



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

**Case Reference** : RC/LON/00BC/OC9/2018/0138

**Property** : 185 Thorold Road, Ilford, Essex, IG1 4HB

**Applicant** : BPT Limited

**Representative** : Winckworth Sherwood LLP

**Respondent** : Roxville Limited

**Representative** : Whitmore Law Solicitors

**Type of Application** : Enfranchisement - costs

**Tribunal Members** : Judge Robert Latham  
Luis Jarero BSc FRICS

**Date and venue of  
paper determination** : 19 June 2018 at  
10 Alfred Place, London WC1E 7LR

**Date of Decision** : 19 June 2018

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**DECISION**

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The Tribunal determines the section 33 statutory costs in the sums of

(i) £900 + VAT for surveyor's fees (a total of £1,080); and

(ii) £590 + VAT for legal fees (a total of £708). We also allow £50 for disbursements.

The total payable is £ 1,838.

## **Introduction**

1. This is an application under section 13 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”). The current application by the Applicant landlord is for the determination of the costs payable by the tenants under section 33 of the Act. The landlord seeks surveyor’s fees of £1,800 + VAT and legal fees of £3,842.15 + VAT.
2. There is a discrete issue as to whether the landlord is entitled to recover VAT.
3. On 27 April 2018, the Tribunal issued its standard Directions, pursuant to which:
  - (i) The Respondent landlord has provided a Breakdown of the Landlord’s Costs, dated 16 April 2018 (at p.19-26). The charge rate is £325 ph for a Grade A and £180 ph for a Grade B Fee Earner. The Directions required the landlord to provide a schedule “sufficient for summary assessment” and to identify and explain any unusual or complex features of the case. No such features are identified.
  - (ii) The Applicant tenant has filed its Submissions, dated 24 May, at p.65-133. It suggests that surveyors’ fees should be assessed at £795 + VAT, the sum which it paid to its surveyor for its valuation. It contends that the hourly sums claimed for legal fees are excessive and should be reduced to £230 ph for the Grade A and £180 ph for the Grade B Fee Earner. The tenant further notes that the landlord is claiming a total of 5 hours 24 minutes for the Grade B and 1 hour 24 minutes for the Grade A Fee Earner. This is described as “a ridiculous amount of time” given the limited work involved. It also notes that certain costs are not identified as falling within section 33 of the Act.
  - (iii) The landlord was permitted to send the tenant a Statement in Response. The Landlord’s Statement in Response, dated 1 June, is at p.134-168.

## **The Background**

4. On 25 October 2017, tenant served its Section 13 Notice claiming the right to purchase the freehold of 185 Thorold Road. There are two flats in this property. A premium of £9,000 was proposed. The Notice was served by the Respondent, Roxville Limited, the tenant of the lower floor flat. Although the Notice was signed by the second tenant, Anwer Hussain Adam Patel, the Notice did not specify Mr Patel as a participating tenant.
5. On 19 December 2017, Winkworth Sherwood notified Whitmore Law that the landlord considered the notice to be invalid and a nullity as Mr Patel was not named as a participating tenant. The tenant was required to urgently confirm that it accepted the notice to be invalid.

6. On 21 December, without prejudice to its contention that the Section 13 Notice was invalid, the landlord served its Counter-Notice. A premium of £19,183 was proposed.
7. On 22 December, Whitmore Law informed the landlord that it accepted that the tenant's Notice was invalid. A Second Section 13 Notice was served.
8. This Tribunal is not required to determine the costs associated with this second Notice. The tenant accepts that the landlord was entitled to serve its Counter-Notice to protect its position. However, it points out, quite correctly, that the statutory costs which the landlord will be entitled to claim in verifying title and valuing any interest in response to this second Notice will be substantially less because the work has largely been done in response to the first Notice.

### **The Statutory Provisions**

9. Section 33 provides, insofar as relevant for the purposes of this decision:

“(1) Where a notice is given under section 13, then (subject to the provisions of this section and sections 28(6), 29(7) and 31(5)) the nominee purchaser shall be liable, to the extent that they have been incurred in pursuance of the notice by the reversioner or by any other relevant landlord, for the reasonable costs of and incidental to any of the following matters, namely—

(a) any investigation reasonably undertaken—

(i) of the question whether any interest in the specified premises or other property is liable to acquisition in pursuance of the initial notice, or

(ii) of any other question arising out of that notice;

(b) deducing, evidencing and verifying the title to any such interest;

(c) making out and furnishing such abstracts and copies as the nominee purchaser may require;

(d) any valuation of any interest in the specified premises or other property;

(e) any conveyance of any such interest;

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 the reversioner or any other relevant landlord 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 initial notice ceases to have effect at any time, then (subject to subsection (4)) the nominee purchaser'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) The nominee purchaser shall not be liable for any costs under this section if the initial notice ceases to have effect by virtue of section 23(4) or 30(4).

(5) The nominee purchaser 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.”

### **The Principles**

10. 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 in a case in which costs were assessed under section 60 of the Act. Similar principles apply to an application under section 33:

“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**

11. The Tribunal assesses the surveyor’s costs in the sum of £900 + VAT. We consider that sum of £1,800 + VAT charged by SAY Property Consulting LLP for preparing a Statutory Enfranchisement Report to be excessive. The work involved was inspecting the two flats, assembling comparables and preparing a report. There were no unusual features. The tenant’s paid their £795 + VAT to their own surveyor. The work involved would have been similar. We consider a charge of £900 to be at the upper end of what would be reasonable.
12. The Respondent challenges the hourly rates of £325 ph for a Grade A and £275 ph for a Grade B Fee Earner. We do not accept that these sums are unreasonable. However, where work is done by an experienced Solicitor, less time would be expended in responding to an invalid notice.
13. The landlord is claiming legal fees of 5 hours 24 minutes for the Grade B and 1 hour 24 minutes for the Grade A Fee Earner. An experienced Solicitor would have immediately noticed that the Section 13 Notice was invalid. We accept that the landlord was entitled to serve a Counter-Notice to protect its position and to obtain a Valuation to inform the premium to be specified in Counter-Notice.
14. We are satisfied that the time claimed is unreasonable give the limited work involved. We allow one hour by a Grade A Earner at £230 ph and two hours by a Grade B Fee Earner at £180 ph, a total of £590. The total is £708 inclusive of VAT.
15. We also allow £50 for disbursement (inclusive of VAT). We note that no VAT is payable on the Land Registry Charges. We consider that the landlord was entitled to obtain its own set of Title Registers. We only allow £20 for photocopying.
16. We are satisfied that the VAT of 20% is payable on these sums claimed. Statutory costs are intended to indemnify the landlord for the costs that he would otherwise be obliged to pay. VAT must therefore be added to the costs assessed by the Tribunal.

**Judge Robert Latham,  
19 June 2018**

## **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).