FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	RC/LON/00BF/OC9/2021/0053
HMCTS code (paper, video, audio)	**:**	P: PAPER REMOTE
Property	**:**	25 Bute Court, Wallington, Surrey, SM6 8AG
Applicants	**:**	Awai Hussain and Aisha Safia Siddiqui
Representative	**:**	In person
Respondent	**:**	Townsmede Properties Limited
Representative	**:**	Bude Nathan Iwananier LLP
Type of Application	**:**	Enfranchisement - costs
Tribunal Members	**:**	Judge Robert Latham Marina Krisko FRICS
Date and venue of paper determination	**:**	28 July 2021 at 10 Alfred Place, London WC1E 7LR

DECISION

The Tribunal determines the section 60 statutory costs in the sum of £2,461.50 (inc VAT).

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 Tribunal has considered the Bundle of Documents filed by the Respondent (237 pages) and the written submissions made by the Applicants (3 pages).

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Introduction

1. This is an application, dated 11 March 2021, 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 Applicants are acting in person. Whitefields LLP ("Whitefields"), Solicitors, have previously acted to them.

2. The Applicants named Townsmede Properties Limited as Respondent, and gave Bude Nathan Iwananier LLP ("BNI"), Solicitors, as their representative. The Applicants did not send a copy of their application to BNI. The Tribunal sent the application to the Respondent as there was no indication that BNI had their authority to act for them in these proceedings.

3. On 30 April 2021, the Tribunal issued its standard Directions. Pursuant to these, on 21 May, the Respondent landlord served a Schedule of Costs and the associated documents in support of their claim. The Respondent is claiming: (i) Legal Costs of £1,650 + disbursements of £10 (to both of which VAT must be added); and (ii) Valuation Costs of £300 + VAT and disbursements of £1.50. The total is £2,461.50 (inc VAT). On 12 February (at p.154), the Respondent had sent details of the costs sought to Whitefields.

4. The Respondent's Solicitor served a witness statement from Samuel Pariente (at p.19), a Consultant Solicitor with BHI. He exhibited the following:

   (i) A Statement of Costs (at p.32): This provides details of the time spent by the Solicitor between 10 December 2020 and 10 February 2021.

   (ii) A bill (at p.28) submitted by BNI to their client, dated 21 May 2021, in the sum of £1,992.00. This included VAT and the Land Registry fee.

   (iii) The extensive correspondence generated by this application.

5. The Applicants were directed to file their Statement of Case by 11 June 2011. They failed to do so.

6. On 9 July, as directed, the Respondent filed a Bundle of Documents. This is extensive and extends to 237 pages.

7. On 8 July, the Applicants sent written submissions to the tribunal. These were unsigned. They were not copied to the Respondent. No explanation was provided for their failure to serve them in accordance with the Directions. On 28 July, the Applicants provided a signed copy to the tribunal.

8. This application has been listed before us today. We have considered whether we should have regard to the Applicant's submissions. We have concluded that we should. The Applicants contend that the costs claimed are excessive and do not accurately reflect the work required by the service of the Section 42 Notice of Claim.

9. We have considered whether we should adjourn this case to enable the Respondent to reply to these submissions. The material submitted by the Applicants has not persuaded us that the sums claimed are unreasonable. We have therefore concluded that it would only increase costs and would be disproportionate to defer our determination.

The Background

10. On 11 December 2020 (at p.35), SCJ Solicitors, who are based in Gwynedd, Wales, served a Section 42 Notice applying for a new lease. The Notice was dated 30 November 2020. A premium of £29,950 was proposed. The Notice was served on behalf of Sandra Davis and Andrew Collicott as personal representatives of Brenda Norfield (deceased). Reference was also made to London & Capital Housing Limited. The Respondent was required to serve a Counter Notice by 26 February 2021.

11. On 2 February 2021 (p.135), Whitefields notified BNI that their clients had acquired then property on 11 January, and that the benefit of the Section 42 Notice had been assigned to their clients. Whitefields asked for confirmation that the Respondent accepted that the Notice was valid.

12. On 9 February 2021 (at p.151), Whitefields notified BNI that that their clients had decided not to proceed with the Notice. They stated that their client had been obliged to accept an assignment of the Notice and accepted their liability to pay the Section 60 costs incurred in respect of the Notice.

The Statutory Provisions

13. 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

14. 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

15. In his statement (at p.19), Mr Pariente describes why this was not a straightforward case. This is confirmed by the extensive correspondence which has been disclosed. The Section 42 Notice was served by the personal representatives of the original tenant. The flat was sold and the Claim assigned to London & Capital Housing Limited. London and Capital assigned the claim to the Applicants. There were legal issues with both the original claim and the assignments. These were raised with SCJ, namely the solicitors who were acting for the original tenant and London & Capital. Following their purchase of the flat and assignment of the claim, the Applicants asserted the validity of the same and that it was vested in them. The Respondent raised the issues with validity of the original Section 42 notice, and requested evidence of the assignments, from Whitefields. Whitefields eventually, on 9 February 2021, confirmed that their clients did not wish to proceed with a claim. The Applicants accepted that the notice was invalid.

16. The fact that a landlord may suspect that a Section 42 Claim Notice is invalid, does not relieve it of the need to serve a Counter Notice. If no Counter Notice is served, and the Notice is subsequently held to be valid, the landlord is left with no defence to the claim. It is bound to grant an extension at the premium specified by the tenant. The Tribunal is satisfied that the landlord took reasonable steps in response to the notice. It needed to investigate the claim and determine what premium should be proposed if a Counter Notice was to be served.

17. The Tribunal determines the section 60 statutory costs in the sums sought by the Applicant:

(i) Legal Costs of £1,650 + disbursements of £10 (to which VAT must be added): The Respondent has provided a Statement of Costs (at p.32) which gives details of the time spent by the Solicitor between 10 December 2020 and 10 February 2021. The bill submitted by BNI to their client, dated 21 May 2021, in the sum of £1,992.00 is at p.208. This included VAT and the Land Registry fee of £10. The fee earner is a Consultant Solicitor whose charge out rate is £300 per hour. The solicitors are based in London, NW11. The Solicitor was engaged for a total of 6.5 hours. This cannot be considered to be unreasonable.

(ii) Valuation Costs of £300 + VAT and disbursements of £1.50: This is a modest fee for a desk top valuation.

18. The Tribunal has had regard to the written submissions of the Applicants. We do not accept that the costs are excessive and do not accurately reflect the work required by the service of the Section 42 Notice of Claim. The Applicants state that their Solicitor took little more than 20 minutes to determine that the Section 42 Notice was invalid. If so, it is a matter of regret that the Section 42 Notice was ever served and that Whitefields did not withdraw the notice more quickly. Until it was withdrawn, the landlord was entitled to protect its position. The Applicants criticise the "aggressive and sarcastic" tone adopted by BNI. We do not accept this. On 12 February 2021 (at p.154), BHI submitted their claim for costs. It is the Applicants who issued this application and then failed to engage with the Tribunal.

Judge Robert Latham,
28 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).