

4598



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

Case Reference : **LON/00AG/OC9/2017/0278**

Property : **34 Jenner House, Hunter Street,
London WC1N 1BL**

Applicant : **Timothy John Hull Pattinson**

Representative : **In Person**

Respondent : **Deritend Investments (Birkdale)
Ltd**

Representative : **Wallace LLP**

Type of Application : **Section 91(2)(d) of the Leasehold
Reform, Housing and Urban
Development Act 1993**

Tribunal Members : **Tribunal Judge S Carrott
L Jarero BSc FRICS**

**Date of Determination
and Venue** : **10 January 2018
10 Alfred Place, London WC1E 7LR**

Date of Decision : **10 January 2018**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the section 60 statutory costs payable by the applicant are £4088.53.

The background

1. This is an application brought under section 91(2) (d) of the Leasehold Reform, Housing and Urban Development Act 1993 for a determination of the landlord's reasonable costs under section 60 of the Act. The application was received by the Tribunal on 7 November 2017.
2. The applicant, Mr Pattinson is the leaseholder of 34 Jenner House, Hunter Street, London WC1N 1BL. The respondent is the competent landlord within the meaning of section 40 of the Act.
3. On 27 September 2016, the tenant made an application for the grant of a new lease by way of a Notice of Claim. The respondent served a counter notice admitting entitlement of the Applicant to a new lease of 34 Jenner House.
4. The terms of acquisition were not agreed between the parties and on the 24 May 2017, the tenant made an application to the Tribunal seeking a determination of the terms of acquisition of new lease. The terms were agreed by the parties. However no agreement was reached between the parties as to the section 60 costs and so the application issued the current application.

The Applicant's Case

5. The amount claimed by the landlord is £4,088.53 inclusive of VAT. This includes the valuer's fee of £1020.00 including VAT. The applicant makes no complaint about the valuer's fees but challenges the remainder stating that the total costs should not exceed £3000.00 in total.
6. The applicant contends that the hourly rates claimed by the partner and assistant (£465 and £365 respectively) are substantially in excess of the guideline hourly rates for Central London. The applicant says that these rates are £312 and £242 respectively and relies upon an excerpt from the White Book.
7. The applicant further states that the amount of time spent on dealing with the claim was unreasonable and excessive. He contends that it was unreasonable to spend 30 minutes considering the notice of claim and states that 18 minutes should be disallowed. Likewise on 22

September 2016 it was unreasonable to spend one hour drafting the lease and that 24 minutes should be disallowed.

8. The applicant claims that it was unreasonable to spend 36 minutes drafting and finalising the counter notice and that 24 minutes should be disallowed.
9. The applicant further complains that some of the work which was carried out by the firm was properly the work of a secretary rather than a paralegal or a qualified solicitor.
10. The applicant also contends that the use of a courier in delivering the counter notice is unreasonable bearing in mind that the landlord has two months to respond to the notice.
11. The applicant therefore says that the time taken to carry out the work should be adjusted to 4 hours and 24 minutes at £242.00 per hour. Mr Pattinson says that the amount should be £2,321.76 including surveyors and legal fees and in any event no more than £3000.00.

The Respondent's Case

12. The landlord submits that it is reasonable to use a grade A fee earner for this type of work and that the time taken in reviewing the notice of claim and preparation of a draft lease and finalising counter notice are reasonable.
13. As to the applicant's contention that some work ought to have been properly carried out by a secretary the landlord argues that the work could properly be regarded as fee earner work.
14. The landlord also argued that it was proper and necessary to use a courier given the consequences of failure to serve a counter notice in time.

Decision

15. Having regard to the material before us, we are of the view that the section 60 costs as claimed by the landlord are reasonable.
16. When considering the issue of costs under section 60 of the Act, it is not the function of the tribunal to carry out a detailed assessment. The function of the tribunal is to ensure that the costs being claimed are reasonable and have been incurred in pursuance of the initial notice and in connection with the purposes listed in sub-sections 60 (1)(a) to (c). An applicant tenant will also have the added protection of section 60(2) which limits recoverable costs to those that the respondent landlord would be prepared to pay if it were using its own money rather

than being paid by the tenant: see *Drax v Lawn Court Freehold Ltd [2010] UKUT 81(LC), LRA 58/2009*.

17. Although in *Drax* the Upper Tribunal recognised this as being a limited test of proportionality as would associated with the assessment of costs on a standard basis, there is nothing in section 60 which would normally call for more than a broad brush approach.
18. Provided costs are properly set out, explained and substantiated, the exercise of determining section 60 costs should not be a lengthy or complex process.
19. In the present case the landlord could not be criticised for using a Grade A partner in this complex area of work: see *Sinclair Gardens Investments (Kensington) Ltd v Wisbey [2016] 203 (LC)*. In *29 Beaumont Court, Upper Clapton Road, London E5 8BG LON/00AM/OC9/2016/0072* Professor Driscoll pointed out the practical reality of time being incurred by the partner in not only delegating the work but also checking on the work that is being undertaken by an assistant.
20. Mr Pattinson complained that 6 hours and 24 minutes to undertake the legal work in the present case was excessive. He maintained that it could have been done in 4 hours and 24 minutes. He arrived at this in our view by making unrealistic reductions in the time which it took the solicitors to perform certain tasks – for example he suggested that it should have only taken 12 minutes to consider the notice of the claim and less than one hour to prepare a draft lease. We are of the view that 6 hours and 24 minutes is not unreasonable.
21. In relation to the service of the counter notice, the tribunal is of the view that given the range of tasks legal advisers will have to perform, including investigating the claim, obtaining relevant Land Registry copy entries, instructing a valuer, preparing the counter notice and preparing a draft lease that the use of a courier is reasonable. Such a cost would normally constitute a disbursement payable by the client and thus therefore fall clearly within section 60.
22. As to the charging rate, the tribunal noted that in *Flats 2 and 42 Quadrant Close, The Burroughs, London, NW4 3BU LON/00AC/OC9/2016/0319*, Tribunal Judge Vance at paragraph 28 noted that guideline rates issued by the Senior Courts Cost Office suggested a figure of £409 for a Grade A solicitor and £296 for a Grade B solicitor, figures higher than those contended for by the applicant. Judge Vance however noted that hourly rate sought by the very same solicitors was at the upper end of what could be considered reasonable and this was so despite the highly specialised nature of enfranchisement cases.

23. In *29 Beaumont Court*, Professor Driscoll said that although the same solicitors costs were on the high side, the tribunal did not consider the rate to be unreasonable.
24. Although the tribunal is not bound by either of the above decisions, we consider the above decisions by experienced tribunal members to be most persuasive. Accordingly we find for the respondent.
25. We should add however that we do not consider that the respondent is correct to say that no regard must be had to the level of costs set out under the CPR regime. Whilst it may be true that the statutory intention underpinning section 60 is that a landlord should be indemnified for his or her costs, this does not mean that non-contentious transactional legal fees can be charged without limitation. The emphasis under section 60 is on reasonableness and the purpose for which the costs are incurred. I

Name: Tribunal Judge S Carrott
L Jarero BSc FRICS **Date:** 10 January 2018