

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL &
LEASEHOLD VALUATION TRIBUNAL

Sections 48 & 60 Leasehold Reform, Housing and Urban Development
Act 1993



**Residential
Property**
TRIBUNAL SERVICE

DECISION & ORDER

Case Number: CHI/00ML/OLR/2008/0003

Property: Flat 56
Chartwell Court
Churchill Square
Brighton BN1 2EX

Applicant: Mr R M Ahmed

Respondent: Kleinwort Benson Corporate Services Ltd

Application: 08 January 2008

Directions: 09 January 2008

Consideration: 18 March 2008

Decision: 25 April 2008

Members of the Tribunal
Ms J A Talbot MA
Mr N J Cleverton FRICS
Mr N I Robinson FRICS

Summary of Decision

The Tribunal determines that the total amount payable by the Applicant to the Respondent in respect of legal costs shall be the sum of £2969.25 to which VAT is to be added as appropriate.

Case No. CHI/00ML/OLR/2008/0003

Property: Flat 56, Chartwell Court, Churchill Square, Brighton, BN1 2EX

Background

1. On 8 January 2008, the Applicant applied to the Tribunal pursuant to Section 48 of the Leasehold Reform Housing and Urban Development Act 1993 ("The 1993 Act") for a determination of the premium to be paid and the terms of a new lease at the property, and the costs payable by the Applicant to the Respondent in connection with the new lease.
2. Directions were issued on 9 January 2008 for the parties to produce Statements of case and setting the matter down for a hearing on 18 March. On 11 March the Applicant's solicitors, Lattey & Dawe, wrote to confirm that the premium and terms of the lease had been agreed and asked that the hearing should be used for assessment of costs under Section 60 of the Act. The Respondent's solicitors were Herbert Smith.
3. The Tribunal convened for a hearing but was informed shortly before it was due to commence that neither party intended to appear. The Tribunal therefore duly considered written representations provided by solicitors for both parties.

Law

4. The law is to be found at Section 60 of the 1993 Act, which deals with costs incurred in connection with a new lease to be paid by the tenant, and provides:
 - (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.*

Consideration

5. The Tribunal carefully considered the schedule and written submissions to which the parties referred in support of their case.
6. Herbert Smith ("HS") claimed legal costs totalling, by the date of the hearing, £8,230.05 exclusive VAT. Surveyor's costs of £250 plus VAT (Knight Smith) were not in dispute. In support of their costs, HS provided a schedule (schedule A) in the form of a computer time-recording printout detailing correspondence, drafting, research, internal conferences, attendances, telephone calls and disbursements. A further schedule B showed costs not claimed under Section 60 including those incurred in connection with the proceedings before the Tribunal.
7. HS submitted that their costs were charged at the following hourly rates exclusive of VAT: Property Litigation Partner, £360; Transactional Senior Solicitor, £245; Transactional Junior Solicitor, £190. No terms of retainer were supplied on the basis that, as HS were instructed to act for the Respondent in connection with a substantial number of properties, there were no separate instructions for this matter.
8. HS further submitted that all costs claimed were reasonably incurred in connection with: reviewing the Applicant's notice and checking its validity; drafting and serving a counter-notice; drafting and serving a new lease; corresponding and negotiating with the Applicant's solicitors about the new lease terms; and liaising with valuers in connection with the level of the premium for the grant of the new lease.
9. Lattey & Dawe ("LD") opposed the level of costs claimed. They argued that the hourly rates were excessive, as similar expertise was available at lower rates; there was a risk of duplication of work, as 3 grades of solicitor were unnecessarily employed in the matter; time recorded for research, internal meetings between solicitors and senior solicitors reviewing the work of a junior was not within the remit of Section 60; and overall the time spent was excessive and disproportionate, as the application was a standard one without any particular contentious issues.
10. The Tribunal considered that it was not unreasonable for the Respondent to retain its usual solicitors, and in view of the importance of the matter to the client and the compulsory nature of the transaction, for a partner to have overall conduct of the case, at the same hourly rate that it would normally pay for other

work. Those rates, though on the high side, were not unreasonable, and fell within the principle of Section 60(2). However, bearing in mind that principle, to which it must have regard, in the absence of a standard client care letter for this matter the Tribunal would have expected to see a fee estimate or other evidence of the landlord's agreement to pay HS's fees.

11. The Tribunal considered the breakdown of legal costs supplied by HS. It reminded itself that the costs payable by the Applicant were confined to those set out in Section 60 of the Act, which was a restrictive provision. For example, it is arguable (though not raised by LD) that costs such as those for taking instructions, reporting to the client, and preparing the counter-notice are not encompassed within Section 60(1), as they are not explicitly referred to. However, the Tribunal took the view that reasonable costs for these purposes would inevitably be incurred, and fell within Section 60(1) as being "incidental to" the matters therein contained. It allowed such costs as it regarded as reasonable as shown on the amended schedule attached to this decision.
12. The Tribunal agreed with LD that the matter was straightforward in terms of investigation of the tenant's right to a new lease, although it accepted HS's point that it was complicated by the fact that the property was part of a large city centre development of mixed commercial and residential use, with multiple landlords. The Tribunal therefore allowed costs as shown in the amended schedule for dealing with this aspect of the matter. Costs of drafting and reviewing the new lease were squarely within Section 60 and were allowed as claimed.
13. The Tribunal took the view that overall the time spent on the matter was excessive, and that some of the costs claimed fell outside the scope of Section 60. A considerable number of hours were recorded by the junior solicitor, whose work was then reviewed and discussed by two senior colleagues. The Tribunal agreed with LD that this amounted to unnecessary duplication of work, and appeared to include an element of supervision, which would not be chargeable to the client. Similarly, as a general principle, no additional time for research should be chargeable, as solicitors specialising in property litigation should be expected to know the legal provisions relevant to the right of a tenant to acquire a new lease, or at least not to pass the cost of research time on to their clients.
14. Overall the Tribunal, having regard to the proviso in S.60(2) and the points discussed above, made adjustments to the costs claimed accordingly, as shown on the attached amended schedule. The total legal costs allowed were £2,969.25 with VAT to be added as appropriate.

Determination

15. The Tribunal determines that the Respondent's reasonable costs payable by the Applicant pursuant to Section 60 of the 1993 Act are £2,969.25 and as shown on the attached amended schedule, exclusive of VAT to be added as appropriate:

Dated 25 April 2008

**Ms J A Talbot
Chairman**

CHI/00ML/OLR/2008/0003

FLAT 56, CHARTWELL COURT, CHURCHILL SQUARE
BRIGHTON BN1 2EX

AS AMENDED BY THE TRIBUNAL

£

SCHEDULE A

<u>Date</u>	<u>Matter</u>	<u>Fee Earner Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>	<u>Narrative</u>	
04/07/2007	30878472		2.00 1.00	190.00	380.00	research, email and counter-notice.	— allow 1 hour 190.00
05/07/2007	30878472		1.50	190.00	285.00	Amending email. Amending counter notice.	
06/07/2007	30878472		0.83	245.00	203.35	Call from sol for Chartwell court. ico with junior colleague / considering and amending draft counter-notice and email to the client	
10/07/2007	30878472		0.15	245.00	36.75	ico with junior solicitor	
10/07/2007	30878472		0.27	245.00	66.15	reviewing draft emails by junior solicitor and amending the same	
10/07/2007	30878472		1.33	190.00	252.70	Chasing emails and counter notice. and research on s60 costs	disallow
11/07/2007	30878472		0.50	360.00	180.00	discussions FDME, AB and follow-up discussions re counternotice and how 1993 act deals with intermediate tenants	
11/07/2007	30878472		3.50	190.00	665.00	Notices. Emails to Angus and David. Research on signing. Discussing with MB. Calls to L&D. Arranging service. copies sent out.	
11/07/2007	30878472		0.67	245.00	164.15	reviewing correspondence / ico with colleague	
11/07/2007	30878472		0.71	245.00	173.95	ico with junior solicitor / ico with JP / further ico with junior solicitor	
12/07/2007	30878472		0.33	360.00	118.80	further discussions AB re counternotice and multiple landlords	— allow 118.80
12/07/2007	30878472		1.17	190.00	222.30	reserved notices - minor amendment. Discuss with MB.	
17/07/2007	30878472		0.33	190.00	62.70	Drafted letter and email to david.	
18/07/2007	30878472		0.33	190.00	62.70		
24/07/2007	30878472		3.00	190.00	570.00	Drafting residential lease	— allow 570.00

878.80

£

SCHEDULE A

<u>Date</u>	<u>Matter</u>	<u>Fee Earner Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>	<u>Narrative</u>	
27/07/2007	30878472		0.50	190.00	95.00	Deed received from Ir. Updating the lease with provisions from deed.	
30/07/2007	30878472		0.42	190.00	79.80	Checking over lease.	
07/08/2007	30878472		2.00	190.00	380.00	Last amendments to lease. Letters, emails sent out.	
07/08/2007	30878472		0.33	190.00	62.70	Reviewing lease.	
07/08/2007	30878472		2.46	245.00	602.70	reviewing the file and the guidance / draft - allow Lease ready to send to the other side / ico with junior solicitor	602.70
07/08/2007	30878472		0.11	245.00	26.95	reviewing letters drafted by Alex	
16/08/2007	30878472		0.70	245.00	171.50	ico with Alex	
16/08/2007	30878472		0.10	245.00	24.50	ico with junior solicitor	
17/08/2007	30878472		1.00	190.00	190.00	MB's amendments to previous lease reviewed compared to this lease.	
22/08/2007	30878472		0.75	190.00	142.50	Emails to solicitors and to David re premium, chasing up.	
13/09/2007	30878472		0.12	190.00	22.80	Call to L&D on lease. - allow	22.80
04/10/2007	30878472		0.07	245.00	17.15	ico with junior solicitor	
30/10/2007	30878472		1.00	190.00	190.00	amending lease and email to surveyor and to - allow CCRL	190.00
06/11/2007	30878472		0.67	190.00	127.30	Emailed out docs-	
07/11/2007	30878472		0.05	245.00	12.25	reviewing correspondence sent by junior solicitor	
16/11/2007	30878472		0.06	245.00	14.70	ico with junior solicitor	
03/12/2007	30878472		0.08	190.00	15.20	Email chasing CCRL's solicitors	
18/12/2007	30878472		0.08	190.00	15.20	Chasing up lease	
02/01/2008	30878472		0.33	190.00	62.70	letter requesting undertaking. - allow 0.10	19.00

116

SCHEDULE A

<u>Date</u>	<u>Matter</u>	<u>Fec Earner Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>	<u>Narrative</u>	
04/01/2008	30878472		0.25	190.00	47.50	Chased up emails. - allow	47.50
09/01/2008	30878472		0.67	190.00	127.30	Discussing with MB. Emailing intermediate landlord for a response.	
09/01/2008	30878472		0.03	245.00	7.35	reviewing correspondence copied to RMO by Alex Bethell / ico with Alex	
15/01/2008	30878472		0.12	245.00	29.40	ico with Alex Bethell	
22/01/2008	30878472		0.17	190.00	32.30	Updating Charlotte	
28/01/2008	30878472		0.50	190.00	95.00	Letter on costs and email.	
28/01/2008	30878472		0.09	245.00	22.05	reviewing copy correspondence received - allow	22.05
29/01/2008	30878472		0.17	190.00	32.30	Chasing invoices - calls for instructions.	
30/01/2008	30878472		0.08	190.00	15.20	Call with angus for instructions.	
31/01/2008	30878472		0.67	190.00	127.30	Email on comments on lease. Reviewing file. - allow	127.30
						Taking instructions.	
31/01/2008	30878472		0.22	245.00	53.90	ico with Alex Bethell	
31/01/2008	30878472		0.05	245.00	12.25	reviewing correspondence received from junior colleague	
04/02/2008	30878472		0.17	190.00	32.30	Chasing	
05/02/2008	30878472		0.60	190.00	114.00	Reviewing email and lease. Responding. - allow	114.00
05/02/2008	30878472		0.17	245.00	41.65	general time discussing with Alex	
06/02/2008	30878472		1.27 0.75	190.00	241.30	Draft lease sent to intermediate landlord so for approval. Emails and discussing with prop lit - allow	142.50
07/02/2008	30878472		1.25	190.00	237.50	Sending out copies to LVT, tenant, liaising with intermediate ll and with prop lit.	
08/02/2008	30878472		0.58	190.00	110.20	Letter to LVT. Amendments to lease following LG's email	
11/02/2008	30878472		0.50	190.00	95.00	Discussion with intermediate landlord and reviewing lease. - allow	95.00

SCHEDULE A

<u>Date</u>	<u>Matter</u>	<u>Fee Earner Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>	<u>Narrative</u>	
12/02/2008	30878472		0.50	190.00	95.00	Emails with intermediate landlord - allow	45.00
12/02/2008	30878472		0.10	245.00	24.50	reviewing correspondence and lco with Alex Bethell - allow	24.50
13/02/2008	30878472		0.02	245.00	4.90	reviewing correspondence received - allow	4.90
13/02/2008	30878472		0.58 0.5	190.00	110.20	Call with tenant's sol. Discuss with Charlotte. Email to client. - allow	95.00
14/02/2008	30878472		0.12	190.00	22.80	Emailing out headlease to tenant's sol	22.80
19/02/2008	30878472		0.75	190.00	142.50	Amendments to lease and sent out. Discuss with RO. - allow	
19/02/2008	30878472		1.10	245.00	269.50	reviewing draft lease and discussing with Alex Bethell - allow	245.00
25/02/2008	30878472		0.25	190.00	47.50	Chasing intermediate landlord's sol	
26/02/2008	30878472		0.25	190.00	47.50	Emailing tenant's sol. Chasing intermediate II's sol - allow	47.50
26/02/2008	30878472		0.33	190.00	62.70	Emails chasing for invoices and chasing for plans	62.70
27/02/2008	30878472		0.25	190.00	47.50	Checking amendments and forwarding on to tenant's solicitor	47.50
27/02/2008	30878472		0.12	245.00	29.40	reviewing the lease and discussing with Alex	
28/02/2008	30878472		0.33	190.00	62.70	Agreeing the lease with tenant's sol. 2 calls. - allow	62.70
29/02/2008	30878472		0.33	190.00	62.70	Adding extra costs to claim back	
04/03/2008	30878472		0.25	190.00	47.50	Costs email to CB and email to intermediate II chasing for plans. Discussing with CB.	
05/03/2008	30878472		0.03	190.00	5.70	Email CB	
Total					<u>£8,230.05</u>		<u>707.60</u>

Total Costs Allowed € 2969.25

J Taylor