



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

**Case reference** : **BG/LON/00AR/OC9/019/0076**

**Property** : **111a St Mary's Lane, Upminster, Essex  
RM14 2QJ**

**Applicant** : **Julie Rosemary Brindle and Stephen  
Leonard Joseph Brindle**

**Representative** : **Cavendish Legal Group**

**Respondent** : **Daejan Properties Limited**

**Representative** : **Wallace LLP**

**Type of application** : **Costs: s60 Leasehold Reform, Housing  
and Urban Development Act 1993**

**Tribunal member** : **Judge Hargreaves**

  

**Date of decision** : **12<sup>th</sup> June 2019**

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**DECISION on s60 costs**

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Pursuant to s60(1) Leasehold Reform, Housing and Urban Development Act 1993, the following statutory costs are payable by the Applicants to the Respondent: £3202.20 including VAT.

## REASONS

1. This is a dispute about reasonable legal costs within the statutory scheme referred to above. The disbursements and valuer's costs are not in dispute. The argument is about the Respondent's claim for £1500 plus VAT for a first s42 notice, and £1900 plus VAT for a second notice. The costs of this exercise might make it questionable whether the application and its attendant costs are cost effective for either party, but I do not have to decide that.
2. Page references are to those in the bundle prepared for the application.
3. The application for a determination of reasonable statutory costs was made by the Applicants on 1<sup>st</sup> April 2019 (p1). Directions were issued on 11<sup>th</sup> April 2019, with which the parties have complied (p8).
4. The Respondent's claim for the costs of the first notice is evidenced by the schedule at p13, and claims fees of £1654 plus VAT £330.80 totalling £1984, for work done between 18<sup>th</sup> May and 18<sup>th</sup> July 2018. This includes work done by a partner at £475 per hour (with one charge out at £495 on 19<sup>th</sup> June), an assistant at £365, and a paralegal at £200 per hour.
5. The Respondent's claim for costs of the second notice is evidenced by the schedule at p15, for work done between 2<sup>nd</sup> August 2018 and 28<sup>th</sup> March 2019 (completion of the new lease). The partner's hourly rate is £495, the assistant's is £385 and the paralegal's rate is £200.
6. The Applicant's succinct statement of case is at p18. The first notice was served on Daejan Estates Limited, and that was a mistake, as the correct Respondent is Daejan Properties Limited. It appears from the submissions that this was a straightforward error and no complicated points were required to determine it. The Respondent covered its position by serving a counter-notice under cover of a letter dated 17<sup>th</sup> July 2018 without prejudice to that contention. A new notice was served on 1<sup>st</sup> August. The Applicant's statement does not specify precisely when the Respondent's solicitors informed them, but they agreed that the first notice was invalid, so I assume on the evidence before me, that it was on receipt of this letter that the mistake was first drawn to their attention. The challenge to the first schedule is that the hourly rates and time spent were excessive. A counter offer is made based on £350 per hour. The same challenge is made as to the second notice, with the added point that there was duplication of work, because the second notice was identical except as to the name of the Respondent.
7. The Respondent's lengthier statement of case in reply is at p20. The Respondent argues that not until 18<sup>th</sup> July did the Applicant accept the first notice was invalid. That may be so, but it also appears from the bundle (and see above) that the first letter from Wallace pointing out the mistake was dated 17<sup>th</sup> July (p35). The obvious point is that the mistake could have been drawn to the attention of the Applicant's solicitors on or shortly after receipt of the s42 notice, and the costs of preparing the first counter-notice avoided if the Applicant's solicitors agreed that the first notice was invalid, which they appear to have done without delay when first informed of the error in July 2018. The

delay in pointing out the error is not explained by Wallace, but given the hourly rates charged out by the Respondent's solicitors (which are high, on the basis that they are expert), there is an absence of explanation as to why the error – obvious – was not immediately pointed out to the Applicant's solicitors. So the crux of the application is whether the Respondent's assertion in the last lines of its statement is made out in relation to all the work conducted, ie "that this work was required to comply with the provisions of the Act and to protect Daejan's interest and is reasonable in the circumstances."

8. It is notable that in one of the cases relied on by the Respondent, Wallace immediately informed the applicants of a mistake in the identity of the landlord, whereupon the applicants in that case accepted the advice and served a new notice. No first counter notice was served (at least, looking at the decision). See the *536 Park West* decision at p116, paragraph 4: the point is not that this played a part in the costs decision as such, but that it is clearly possible to raise a point about identity before further costs are incurred.
9. As the Respondent's statement submits at length, the quantum and reasonableness of Wallace's charge out rates for s60 applications have been the subject of numerous costs decisions in this Tribunal, several of which are reproduced in the bundle. There is no need to repeat or refer to those at length, it being generally accepted that Wallace rates are high but justified on grounds of expertise and a reasonable choice for Daejan because of that experience and familiarity. This is not the case to depart from those general principles or the generality of that approach, but the question is whether the work conducted by Wallace in *this* case justifies the fees charged.
10. In my judgment, the real nub of the issue in this case is whether, as required by s60(1), Wallace's legal costs as claimed fall within the following statutory provisions, ie "*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 [etc]*
  - (c) *the grant of a new lease ....*(2) *.... any costs ... shall only be regarded as reasonable if and to the extent that costs in respect of such services might reasonably have been expected to have been incurred by him if the circumstances had been such that he was personally liable for all such costs.*"
11. In addition s60(3) provides a cut-off point for the tenant's liability for costs where "*the tenant's notice ceases to have effect, or is deemed to have been withdrawn.*" The Applicant makes no submissions on this point, but that does not prevent me from considering the point on which the Applicant relies in this case: they would have withdrawn earlier had they been notified of the error, as in fact they did when notified. Alternatively, was it reasonable to prepare the first counter-notice if the s42 notice was invalid? How was that reasonably incidental to the claim on these facts? Why not notify the Applicants immediately and then decide, based on their response, what to do by way of

preparing a first counter-notice? That would have been reasonable in my judgment and that is relevant for s60.

12. Taking the requirements of s60, and allowing Wallace the rates claimed, I conclude that it is not reasonable within s60 to allow Wallace all the costs of the first counter notice. The error should have been discovered by the partner charging £427.50 for the work done on 18<sup>th</sup> May: that is presumably the point of engaging a partner at a high hourly rate to consider the notice. I conclude that the right approach to the first counter-notice is to allow that amount plus the costs of a letter to the Applicants about the notice ie £47.50 based on the schedule. In addition I allow (whether in relation to the first or second notice makes no difference to the numbers) the sum of £247.50 for work done on 19<sup>th</sup> June 2018, preparing the draft lease, which is not reproduced in the second schedule but clearly relevant and reasonable to the overall charge.
13. Therefore the total allowed in respect of the first notice which is “*reasonable ... and incidental*” to “*any investigation reasonably undertaken of the tenant’s right to a new lease*” based on the submissions and documents before me is therefore £867 including VAT. In other words, I agree with the point made by Wallace at the end of paragraph 24 of their statement of case, but differ in disallowing some of the other costs in respect of the first counter-notice as submitted is appropriate by the Applicants.
14. The Applicants’ challenge to the first counter-notice costs succeeds for the reasons I give above, which are not the same as theirs, but in my judgment in accordance with the provisions of s60.
15. Having taken that position in relation to the first counter-notice, it follows that the duplication argument falls away with respect to the second counter-notice. The general criticisms of Wallace’s costs made by the Applicant are met by a detailed response in relation to the second notice: it seems to me reading both sides’ submissions overall that the time spent on the second notice is reasonable, and should be allowed within s60. With expensive expertise comes a commensurate time saving: I allow the sum of £2335.20 in respect of the second counter-notice (including VAT).
16. The total allowed including VAT is £3202.20.

Judge Hargreaves 12<sup>th</sup> June 2019