

2837



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

**Case Reference** : **GM/LON/00AE/OC9/2014/0013**

**Property** : **82b Berkeley Road, London NW9  
9DG**

**Applicants** : **Brondmex Company Limited**

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

**Respondent** : **Senthil Nathan Sriharan**

**Representative** : **Gattas Denfield**

**Type of Application** : **Application for the determination  
of reasonable costs pursuant to  
sections 60 of the Leasehold  
Reform, Housing and Urban  
Development Act 1993**

**Tribunal Members** : **Ms N Hawkes  
Miss M Krisko BSc(EstMan) BA  
FRICS**

**Date and venue of  
paper determination** : **24.4.14 10 Alfred Place, London  
WC1E 7LR**

**Date of Decision** : **28.4.14**

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## DECISION

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### Decision of the Tribunal

**The Tribunal determines that the costs payable by the Respondent are in the sum of £1,107.26.**

### Background

1. The Tribunal has been informed that the background is as follows.
2. The applicant is the freehold owner of the premises known as 80A, 80B, 82A and 82B Berkeley Road, Kingsbury, London NW9 9DG of which the subject property forms a part.
3. On or about 31.5.13, Dias Lyala Wincey (“the assignor”) made an application for the grant of a new lease by way of a Notice of Claim pursuant to the provisions of Chapter II of the Leasehold Reform, Housing and Urban Development Act 1993 (“the 1993 Act”).
4. On or about 21.6.13, the property was sold to the respondent and the benefit of the Notice of Claim was assigned to him.
5. On or about 6.8.13, the applicant’s solicitors served a Counter Notice denying entitlement to the grant of a new lease because the assignor on the relevant date only became the registered proprietor of the property on 20.6.11 and the Notice of Claim was deemed to be given to the applicant on 3.6.13.
6. On or about 21.8.13, the applicant’s solicitors wrote to the respondent’s solicitors stating that in the absence of confirmation that the respondent was not on the relevant date entitled to the grant of a new lease the applicant would be compelled to issue County Court proceedings.
7. On or about 2.9.13, the respondent’s solicitors wrote to the applicant confirming that they would not be pursuing the application for a new lease.
8. On 18.2.13, the applicant made this application to the Tribunal seeking a determination of the statutory costs payable.

### The law

9. Section 60 of the 1993 Act provides:

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.

### The hearing

10. Neither the applicant nor the respondent attended a hearing which was due to take place on 24.4.14 and both parties requested that this matter be determined by way of a paper determination. Accordingly, the Tribunal has carried out a paper determination.

### The Determination

11. The Tribunal has numbered the items listed in the applicant's breakdown of fees 1-20 (item 1 is the fee for the time "Engaged

considering Notice of Claim” on 18.6.13 and item 20 is the fee for the time “Engaged preparing letter to client” on 3.9.13). References to items of work in this decision will follow this numbering system.

12. The Tribunal accepts that the applicant was not required to find the cheapest solicitor in the location closest to the property and that the charge out rates specified in the costs breakdown are reasonable for a specialist solicitor dealing with enfranchisement work. However, the Tribunal will expect a specialist solicitor of this type to be able to carry out the work quicker and more efficiently than would have been the case if a less experienced solicitor had been instructed. Further, the Tribunal does not accept that it was necessary for a partner to draft every letter.
13. In respect of item 1, the Tribunal considers that the relevant work could have been carried out by an experienced specialist solicitor in 0.5 hours rather than 0.8 hours. Accordingly, the Tribunal allows £187.50 in respect of item 1.
14. The Tribunal considers that items 2, 3, 5, 6, 8, 9, 11, 13, 14, 16 and 17 and the Land Registry and Courier fees are reasonable.
15. The Tribunal disallows items 4, 7, 10, 18 and the valuation report on the grounds that it was premature to instruct a valuer. The Tribunal finds that once office copy entries had been obtained on 18.6.13, the applicant should have appreciated that the Notice of Claim was invalid and that its validity should have been checked before a valuer was instructed.
16. As regards item 12, the Tribunal finds that, as it should have been appreciated before 30.7.13 that the Notice of Claim was invalid, it was not reasonable for the applicant to prepare a draft lease.
17. As regards item 15, the Tribunal considers that the relevant work could have been carried out by an experienced specialist solicitor in 0.3 hours rather than 0.7 hours. Accordingly, the Tribunal allows £118.50 in respect of item 15.
18. As regards items 19 and 20, the Tribunal does not accept that a partner was required to draft every letter however straightforward; some of the letters are likely to have been simple to draft; the Tribunal considers £39.50 too high a charge for a straightforward letter; and, accordingly, the Tribunal will allow £39.50 in total for the final two letters.
19. In accordance with these findings, the Tribunal determines that the total costs payable by the respondent are in the sum of £1,107.26.

Judge Naomi Hawkes

28<sup>th</sup> April 2014