



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

**Case reference** : OT/LON/00AG/0C9/2015/0160

**Property** : 51 Witley Court Coram Street  
London WC1N 1HD

**Applicant** : Brickfield Properties Limited

**Representative** : Wallace LLP

**Respondent** : Miss Frances Dilys Mary Edwards

**Representative** :

**Type of application** : Application under section 91  
Leasehold Reform, Housing and  
Urban Development Act 1993 (the  
“Act”) for a determination of the  
costs payable under S60(1) of the  
Act

**Tribunal member** : Mrs E Flint DMS FRICS

: Determination without an oral  
hearing in accordance with  
 : Regulation 31 The Tribunal  
Procedure (First-tier Tribunal)  
(Property Chamber) Rules 2013

**Date of decision** : 18 May 2015

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**DECISION**

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## **Decisions of the Tribunal**

The tribunal determines the s60 legal costs at £1996.00 + VAT.

## **The Application**

1. The Applicant seeks a determination of the landlord's reasonable legal costs under section 60(1) Leasehold Reform and Urban Development Act 1993 ("the Act").
2. The Applicant is the headlessee of the subject premises. The costs are those incurred in respect of the Respondent's application for a lease extension, the terms of which, other than costs, have been agreed.
3. An application for determination of costs dated 25 March 2015 was received which itemised the costs in dispute as legal fees of £2255.00 plus VAT, Land Registry fees of £32 and Courier fees of £24.60 plus VAT.
4. On 27 March 2015 the Tribunal issued Directions which provided for this matter to be decided on the papers unless a hearing was requested. No such request has been received and the Tribunal has reached its decision without an oral hearing in accordance with Regulation 31 The Tribunal Procedure (First Tier) (Property Chamber) Rules 2013.

## **The Law**

5. Section 60 of the Act 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.....*
  - (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.*

## **The Evidence**

6. Both parties made written submissions. The Applicant provided a bundle of relevant documents which included a schedule summarising the costs, the original and new leases and seven previous Tribunal decisions on costs.
7. The Applicant set out the timetable of events following service of the Notice of Claim on 21 October 2013. The Counter Notice was served on 2 January 2014 and the Respondent's application to the Tribunal in accordance with section 48 of the Act seeking determination of the terms of a new lease was made on 30 May 2014. By 24 September 2014 the terms of acquisition of the new lease were agreed and the hearing date vacated. The new lease was completed on 25 November 2014 and the surveyor's fees were paid at completion.
8. The Applicant submitted a schedule setting out the date the work was done between 7 November 2013 and 27 November 2014; the type of work; a short description of the work and its relationship to s60; the level of the fee earner; the time spent; the hourly rate; the amount claimed and the disbursements. Copies of the charging out rates for the years commencing 1 August 2013 and 2014 together with the covering letters to the Freshwater Group of Companies, of which the Applicant is a member, were attached.
9. The Applicant's solicitor was a partner and Grade A fee earner in the central London firm of Wallace LLP who have acted for the applicant in relation to enfranchisement matters since 1996; the charging out rate was £395 per hour. The fee earner with conduct of the matter was a partner assisted by other fee earners with the relevant experience for the task in hand. The provisions of the act are complex and required a partner to oversee the work and ensure that the provisions of the Act are complied with and supervise the work undertaken by the paralegal charged out at £150 per hour.
10. The Tribunal was referred to seven other decisions relating to costs which were said to support the applicant's case that it was reasonable to charge by reference to time spent and the reasonableness of costs as set out in *Daejan Investments Limited v Parkside 78 Limited* dated 4<sup>th</sup> May 2004.

11. The Applicant was of the view that the costs incurred in the schedule were those which it would have incurred if it had been liable to pay them itself. The Applicant had been willing to settle the legal costs at £2100 although the actual time pertaining to section 60 costs was in excess of £2200 plus VAT.
12. The Respondent stated that she had paid her solicitor, a firm of equivalent size and repute to the applicant's solicitors a total of £2450 plus VAT broken down as follows: £1850 plus VAT fixed fee for all work and advice involved in preparing and serving the statutory notice, negotiations in relation to the new lease, all conveyancing aspects of the transaction and issue of proceedings at the Tribunal and £600 plus VAT for additional litigation time beyond that which was spent in preparation for the hearing before the Tribunal, including preparing the List of Issues and the Court bundle.
13. The Respondent confirmed that the disbursements paid in respect of Land Registry and Courier fees and the Applicant's entitlement to VAT on the costs are not disputed.
14. The Respondent stated that Wallace had not complied with the Tribunal's directions and that the schedule of costs provided very limited information regarding the individual items and does not identify to which of the heads of expense for which the landlord can recover costs the time relates.
15. The Respondent addressed the question of whether the Applicant was actually liable for the costs and referred to the lack of a retainer letter and invoices. This case is similar to Metropolitan Property Realizations Ltd v John Keith Moss [2013] where the Upper Tribunal held that there was no doubt that Wallace were instructed and the Respondent was liable to pay. The Respondent considered that a failure to disclose a retainer letter also raised difficulties regarding reasonableness of costs.
16. The Respondent listed those items on the Applicant's schedule which she accepted as within s60 totalling £942 + VAT. The Respondent stated that it was unclear whether the remaining items up to item 17 on the schedule and dated 2 January 2014 related to s60 costs. The Respondent did not consider that it was possible to assess whether recovery of the remaining costs was legitimate or not. She assumed that item 26 and 27 may relate to re-sending the engrossment of the Lease where there were errors made by Wallace and therefore should not be chargeable to her.
17. The Respondent did not consider the costs relating to preparing the Counter Notice were recoverable under s60 (Item 15). Nor that the costs relating to dealing with amendments to the draft lease (Items 19 & 21) allowable since drafting and executing the lease does not include arguing or negotiating the claim.

18. The Respondent also questioned the hourly rates charged. Whilst accepting that the applicant is entitled to instruct whomever it wishes as this was not a complicated matter the Tribunal was asked to consider applying outer London hourly rates. The title to the flat is simple, the extended lease is granted by reference to the old lease. The Respondent noted in support of her contention that the new lease took 0.8 hours to prepare. The Respondent stated that she had tried to reach a compromise with Wallace but had failed and invited the tribunal to award costs of ££1,022.20 + VAT.

### **The Tribunal's decision**

19. Legal costs of £1996 + VAT are payable. Disbursements have been agreed; the Tribunal has no further jurisdiction in that respect.

### **Reasons for the Tribunal's decision**

20. The Tribunal accepts that Wallace have acted for the Freshwater Group of companies for some years; leasehold enfranchisement is a specialist area of law; the property is situated in central London. In these circumstances the choice of a central London firm is justified. The Tribunal accepts that the charge out rates are reasonable for a central London firm and notes that different individuals were allocated to the case dependant upon the level of expertise required for each particular task.
21. Doing the best it can on the evidence before it, the 33 items on the schedule are accepted excepted where noted below.
22. Items 3, 6 and 9 represent 3 letters to the valuer on 7<sup>th</sup>, 8<sup>th</sup> and 12<sup>th</sup> November 2013 giving instructions and enclosing the necessary documents for the valuation: the tribunal determines that there was an element of duplication and that the documentation should have accompanied the letter of instruction; therefore £79 is disallowed. Items 18, 19, and 22 are not matters within the ambit of s60 since they are all an intrinsic part of negotiating the deal; £150 is disallowed. The Tribunal accepts the Respondent's submissions in relation to item 27: £30 is disallowed.

**Name:** Evelyn Flint

**Date:** 27 May 2015