



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

Case Reference : **KA/LON/00AJ/OC9/2020/0021**

Property : **9a Churchfield Road, London, W3 6BH**

Applicant : **Roslyn Button**

Representative : **Comptons Solicitors LLP**

Respondent : **Estate of the late Hakam Singh Gill**

Representative : **Bhokal Partners, Solicitors**

Type of Application : **Assessment of costs under section 60(1) of the Leasehold Reform Housing and Urban Development Act 1993 and fees under section 56.**

Tribunal members : **Judge Professor Robert M. Abbey
Sarah Redmond MRICS**

Date of Decision : **5 April 2022**

DECISION

The background

1. The Applicant is the long leaseholder of **9a Churchfield Road, London, W3 6BH**.
2. The Respondent is the freeholder of the building and the competent landlord for the purposes of the Leasehold Reform, Housing and Urban Development Act 1993 (the “1993 Act”).
3. The leaseholder served a section 42 notice seeking to exercise their right to a lease extension under S48 of the 1993 Act and a Counter notice was served.

The application

4. By an application dated 28 January 2020 the leaseholder has now applied for an assessment of the landlord’s costs under section 60(1) of the 1993 Act and surveyor’s fees under section 56.
5. Directions were issued dated 12th October 2021. Further to those directions a bundle was lodged containing the Respondent’s costs schedule and submissions made on behalf of both parties.
6. Neither party having requested an oral hearing, the application was considered by way of a paper determination.

The Legal costs

7. The costs in issue are limited to legal costs in the sum of £5194.80 (inclusive of VAT). All other relevant fees including Surveyors fees are agreed between the parties only leaving these legal costs at issue.

The Respondent’s case

8. The Tribunal was provided with an itemised schedule of the legal fees. This did not identify the date of each activity but it did give a brief description of the activity, the type of fee earner involved, (by reason of the level of the hourly rate) and the time spent and resultant cost. The schedule listed two fee rates of £245(Grade A) and £200 per hour (Grade B).

9. The costs schedule breaks down into various sections. Each total item of claim for each section will be considered subsequently in this determination.
10. The respondent says that the rates charged are reasonable and properly payable by the applicant. The respondent denies that the charges are excessive or unreasonable or not within the ambit of section 60. The respondent says the work was necessary given the nature of the transaction and therefore it was proportionate for the respondent to incur the costs and disbursements listed above.
11. Disbursements in the sum of £9 in respect of land registry fees were not disputed and are therefore agreed. Counsel's fees claimed by the respondent were not agreed.
12. With regard to the surveyor/valuer's fees, the Applicant has confirmed in their statement of case that these are accepted and therefore the fee claimed of £600 (no vat) is approved.

The Applicant's case

13. The Applicant says that the legal charges are in part excessive and in the Applicant's application to the tribunal the Applicant would only agree fees of £1549 plus VAT.
14. The Applicant disputes the legal costs on the basis that this was a routine lease extension with no unexpected complications or protracted negotiations. The premium agreed was agreed at £52,500. The Applicant also says that there would be limited title investigation and the Tribunal understood this to mean that the lease renewal was by way of precedent documentation that would be straight forward to prepare and or approve.
15. The applicants submitted that the -

*"Tribunal will note the limited scope of work for which the Respondent is entitled to recover costs under Section 60(1)(a) to (c). Costs that are included in the Landlord's Schedule of Costs that do **not** fall within the remit of Section 60 are:*

- a. Costs of negotiation relating to the premium;*
- b. Costs of negotiation relating to the Lease;*
- c. Costs relating to Tribunal proceedings which are specifically excluded under Section 60(5) including these costs proceedings;*
- d. Costs relating ancillary issues which in this case concerns the Applicant's alleged claim for breach of the Landlord's covenant. This ancillary claim relates to the Respondent's failure to repair and maintain the Building in which the flat is situated;*
- e. Instructions to Counsel."*

Relevant Statutory Provision and Case Law

16. The statutory law applicable to this dispute is set out in Appendix 1 annexed to this decision.
17. Judicial guidance on the application of section 33 was given in the case of *Drax v Lawn Court Freehold Ltd* [2010] UKUT 81 (LC), LRA/58/2009. That case concerned the proper basis of assessment of costs in enfranchisement cases under the 1993 Act, whether concerned with the purchase of a freehold or the extension of a lease. The decision (which related to the purchase of a freehold and, therefore, costs under section 33 of the Act, but which is equally applicable to a lease extension and costs under section 60) established that costs must be reasonable and have been incurred in pursuance of the initial notice and in connection with the purposes listed in sub-sections [33(1)(a) to (e)]. The applicant tenant is also protected by section 33(2) which limits recoverable costs to those that the respondent landlord would be prepared to pay if it were using its own money rather than being paid by the tenant.
18. In effect, this introduces what was described in *Drax* as a “(limited) test of proportionality of a kind associated with the assessment of costs on the standard basis.” It is also the case, as confirmed by *Drax*, that the landlord should only receive its costs where it has explained and substantiated them.
19. It does not follow that this is an assessment of costs on the standard basis (let alone on the indemnity basis). This is not what section 60 says, nor is *Drax* an authority for that proposition. Section 60 is self-contained.
20. There is further guidance in *Dashwood Properties Limited v Beril Prema Chrisostom-Gooch* 2012 UKUT 215: -

20. The value of a dispute and the amount to be gained, or lost, by a party, is always a matter that a party will bear in mind when considering whether to incur costs and the level of those costs.

*21. While the issues involved in enfranchisement claims can undoubtedly be complex and LVT decisions in *Daejan Properties Ltd v Parkside 78 Ltd* LON ENF 1005/03, followed in *Daejan Properties Ltd v Twin* LON/00BK/0C9/2007/0026 and *Daejan Properties Limited v Allen* LON/00AH/OLR/2009/0343 establish that the LVT accepted that a landlord is entitled to instruct the solicitors of its choice and is not obliged to instruct the cheapest or most local solicitors, the LVT were perfectly entitled to take into account the actual sum in dispute in determining whether the costs of*

professional services in investigating the tenant's right to a new lease were reasonable and that the investigation was reasonably undertaken.

22. The LVT were entitled to determine that costs far in excess of the amounts involved were not costs that "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" and the appeal on this ground therefore fails.

The case of *Dashwood* has in setting out the details above helped further clarify how reasonable costs are to be determined in an enfranchisement claim such as this one.

21. Leggatt J in *Kazakhstan Kagazy plc v Zhunus* [2015] EWHC 404 (Comm) at [13] wrote further guidance and clarification saying: -

"... it may be entirely reasonable from the point of view of a party incurring costs to spare no expense that might possibly help to influence the result of the proceedings. It does not follow, however, that such expense should be regarded as reasonable or proportionately incurred or reasonable and proportionate in amount when it comes to determining what costs are recoverable from the other party. What is reasonable and proportionate in that context must be judged objectively. The touchstone (of reasonable and proportionate costs) is not the amount of costs which it was in a party's best interests to incur but the lowest amount which it could reasonably have been expected to spend in order to have its case conducted and presented proficiently, having regard to all the relevant circumstances."

Thus, a court would look at what expenses were reasonable and appropriate by looking at the least amount a party in proceedings could be reasonably anticipated to have spent in order to have demonstrated to the court that it had presented its case in an effective and competent manner. Overall, the Tribunal will take a broad brush approach to the question of costs but only in the light of the clear judicial guidance set out above.

The tribunal's decision

22. The provisions of section 60 are well known to the parties and the tribunal does not propose to set the legislation out in full. (For reference purposes an extract of the legislation and in particular section 60 is set out in an appendix to this decision along with details of appeal rights in an annex). However, costs under that section are limited to the recovery of reasonable costs of an incidental to any of the following matters, namely: -

- i. Any investigation reasonably undertaken of the tenant's right to a new lease;
- ii. Any valuation of the tenant's flat obtained for the purpose of fixing the premium or amount payable by virtue of Schedule 13 in connection with the grant of a new lease under section 56
- iii. The grant of a new lease under that section.

23. Subsection 2 of section 60 provides that: -

“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”.

24. The Respondent has set charges using hourly rates of £245(Grade A) and £200 per hour (Grade B). The tribunal accepts the hourly rates mentioned above as being appropriate in the case. Moreover, the Tribunal is satisfied as to the distribution of the work as between these fee earners as being reasonable given the nature of the claim and or transaction.
25. The Tribunal then turned to the major disbursement being Counsel's fees. The Tribunal were of the view that this was an unusual charge in a simple case of this kind. It is the experience of this Tribunal that instructing Counsel in cases of this type for enfranchisement work is rarely encountered. Nevertheless, the Tribunal noted that the applicant accepted that there had been some input from Counsel into work covered by s.60. The Tribunal agrees that a reduced fee is appropriate and sets this at £1000 plus VAT being a reasonable sum necessary to cover the work relevant to s.60 activities. Accordingly, the disbursement is reduced to that sum.
26. As for the claim for solicitors costs the Tribunal has carefully considered the claims and has concluded that some sections do not fall within the ambit of s.60. For example, the claim of £40 at the fifth section of the claim was described as attempts at negotiation. The Tribunal was of the view that this does not come within the terms of s.60. Similarly, the next section charged at £400 was described as correspondence with the tenant about the premium amount incorporating structural works. Only part of this work would seem relevant at £200.
27. Accordingly, the Tribunal has looked at each section of the total claim and has concluded that several elements do not fall within the coverage of s.60 costs. Similarly, there are some sections of the claim that appear to be within the ambit of s.60 but are excessive in total. For example, £600 for three hours is claimed for correspondence with the tenant and

executors. This is a surprisingly high amount and the Tribunal would only allow £400 as a reasonable amount

28. For all these reasons the Tribunal reduces the legal costs claimed by the respondents by a sum of £1000 before VAT but approves the remainder as claimed. This reduction is in addition to the change made by the Tribunal to the disbursement for Counsel's fees where that was reduced to £1000 plus VAT

Name: Judge Professor Robert M. Abbey **Date:** 5 April 2022

APPENDIX

Leasehold Reform, Housing and Urban Development Act 1993

60 Costs incurred in connection with new lease to be paid by tenant.

(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.

(3) Where by virtue of any provision of this Chapter the tenant's notice ceases to have effect, or is deemed to have been withdrawn, at any time, then (subject to subsection (4)) the tenant's liability under this section for costs incurred by any person shall be a liability for costs incurred by him down to that time.

(4) A tenant shall not be liable for any costs under this section if the tenant's notice ceases to have effect by virtue of section 47(1) or 55(2).

(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, any other landlord (as defined by section 40(4)) or any third party to the tenant's lease.

Annex - Rights of Appeal

1. 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.
2. 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.
3. 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.
4. 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.