT 415*, Martin Rodger QC, the Deputy President, gave the following guidance on the approach to be adopted:

“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 any 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 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.”

## **The Tribunal’s Determination**

### Legal Fees: £2,000

14. A Schedule of Costs has been provided. The majority of the work has been carried out by Samantha Bone, a Partner, whose charge out rate is £495 per

hour. Work has also been carried out by two assistant solicitors whose charge out rate is £385 per hour. The Schedule totals £2,230, but the Applicant is restricting its claim to the sum of £2,000.

15. The Second Respondent argues that the legal costs are unreasonably high because the Partner has spent 61% of the total number of the hours billed. We consider that there is some justification in this criticism. Where an experienced Partner carries out this work, we would expect that the time to complete the formal steps required by the statute to take substantially less than were the tasks to be performed by a less experienced lawyer.
16. However, there is a more fundamental issue. The landlord is only entitled to its reasonable costs of and incidental to (a) any investigation reasonably undertaken of the tenant's right to a new lease and (b) any valuation of the tenant's flat obtained for the purpose of fixing the premium in its Counter Notice. The Counter Notice is dated 9 August 2019. However, a considerable amount of the work for which payment is sought arose after this date. The sums claimed for this work totals £767.
17. The Tribunal notes that the total fees claimed total £2,230. Any reductions should therefore be made to this sum. We therefore allow legal fees in the sum of £1,250 + VAT.

Valuation Fees: £900

18. The Applicant has provided the invoice from Mr Robin Sharp, dated 10 March 2020. He has provided details of the time engaged at p.119. The valuation fee included the costs of inspecting the property, perusing the lease and the statutory notices and considering evidence of local comparables. The date of the inspection is not specified, but it is assumed to be prior to 9 August 2019 when the Applicant served its Counter Notice. It is somewhat surprising that Mr Sharp should have submitted his invoice seven months after he provided his valuation.
19. The Second Respondent considers that the information disclosed in the invoice is inadequate. It is also suggested that Mr Sharp should have communicated with the Respondent's surveyor. There was no need to any communication at this stage. The Applicant has confirmed that Mr Sharp is registered for VAT. This had been disputed by the Second Respondent.
20. The Tribunal is satisfied that there were no unusual or complex features to this case. We consider the sum of £900 which is claimed to be excessive. We allow £750 + VAT for the Valuation Fees.

**Judge Robert Latham,  
14 July 2021**

## **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).