



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

Case reference : **RC/LON/00BJ/OC9/2017/0067**

Property : **72a Bennerley Road, London SW11
6DS**

Applicant : **Mrs Alexandra Woodcock**

Representative : **Stevensons Solicitors**

Respondent : **Legion Properties Limited**

Representative : **Hart Brown Solicitors**

Type of application : **Application for determination of
reasonable costs**

Tribunal member(s) : **Mr Jeremy Donegan (Tribunal
Judge)
Mrs Sarah Redmond MRICS
(Valuer Member)**

**Date and venue of
paper determination** : **27 September 2017
10 Alfred Place, London WC1E 7LR**

Date of decision : **27 September 2017**

DECISION

Decision of the Tribunal

The Tribunal determines that the costs payable by the applicant pursuant to 60(1) of the Leasehold Reform, Housing and Urban Development Act 1993 (‘the 1993 Act’) are £3,549.20 (Three Thousand, Five Hundred and Forty-Nine Pounds and Twenty Pence), including VAT.

The background

1. These proceedings arise from a statutory lease extension claim for 72a Bennerley Road, London SW11 6DS (‘the Flat’), under the 1993 Act. The applicant is the leaseholder of the Flat and the respondent is the freeholder.
2. The applicant served a section 42 notice of claim on the respondent on 19 November 2015, in which she proposed a premium of £9,000 for a new lease of the Flat. The respondent served a counter-notice on 20 January 2016, in which it admitted the claim but proposed a higher premium of £21,250.
3. On 9 March 2017 the applicant submitted two applications to the Tribunal; one to determine the terms of acquisition and one to determine the reasonable costs payable to the respondent under section 60(1) of the 1993 Act. The parties subsequently agreed the premium in the sum of £19,400. However, the new lease is yet to be completed as the parties have been unable to agree the respondent’s costs.
4. Directions were issued on the costs application on 25 July 2017, which included allocation to the paper track with the application to be determined upon the basis of written representations. Neither of the parties has objected to this allocation or requested an oral hearing.
5. The parties exchanged documents in accordance with the directions and the Tribunal was supplied with a bundle of documents that included copies of the application, directions, costs schedule, statement of case and various other relevant documents. The Tribunal considered all of the documents in the bundle when deciding the application.
6. The relevant legal provisions are set out in the appendix to this decision.

Submissions

7. The respondent’s legal costs were detailed in a schedule dated 8 August 2017. The work was undertaken by two fee earners; Ms Emily Fitzpatrick (Grade A - £260 per hour) and Ms Kirsty Frampton (Grade

D - £155 per hour). The total sum claimed was £2,734.80 plus VAT. In addition, the respondent seeks to recover a valuation fee of £1,036 plus VAT, as detailed in an invoice from Channer Morgan Chartered Surveyors ('CMCS) dated 17 November 2016.

8. The applicant's solicitor commented on the costs schedule in a statement of case dated 21 August 2017, in which he set out various points of dispute and proposed the following alternative figures:

- Legal costs - £1,024 plus VAT and disbursements of £12.20
- Valuation fees - £575 plus VAT

Some of the points of dispute were conceded in a reply from the respondent's solicitors dated 5 September 2017.

The Tribunal's decision

9. The Tribunal determines that the following sums are payable under section 60(1):

- Legal fees - £2,167.50 plus VAT and disbursements of £12.20 (total £2,613.20)
- Valuation fees - £750 plus VAT and Land Registry fees of £36 (total £936)

Reasons for the tribunal's decision

10. There was no challenge to the charging rates being claimed by the respondent's solicitors, which are allowed in full. The Tribunal's determinations on the time claimed, using the lettering adopted by the parties, are set out below:

Item	Units allowed/agreed	Hourly rate	Determination
A	20	£260	Attendances on client are recoverable to the extent they relate to the investigation of the claim (section 60(1)(a)) or the grant of the new lease (section 60(1)(c)). Attendances relating to negotiations or the Tribunal proceedings are not recoverable. The time claimed (30 units) is excessive and is reduced by 33.33%.

B	6	£155	The time claimed (6 units) is reasonable and is allowed in full
C	6	£260	Attendances on other side are recoverable to the extent they are covered by sections 60(1)(a) and (c). Attendances relating to negotiations or the Tribunal proceedings are not recoverable. Some of the correspondence disclosed by the respondent is irrecoverable and this item has been reduced by 50%.
D	0	£260	Conceded by the respondent
E	7	£260	The costs of instructing the Valuer and liaising with him regarding his valuation are recoverable under section 60(1)(b). The time claimed is reasonable.
F	2	£260	The time claimed for drafting the client care letter is allowed. The time claimed for file opening is not; as this is an administrative task and is not recoverable inter partes. The Tribunal has reduced this item by 50%.
G	3	£155	Agreed by the applicant
H	6	£260	Agreed by the applicant
I	1	£260	Reduction to 1 unit agreed by respondent

J	11	£260	Agreed by the applicant
K	0	£155	The time spent on an enhanced conflict check is an own client cost and is not recoverable inter partes.
L	1	£260	Agreed by the applicant
M	1	£260	Agreed by the applicant
N & O	3	£260	Agreed by the applicant
P	0	£260	Conceded by the respondent
Q	10	£260	Agreed by the applicant
R	10	£260	The time claimed for further work to completion (10 units) is reasonable for preparation of completion statements, communications with the applicant's solicitor and respondent, completion formalities and accounting to the respondent with the net proceeds. Allowed in full.

11. The total time allowed by the Tribunal is:

- Grade A – 78 units @ £260 per hour (£2,028 plus VAT)
- Grade D – 9 units @ £155 per hour (£139.50 plus VAT)

The total sum allowed for legal costs is £2,167.50 plus VAT. In addition the Tribunal allows the disbursements agreed by the applicant in the sum of £12.20. This means the total sum allowed for legal costs, including VAT and disbursements, is £2,613.20.

12. The respondent is entitled to its surveyor's reasonable fees for preparing a valuation of the Flat with a view to fixing the premium (section 60(1)(b)). Based on the Tribunal members' knowledge and experience, gained from hearing other similar cases and professional practice, the valuation fee of £1,000 plus VAT is on the high side.

CMCS are based in Chesham, Buckinghamshire. In the Tribunal's experience, the 'going rate' for statutory lease extension valuations (for surveyors in the south-east but outside central London) is £600 to £900 plus VAT. The Tribunal allows £750 plus VAT, which is in the middle of this range. The Tribunal also allows the disbursements claimed by CMCS, being Land Registry search fees of £36. No VAT should be payable on these search fees. The total sum allowed for the valuation fees, VAT and disbursements is £936.

13. The Tribunal has allowed VAT upon the assumption that the respondent is not VAT registered. If this assumption is incorrect and the respondent is able to recover the VAT charged then the sum due should be adjusted accordingly.

Name: Tribunal Judge Donegan **Date:** 27 September 2017

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).

Appendix of relevant legislation

Leasehold Reform, Housing and Urban Development Act

Section 60

(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 the appropriate 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.