

2753



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

**Case Reference** : **BIR/00CN/OC9/2013/0007**

**Property** : **2/22 Carpenter Road, Birmingham B15 2JN**

**Applicant** : **WEL (No1) Limited**  
**Represented by Ms. J L Hogg (Stevensons Solicitors)**

**Respondent** : **Mr. V Stepanovic**

**Date of Application** : **14<sup>th</sup> May 2013**

**Type of Application** : **Section 91(2)(d) Leasehold Reform and Urban Development Act 1993  
Determination of the costs payable by the lessee under section 60 of the Act**

**Tribunal** : **Mr. R T Brown FRICS  
Mr. W J Martin  
Ms. S McClure**

**Date and venue of Hearing** : **2<sup>nd</sup> July 2013  
Priory Court, Bull Street, Birmingham**

**Dated** : **1 2 AUG 2013**

---

**DECISION**

---

## **Decision**

1. The Tribunal determines that the reasonable legal costs and surveyors fees of the Respondent in dealing with the matters in section 60 of the Act are:
  - a) For the Freeholder £619.50 plus VAT (if applicable) plus disbursements £16.00.
  - b) For the Head leaseholder £265.50 plus VAT (if applicable) plus disbursements £27.00.
  - c) For the Valuer £350.00 plus VAT (if applicable)

## **Introduction**

2. The Decision recorded in this document was made by the First-tier Tribunal (Property Chamber) rather than the leasehold valuation tribunal, to whom the application had been made, because by virtue of The Transfer of Tribunals Function Order (2013 No 1036) ('the Transfer Order') the functions of leasehold valuation tribunals were, on 1<sup>st</sup> July 2013, transferred to the First-tier Tribunal (Property Chamber). By virtue of the transitional provisions, applications to leasehold valuation tribunals in respect of which a decision had not been issued before the 1<sup>st</sup> July 2013, automatically became proceedings before the First-tier Tribunal (Property Chamber). The Transfer Order also amended the relevant legislation under which leasehold valuation tribunals were referred to by substituting the words 'First-tier Tribunal' for 'leasehold valuation tribunal' within the relevant parts of the legislation. The extracts from the legislation applicable to the present applications that appear below incorporate the changes made by the Transfer Order. In this Decision the expression 'the Tribunal' means the First-tier Tribunal (Property Chamber).
3. This is an application under section 91(2)(d) of the Leasehold Reform and Urban Development Act 1993 for the determination of the Freeholder's reasonable legal costs.
4. Directions were issued on 16<sup>th</sup> May 2013 and the parties complied with those Directions.
5. The Applicant (Freeholder) contends for legal costs, plus disbursements and valuation fees totalling £2443.00 including VAT and the Respondent (Leaseholder) denies liability for any costs.

## **The Law**

6. The relevant law is set out below:

### **Leasehold Reform and Urban Development Act 1993**

#### **60 Costs incurred in connection with new lease to be paid by tenant**

(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.

## **91 Jurisdiction of tribunals**

(1) Any jurisdiction expressed to be conferred on the appropriate tribunal by the provisions of this Part (except section 75 or 88) shall be exercised by a rent assessment committee constituted for the purposes of this section; and any question arising in relation to any of the matters specified in subsection (2) shall, in default of agreement, be determined by such a rent assessment committee.

(2) Those matters are—

(d) the amount of any costs payable by any person or persons by virtue of any provision of Chapter I or II and, in the case of costs to which section 33(1) or 60(1) applies, the liability of any person or persons by virtue of any such provision to pay any such costs; and

## **Schedule 11 Part II**

### **Conduct of proceedings by competent landlord on behalf of other landlords**

#### **Acts of competent landlord binding on other landlords**

6 (1) Without prejudice to the generality of section 40(2)–

- (a) any notice given under this Chapter by the competent landlord to the tenant,
- (b) any agreement for the purposes of this Chapter between that landlord and the tenant, and
- (c) any determination of the court or the appropriate tribunal under this Chapter in proceedings between that landlord and the tenant,

shall be binding on the other landlords and on their interests in the property demised by the tenant's lease or any other property; but in the event of dispute the competent landlord or any of the other landlords may apply to the court for directions as to the manner in which the competent landlord should act in the dispute.

#### **Hearing**

- 7. The Applicant did not attend the hearing, however, Ms. Hogg (an employee of its solicitors) had prepared a comprehensive bundle which had been copied to the Respondent.
- 8. The Respondent Mr Stepanovic attended in person and had provided a statement which had been copied to the Applicant

#### **The Applicant's case**

- 9. In her witness statement Ms Hogg says that she is only able to speak to the costs incurred by her firm and not those of Messrs Shoosmiths and Shakespeares (*Tribunals note:* and by implication the valuer's fee).
- 10. Her firm had originally estimated their fees at £400.00 plus VAT but a detailed analysis had shown that this was an underestimate and £900.00 is now claimed.
- 11. Ms Hogg's statement explained that the file had been transferred to her firm following the sale of the property by the former Freeholder Calthorpe Estate to WEL (No1) Ltd.

12. The statement of costs included in Ms Hogg's statement set out the fees due in summary as follows:

<b>Item</b>	<b>£</b>
Calthorpe Estates Legal costs	600.00
VAT	120.00
Calthorpe Estates Valuer	450.00
VAT	90.00
Disbursements	16.00
Headleaseholder legal costs	550.00
VAT	110.00
Disbursements	27.00
Stevensons Costs	400.00
VAT	80.00
	2,443.00

13. The full statement acknowledges that the sum of £250.00 was paid by the Applicant to the original Freeholder and this amount stands to the credit of the Respondent. Hence the amount on the application form being £2193.00.
14. A detailed schedule of the time spent on every aspect of the case was supplied in support of the summary figures.
15. In her statement she explains that the Freehold was transferred from the Calthorpe Estate to her client WEL (No1) Ltd in September 2012, the matter having previously been dealt with by Messrs Shakespeares. On receiving the file she spent time familiarising herself with the particulars.
16. Messrs Shoosmiths acted for the Headleaseholder (Trident)
17. The Respondents Notice dated 3<sup>rd</sup> October 2011 was deemed withdrawn on the 24<sup>th</sup> April 2013 (because the Respondent had failed to complete).

### **The Respondent's reply**

18. Mr. Stepanovic's response is essentially that:
- a) At no time did he instruct any of these people and therefore he should have no liability for their costs;
  - b) The costs incurred are excessive on account of the fact that significant additional costs have resulted from the transfer of the Freehold to WEL (No1) Ltd in the middle of the lease extension process;

- c) The surveyor did not inspect the property and was not therefore able to carry out a complete valuation and as a consequence his fee is too high and;
  - d) He did not complete the transaction because other charges (ground rent and service charge balances) with which he did not agree were included on the completion statement.
19. Mr. Stepanovic helpfully took the Tribunal through the detail of Ms Hogg's timesheet explaining where he considered the charges were a) enhanced as a result of the transfer of the freehold and b) too high. The disbursement items were not challenged.
  20. Mr Stepanovic was unable to tell the Tribunal what he thought the proper costs should be nor was he able to give any guidance by reference to the fee he had paid his own solicitor.

### **The Tribunal's deliberations**

21. The Tribunal considered all the relevant written and oral evidence presented summarised above in its deliberations.
22. The Tribunal is not able to take into consideration the reasons put forward by Mr Stepanovic for his failure to complete the transaction as a reason why the fees should not be paid.
23. The Tribunal finds that the lessee is liable for abortive costs even though the transaction did not proceed by virtue of section 60(3) of the Act above and he personally did not instruct any of the solicitors involved.
24. The Tribunal makes a further finding that any increased costs in this matter resulting from the sale of the freehold during the time this matter was live are not recoverable (for example time spent by Ms Hogg and her supervisor familiarising themselves with the file on transfer of the matter to them) from the lessee under section 60 of the Act.
25. There is a headlease in this case and the Tribunal finds that the Respondent lessee is liable for the reasonable costs of the Headleaseholder. In this case unsubstantiated costs amounting to £550.00 plus VAT are claimed.
26. The Tribunal considered the application which stated the amount claimed to be £2193.00 (the gross amount of 2443.00 less the deposit of £250.00) and whether or not WEL (No1) Ltd was the Competent Landlord for the purpose of these proceedings. In other words does the Application encompass not just the fees of Stevensons but also those of Messrs Shakespeares, Messrs Shoosmiths and Messrs Bruton Knowles (the valuers)?
27. Before making that decision the Tribunal considered whether or not those parties should have individually been notified of these proceedings. The Tribunal concluded that because of WEL (No1) Ltd's position as competent Landlord (see the Act Schedule 11 Part II paragraph 6 above) it was entitled to bring these proceedings and had instructed Stevensons to act on its behalf. Stevensons were conducting the proceedings on behalf of the other professionals involved by virtue

of the amount claimed. The Tribunal was unable (from the papers provided) to discover whether or not those professionals had been consulted but concluded that to do so at this late stage would be disproportionate to the proceedings as whole.

28. As a result the Tribunal was in some difficulty as to the assessment of the costs incurred and concluded that the best way to do this was to look first at the costs of Messrs Shakespeares and Stevensons as if they were one firm conducting the matter of behalf of the Freeholder. It would then consider the individual costs of the Headleaseholder's solicitors (Shoosmiths) and the fees of the valuer (Bruton Knowles).
29. It was unfortunate that Ms Hogg was not available to explain the detail of some of the costs incurred. The Tribunal was not persuaded that, having quoted a fee (£400.00 plus VAT) (which would have been accepted had the matter completed), these costs could then be increased for the purposes of these proceedings following a detailed analysis of the file.
30. As regards the Freeholder's legal costs the Tribunal's starting point was to consider the amounts previously determined by this Tribunal (by which it is not of course bound) in respect of other cases in the Midlands region involving solicitors based in Birmingham and the country as a whole (excluding London). The conclusion it reached and the starting point for this part of this decision is that reasonable costs if one firm were involved would be in the region of £600 to £700.00 plus VAT and disbursements.
31. The Tribunal then considered the County Court rates published by HM Courts Service. The Tribunal finds that a Band B fee earner on an *inter party* basis in the county court would be assessed at £177.00 per hour. Whilst this rate is not mandatory on matters such as the one before the Tribunal, it is a good guideline.
32. The Tribunal, doing the best it can with the evidence adduced, concluded that the combined time (applicable to this transaction but excluding any time arising as a result of the transfer of the freehold) of the two solicitors should be in the region of 3.5 hours. Applying  $£177.00 \times 3.5 = £619.50$ .
33. The Tribunal was provided with no evidence to support the level of costs claimed by Shoosmiths on behalf of the Headleaseholder. However applying the same principles and bearing in mind that the majority of the work falls to the Competent Landlord's (i.e. in the case the Freeholder's) solicitor that 1.5 hours should be sufficient. The Tribunal determines that this work could be undertaken by a Band B solicitor (as above) at a rate of £177.00 per hour. Applying  $£177.00 \times 1.5 = £265.50$ .
34. The Tribunal was provided with no evidence in support of the valuation fee of £450.00. However the Tribunal is aware that this figure is in line with previous determinations of Tribunals in the Midland region and finds that had an inspection been carried this figure would have been determined. However, as acknowledged by Bruton Knowles, no inspection was carried out and the valuation was performed 'desk top'. Accordingly making due allowance for this

and doing the best it can with the evidence before it the Tribunal determines the valuer's fee at £350.00.

35. In summary the determination of the Tribunal (plus VAT if applicable) is as follows:

<b>Item</b>	<b>£</b>
Freeholder's legal costs	619.50
Disbursements	16.00
Headleaseholder's legal costs	265.50
Disbursements	27.00
Valuer's fee	350.00
	<b>1,278.00</b>

If the Applicant is registered for VAT purposes, it will be able to recover the VAT on the above fees because the services will have been supplied to the Applicant and not the Respondent. In this case the Respondent is not to be charged with the VAT on the above fees.

36. If either party is dissatisfied with this decision they may apply for permission to appeal to the Upper tribunal (Lands Chamber). Any such application must be made within 28 days of this decision (Rule 52 (2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

**Robert T Brown**  
**Chairman**

12 AUG 2013