



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

**Case Reference** : LON/OOAG/OC9/2015/0276

**Property** : Ground floor flat, 108 Fleet Road,  
London NW3 2QX

**Applicant** : 108 Fleet Road Limited

**Representative** : Mrs Ruth Pratt

**Respondent** : Mrs Sonia and Miss Natasha  
Malkani

**Representative** : P Malkani

**Type of Application** : S60 and 91 Leasehold Reform,  
Housing and Urban Development  
Act 1993 (the Act) and rule 13 of  
Tribunal Procedure (First-tier  
Tribunal)(Property Chamber)  
Rules 2013 (the Rules)

**Tribunal Members** : Tribunal Judge Dutton

**Date and Venue of  
hearing** : 24<sup>th</sup> August 2015 at 10 Alfred Place,  
London WC1E 7LR

**Date of Decision** : 24<sup>th</sup> August 2015

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**DECISION**

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## DECISION

**The Tribunal determines that the sum payable by the Respondents under the provisions of s60 of the Act shall be £600.**

**The Tribunal makes no order for costs under rule 13 of the Rules for the reasons set out below.**

### BACKGROUND

1. By an application dated 12<sup>th</sup> June 2015 the Applicant sought a determination of the costs payable under the provisions of s60 and 91(2) (d) of the Act. The Application sought costs totalling £641.80 made up of solicitor's costs of £600 including VAT and a further £41.80 being the costs incurred by Mrs Pratt as a litigant in person in preparing a new draft lease.
2. In addition the Applicant sought an order under the provisions of rule 13 that the Respondents had acted unreasonably in bringing the proceedings, and the conduct of same. The Applicant claims £1,583.30 being Counsel's fees of £1,200 including VAT and litigant in person costs and disbursements totalling £383.30.
3. The matter came before me for a paper determination on 24<sup>th</sup> August 2015. I had before me a bundle of papers, prepared on behalf of the Applicant, said to be for a paper hearing on 10<sup>th</sup> August 2015. Similarly a bundle prepared on behalf of the Respondents said to be in relation to direction 3, but is undated. As a follow on, the Applicant had also lodged a reply to the Respondents' statement. This is dated 17<sup>th</sup> August 2015. I have read these papers.

### THE LAW

3. The law relating to this matter is contained at s60 of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act). The section is set out at the end of this decision. I have also considered the provisions of rule 13, which are also set out below

### FINDINGS

4. I will deal firstly with the costs under s60. There are two elements to this. The first are the costs of Solomon Taylor & Shaw, solicitors retained by the Applicant. I have a copy of their fee note, with the narrative, which indicates that the costs were associated with advice under the Act. The time spent, which is not broken down, but I understand that the partners' rate is £300 per hour and an assistant rate of £180 – 200 per hour, covers meeting with the client, reviewing papers, including the initial notice and the assignment of rights and drafting and serving a counter notice. The Respondent offers £200.

5. There is a paucity of information and the Respondent criticises this. By a letter dated 13<sup>th</sup> July 2015 the Applicant seeks to explain the time spent. The fee note does set out the element of costs which would be payable under s60 but the said letter of 13<sup>th</sup> July does attempt so to do. In my experience a fee of £500 for considering the initial notice, advising thereon and producing the counter notice is not unreasonable and I allow the sum, which together with VAT amounts to £600.
6. In respect of the costs of the Applicant, the litigant in person costs, I note the work undertaken and have also considered the comments of the Respondent. The draft lease appears not to be Land Registry compliant. In any event I consider this a task to be undertaken by a legal professional. Although it was, it is said, undertaken to comply with the Tribunal's directions it would not have been a document that could have been utilised. I therefore disallow this element. The total costs payable under s60 is therefore £600
7. I turn now to the claim for costs under rule 13 of the Rules. It seems to me that the Applicant criticises both the bringing of the proceedings and the conduct. It is said, trying to see the wood for the trees in the numerous pages of submissions made, that the application was misconceived. It relied on a notice under s42 of the Act which purported to suggest a premium of £1000. This notice also sought a new lease to expire in 2165, being 90 years after the expiration of the existing lease. Much has been made of an apparent request for a new lease of 999 years at a premium of £1 but this is not as set out on the s42 notice. A counter notice was served in time suggesting a premium of £45,000 and just before the 6 month cut off an application was made by the Respondents for a determination under s48 of the Act. This application was received at the Tribunal offices on 22<sup>nd</sup> January 2015 and a request for withdrawal was made on 8<sup>th</sup> May 2015. It is this latter step, close to the proposed hearing date of 2<sup>nd</sup> or 3<sup>rd</sup> June 2015 which is also criticised, it being said that the claim should have been abandoned before then.
8. As a result of the late withdrawal it is said that Counsel's fees of £1,200 were incurred. The fee note produced is from Mr Daniel Gatty merely showing the work to be "advising in conference" in respect of a matter headed Sonia Malkani and Miss Natasha Malkini v 108 Fleet Road Limited and is dated 8<sup>th</sup> May 2015. The remainder of costs are said to be 'litigant in person' costs for which it is said some 19 hours and 6 minutes were spent by Mrs Pratt as shown on a schedule of work done and time spent at the rate of £19 per hour.
9. The awarding of costs under rule 13 can be made by reason of rule 13(1)(b)(iii). Originally there was a cap on the amount that could be awarded, which was set at £500. As a result of recommendations made by Mr Justice Warren this cap was removed. However, to my mind this did not change the manner in which the liability for costs should be considered, which follows the provisions of schedule 12 to the Commonhold and Leasehold Reform Act 2002. Unreasonable is intended

to describe conduct which is vexatious, designed to harass the other side and which is abusive of procedures and or disruptive. The test is whether the conduct permits of a reasonable explanation.

10. Here we need to consider the background. It appears that in 1995 the freehold was purchased by Alison Miller and Clive and Deana Potter. Subsequently on 19<sup>th</sup> February 1995 by a Deed, these parties agreed that the lease for the ground floor flat, being the property acquired by the Respondents, should be extended to a term of 999 years. It seems for reasons which are unknown that this Deed may not have been registered. After this time the representative for the Applicant, Mrs Pratt agreed with the Applicant an extension of her lease for the second floor flat to a term of 999 years, it seems for only £1. Further, I have been supplied with a copy of a share certificate, which appears to show the Respondents as members of the Applicant company. This is dated 14<sup>th</sup> November 2014. This background coupled, with the issuing of an initial notice under s42, the counter-notice under the Act and the application under s48 certainly causes some confusion as to the correct steps to be taken by the Respondents to seek a lease extension and is the 'reasonable explanation' for the conduct in this case.
11. I do not consider it unreasonable to act upon the s42 notice, the more so as a counter notice accepting the claim had been made and the time limit for lodging the claim. As to the conduct of the proceedings the Respondents withdrew nearly a month before the hearing date. Correspondence had been sent by the Tribunal to Solomon Taylor & Shaw but it seems it was not forwarded to the Applicant for reasons which were not the fault of the Respondents. It seems that Mrs Pratt did not become aware of the proceedings until the end of March 2015. She refers to a letter purportedly sent to the Respondents' solicitors dated 20<sup>th</sup> January 2015, which is only partly copied and runs to several pages. It merely puts forward the Applicant company's position and asserts that the Respondents should have been aware of the position from May 2014. However, the letter to which she refers posed the question as to whether all leaseholders paid an equal share when the freehold company, the Applicant, was acquired, to which the answer is 'yes'. In my finding there is a deal of confusion as to the status of the Respondents and their right to acquire a lease extension, either as a right of being a member of the freehold company or under the Act. The Applicant's representative accepts that this was not a straight forward case. The withdrawal was made sufficiently in advance of the hearing to avoid wasted costs of preparing for same. S60 of the Act, of course, does not allow the recovery of costs associated with proceedings before the Tribunal.
12. It is not possible to determine what advice Counsel gave, or was asked to advise upon. In the circumstances of this case I find that the Respondents have not acted unreasonably in either starting the proceedings or in the conduct of same and therefore decline to make any costs order against them. As members of the Applicant company however, they may well have a responsibility to meet some of the costs

incurred but I do not have a copy of the memorandum and articles of association so cannot comment further.

Andrew Dutton  
Andrew Dutton - Tribunal Judge

24<sup>th</sup> August 2015

### **The Relevant Law**

#### **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 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.

#### **Orders for costs, reimbursement of fees and interest on costs**

##### **13.**

—(1) The Tribunal may make an order in respect of costs only—

- (a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;
- (b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—
  - (i) an agricultural land and drainage case,
  - (ii) a residential property case, or

- (iii) a leasehold case; or
- (c) in a land registration case.
- (2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.
- (3) The Tribunal may make an order under this rule on an application or on its own initiative.
- (4) A person making an application for an order for costs—
  - (a) must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and to the person against whom the order is sought to be made; and
  - (b) may send or deliver together with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal.
- (5) An application for an order for costs may be made at any time during the proceedings but must be made within 28 days after the date on which the Tribunal sends—
  - (a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or
  - (b) notice of consent to a withdrawal under rule 22 (withdrawal) which ends the proceedings.
- (6) The Tribunal may not make an order for costs against a person (the “paying person”) without first giving that person an opportunity to make representations.
- (7) The amount of costs to be paid under an order under this rule may be determined by—
  - (a) summary assessment by the Tribunal;
  - (b) agreement of a specified sum by the paying person and the person entitled to receive the costs (the “receiving person”);
  - (c) detailed assessment of the whole or a specified part of the costs (including the costs of the assessment) incurred by the receiving person by the Tribunal or, if it so directs, on an application to a county court; and such assessment is to be on the standard basis or, if specified in the costs order, on the indemnity basis.
- (8) The Civil Procedure Rules 1998(a), section 74 (interest on judgment debts, etc) of the County Courts Act 1984(b) and the County Court (Interest on Judgment Debts) Order 1991(c) shall apply, with necessary modifications, to a detailed assessment carried out under paragraph (7)(c) as if the proceedings in the Tribunal had been proceedings in a court to which the Civil Procedure Rules 1998 apply.
- (9) The Tribunal may order an amount to be paid on account before the costs or expenses are assessed.