

4245



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

Case reference : **LON/00AC/OC9/2015/0491**

Property : **59a Elmcroft Crescent, London
NW11 9TA**

Applicant : **Goldfinch Property Company
Limited**

Respondent : **Eren Yusuf**

Type of application : **Costs under section 60 Leasehold
Reform, Housing and Urban
Development Act 1993**

Tribunal member : **Judge P Korn**

Date of decision : **2nd February 2015**

DECISION

Decision of the Tribunal

The costs payable by the Respondent to the Applicant pursuant to section 60 Leasehold Reform, Housing and Urban Development Act (“**the 1993 Act**”) are £3,044.56 (inclusive of VAT).

The application

1. The Applicant has made an application for the determination of the reasonable costs payable under section 60(1) of the 1993 Act and arising out of the Respondent seeking the grant of a new lease following the giving of a notice under section 42 of the 1993 Act.
2. The costs claimed amount to £3,044.56 inclusive of VAT. This sum comprises legal fees of £1,600.00 + VAT, valuation fees of £900.00 + VAT, courier fees of £22.13 + VAT and Land Registry fees of £18.00.

Paper determination

3. In its application the Applicant stated that he would be content with a paper determination if the Tribunal considered it appropriate. In its directions dated 4th December 2015 the Tribunal stated that the matter would proceed as a paper determination (i.e. without an oral hearing) unless either party requested an oral hearing. Neither party has requested an oral hearing and therefore this matter is being dealt with by way of paper determination.

Applicant's case

Background

4. The Applicant is the freehold owner of the Property and the Respondent is the long leasehold owner. In January 2015 the Respondent served a Notice of Claim on the Applicant pursuant to section 42 of the 1993 Act claiming the right to acquire a new lease. Two notices were served and the Applicant's representatives wrote to the Respondent's representatives contending that both notices were invalid and of no effect and requesting clarification as to whether the Respondent accepted that this was the case.
5. In March 2015 the Applicant's representatives were supplied with a Deed of Assignment purporting to be given in connection with the notices of claim previously served. The Applicant's solicitors responded by raising various written queries. No response was received. Slightly later that month the Applicant served a counter-notice on the Respondent admitting the Respondent's entitlement to the grant of a new lease but without prejudice to the Applicant's contention that the Respondent's notices were invalid and of no effect.

6. Between April and June 2015 the Applicant's representatives sought confirmation from the Respondent's representatives that they accepted that the notices were invalid and of no effect, but no such confirmation was provided, and the Respondent did not apply to the First-tier Tribunal pursuant to section 48 of the 1993 Act within the stated time limit. Therefore the Applicant considered both notices to be deemed withdrawn pursuant to section 53 of the 1993 Act.
7. In October 2015 the Applicant's representatives advised the Respondent's representatives of the Respondent's responsibility for statutory costs incurred pursuant to section 60 of the 1993 Act. No agreement has been reached as to the amount of these costs.

Details of the costs incurred

8. The Applicant's written submissions contain a detailed statement and breakdown of costs incurred together with copies of supporting invoices, and these have also been sent to the Respondent's representatives. The Applicant has also referred the Tribunal to some recent cases.

Lack of response from Respondent

9. The Respondent has not submitted a statement of case in response to the Applicant's submissions. The Applicant submits that on the basis that no objections have been raised the Applicant's position is undisputed.

The relevant legal provisions

10. Section 60(1) and (2) of the 1993 Act read as follows:-

“(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.”

Tribunal's decision

11. Section 60 allows the landlord to recover certain costs where a notice has been served by the tenant under section 42. Section 60 does not limit this right to a situation in which the service of the notice leads to the granting of a new lease, and therefore there is no reason in principle why the Applicant should not be able to claim costs under section 60 simply because the lease was not completed.
12. The Applicant has provided a detailed account of the background to the application and detailed submissions as to the payability of the costs sought in its application. By contrast the Respondent has not engaged with this process at all, and nor seemingly did the Respondent engage with the Applicant properly at an earlier stage.
13. It is possible that the Respondent might have been able to raise valid questions on some elements of the costs sought by the Applicant, but the Respondent has raised no questions at all. The Tribunal still needs to be satisfied on the balance of probabilities that the costs sought are payable under section 60(1), but having considered the Applicant's submissions and in the absence of a challenge by the Respondent I am satisfied on the balance of probabilities that the costs sought are payable in their entirety. Accordingly the costs sought are payable in full.

Name: Judge P Korn

Date: 2nd February 2016