

4231



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

**Case Reference** : LON/OOAC/OC9/2016/0294

**Property** : 11, Kennyland Court, Hendon Way,  
London NW4 3LU

**Applicant** : Daejan Investments Limited  
(freeholder)

**Representative** : Wallace LLP (solicitors)

**Respondents** : Hyun Don Choi (leaseholder)

**Representative** : C L Clemo & Co (solicitors)

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**Type of Application** : Application under section 91(2)(d)  
of the Leasehold Reform, Housing  
and Urban Development Act 1993  
(‘the Act’) to determine the costs  
payable under section 60 of the Act

**Tribunal Members** : Patrick M J Casey MRICS

**Date and venue of  
Hearing** : The tribunal considered the  
application on the basis of the  
papers filed and without an oral  
hearing on 7 September 2016

**Date of Decision** : 29 September 2016

**DECISIONS**

## **Summary of the decisions**

1. It is determined that the landlord is entitled to recover the following costs which are payable by the leaseholder under section 60 of the Act. These are solicitors' fees in the sum of £2,595.60 including VAT, Land Registry fees and courier charges and valuer's fees of £1,020.00 including VAT.

## **Introduction**

2. This is an application for a determination of costs. It is made under section 91(2)(d) of the Act. Under section 60 a claimant leaseholder is required to pay the reasonable costs incurred by the landlord in connection with a claim for a new lease. Copies of these two statutory provisions are contained in the appendix to this decision.
3. In this matter the respondent is the leaseholder of the subject premises who has exercised their right to seek a new lease under the provisions in Chapter 2, Part I of the Act. The applicant is landlord under the lease. The respondent is represented by C L Clemo; the landlord is represented by Wallace LLP, both are firms of solicitors.
4. The claim was made in a notice dated 10 November 2014. In response the landlords gave a counter-notice dated 14 January 2015. The counter-notice admitted the claim but made counter-proposals on the premium and on the proposed terms of the new lease.
5. As the parties failed to reach agreement on the premium to be paid and the terms of the new lease an application was made by the leaseholder to the tribunal for a determination of these disputes on 22 April 2015.
6. On 4 August 2015 the only issue remaining in dispute between the parties, namely the new lease terms, was heard by a tribunal of the First Tier Tribunal, Property Chamber (Residential Property) which gave its decision on 1 September 2015. The decision became final on 28 September 2015.
7. The respondent failed to complete within four months of that latter date nor was an application made to the County Court under S48(3) of the Act and the application was deemed to be withdrawn on 27 January 2016 pursuant to S53(1)(b) of the Act
8. No agreement in respect of statutory costs payable to the landlord was reached and on 8 July 2016 this application for their determination was made. The tribunal issued Directions for the progression of the application on 14 July 2016. These directions required the leaseholder to respond to the landlord's claim for costs and for the leaseholder to prepare a bundle of documents. The directions also stated that the matter should be dealt with without an oral hearing. However, each party was given the option of seeking a hearing. Neither party having sought a hearing, the tribunal considered the application on the basis of the papers filed on 7 September 2016.

## The Evidence

9. The directed bundle of documents was duly filed with the tribunal and I considered all of the documents in the bundle as part of my consideration of the costs claims. The bundle included the notices, the application, the directions, the landlord's schedule of costs and supporting invoices, submissions from C L Clemo in response to the applicant's Statement of Costs, the landlord's written submissions on costs and correspondence between the parties. Also included were copies of previous decisions on costs made by this tribunal. The bundle ran to 141 pages.
10. The landlord claims the sum of £2,300.00 in relation to the costs of their solicitors, a valuation fee of £850.00, (all exclusive of VAT), Land Registry fees of £21.00 and courier fees of £29.40.
11. I considered first, the submissions on section 60 costs. Mr Clemo for the leaseholder disputes the landlord's solicitors' costs on three broad grounds. He questions firstly whether the hourly rates charged by the applicant's solicitors are reasonable, secondly whether the number of units claimed is reasonable, and, lastly whether the applicant's choice of solicitor was reasonable. As to the principles to be addressed in considering these issues he cites both S60 of the Act and the decision in *Drax v Lawn Court Freehold Limited* [2010]UKUT81(LC) which he says also brings in a limited requirement of proportionality. On the last point he argues that very competent solicitors in the Hendon area could have dealt with the claim at much lower rates than those charged by the applicant's solicitors of choice and given the premium was unlikely to be substantial that is the choice a reasonable person spending their own money would make. The fee level should be proportionate.
12. Even if the applicant's long standing relationship with their solicitors and their supposed expertise could justify the choice actually made the rates charged are far in excess of those shown in the published Guideline Hourly Rates for solicitors even in W1. The guideline suggests £317.00 per hour for a solicitor with over 8 years' experience, £242.00 for one with over 4 years and £126.00 for a paralegal. Wallace are claiming £420.00 for partner, £300.00 for an assistant and £180.00 for a paralegal which are in his view unreasonable rates. At the guideline rates the charge would be £1,519.10 plus VAT for the units of work claimed. To support his view Mr Clemo referred to a FTT decision, *Patel v Millpond Properties*.
13. If however the tribunal accepted rates higher than the guidelines Mr Clemo claimed the units of work billed should be reduced because most of the work was done by the assistant with the partner supervising. While 50% may be reasonable for supervision time given the firm's familiarity with the work this would only suggest that the partner's time be limited to 75 minutes being half the time spent by the assistant doing nearly all the main work. However Mr Clemo did not seek to have this approach adopted if his view of the adoption of guideline rates was accepted by the tribunal.

14. A full explanation of their charges was given by Wallace LLP the applicant's solicitors who also address the challenges to these charges. I considered the items of work that they covered, checked that they are all covered by section 60 of the Act and that they are not excessive. I also relied on my professional knowledge and experience to inform my consideration of the fees claimed. In addition I also considered the previous tribunal decisions which were included in the bundle all of which are determinations of costs claimed by Wallace LLP.

## **The Decisions**

15. I note that under section 60 the claimant leaseholder must pay the landlord's reasonable costs of and incidental to (a) investigating the leaseholder's right to a new lease, (b) any valuation of the leaseholder's flat and (c) the grant of the new lease.
16. I agree with the landlord's submission that the area of enfranchisement and new leases is a complex one and that the landlord is entitled to choose a specialist solicitor to represent its interests. Daejan are part of a major property group that owns residential freeholds all across London with its head offices in central London. Wallace has been its solicitor of choice when dealing with enfranchisement matters and charges Daejan the same rates for both recoverable and non-recoverable costs, (eg tribunal proceedings). It is unreasonable to expect Daejan to seek out a competent local solicitor for each of the many claims it receives and the lack of familiarity and possibly complete trust in competence would invariably lead to a great increase in client/solicitor communications. In the present case the work was undertaken by a partner at Wallace LLP who charged £420.00 per hour. The partner was assisted by an assistant solicitor (a grade A fee earner) who charged the time at £300.00 per hour rising to £330.00 per hour from August 2015 and by a paralegal whose charge out rate was £180.00. In my opinion these rates are in line with the charge out rates for solicitors working in central London.
17. The work included considering the claim notice, considering Land Registry entries, preparing a draft lease and preparing a counter-notice. The work also consisted of correspondence and emails with the leaseholder's solicitor and the applicant's valuer. I am satisfied that the scope of this work was in general reasonable and the time taken was not excessive. There is no evidence in the statement of costs of any overlapping of work or of supervision; the partner dealt with all matters relating to the initial notice and the counter-notice, the assistant with drafting the new lease and preparing the transaction for completion.
18. However there are 8 units of time claimed by the latter, after the leaseholder applied to the tribunal and before the tribunal's decision became final, relating to the lease terms. Under S60(5) the tenant is not liable for any costs incurred in proceedings before the tribunal and in the absence of any more detailed explanation of the basis on which these units were incurred it is hard to see how they were not "incurred in proceedings". They are accordingly disallowed and amount to a reduction in the fee claimed of £240.00.

19. There is one further cost item which is difficult to reconcile with S60 and that is the 0.3 hours charged by the partner for considering the valuation report. It is certainly not "a reasonable cost of and incidental to" an investigation of the claim for a new lease or of the grant of the new lease and it is difficult to see how it falls within S60(1)(b). One can understand a solicitor's desire to check all is right in the valuation report but a competent value should be expected to get his report right especially when paid a fee of £850.00 for a relatively straight forward valuation. To expect the tenant to pay £126.00 on top of this for the partner to consider the report cannot be said to be reasonable and this sum is disallowed.
20. Otherwise all of the work was justified including the Land Registry fees of £21.00 for copies of the titles and the para legal charge for dealing with the same and the courier fee of £29.40 and I determine that these elements of the charges were reasonably incurred. I determine that the allowable solicitor's costs is the total sum of £2,595.60 inclusive of VAT.
21. The valuer's fee of £850.00 (exclusive of VAT) was also challenged by Mr Clemo on the basis of the Patel v Millpond decision but that decision cannot be evidence of what a reasonable valuation fee is especially when a different property and a different valuer is involved. In my view this sum was reasonably incurred and is in line with valuer's charges for new lease claims in Greater London.

Patrick M J Casey, 21 September 2016

# Appendix

## Relevant Legislation

### Section 91

#### **Jurisdiction of leasehold valuation tribunals.**

(1)

Any jurisdiction expressed to be conferred on a leasehold valuation 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—

(a)

the terms of acquisition relating to—

(i)

any interest which is to be acquired by a nominee purchaser in pursuance of Chapter I, or

(ii)

any new lease which is to be granted to a tenant in pursuance of Chapter II, including in particular any matter which needs to be determined for the purposes of any provision of Schedule 6 or 13;

(b)

the terms of any lease which is to be granted in accordance with section 36 and Schedule 9;

(c)

the amount of any payment falling to be made by virtue of section 18(2);

[F1(ca)

the amount of any compensation payable under section 37A;]

[F2(cb)

the amount of any compensation payable under section 61A;]

(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

(e)

the apportionment between two or more persons of any amount (whether of costs or otherwise) payable by virtue of any such provision.

(3)

A rent assessment committee shall, when constituted for the purposes of this section, be known as a leasehold valuation tribunal; and in the following provisions of this section references to a leasehold valuation tribunal are (unless the context otherwise requires) references to such a committee.

(4)

Where in any proceedings before a court there falls for determination any question falling within the jurisdiction of a leasehold valuation tribunal by virtue of Chapter I or II or this section, the court—

(a) shall by order transfer to such a tribunal so much of the proceedings as relate to the determination of that question; and

(b) may then dispose of all or any remaining proceedings, or adjourn the disposal of all or any such proceedings pending the determination of that question by the tribunal, as it thinks fit; and accordingly once that question has been so determined the court shall, if it is a question relating to any matter falling to be determined by the court, give effect to the determination in an order of the court.

(5) Without prejudice to the generality of any other statutory provision—

(a) the power to make regulations under section 74(1)(b) of the Rent Act 1977 (procedure of rent assessment committees) shall extend to prescribing the procedure to be followed consequent on a transfer under subsection (4) above; and

(b) rules of court may prescribe the procedure to be followed in connection with such a transfer.

(6) Any application made to a leasehold valuation tribunal under or by virtue of this Part must comply with such requirements (if any) as to the form of, or the particulars to be contained in, any such application as the Secretary of State may by regulations prescribe.

(7) In any proceedings before a leasehold valuation tribunal which relate to any claim made under Chapter I, the interests of the participating tenants shall be represented by the nominee purchaser, and accordingly the parties to any such proceedings shall not include those tenants.

(8) No costs which a party to any proceedings under or by virtue of this Part before a leasehold valuation tribunal incurs in connection with the proceedings shall be recoverable by order of any court (whether in consequence of a transfer under subsection (4) or otherwise).

(9) A leasehold valuation tribunal may, when determining the property in which any interest is to be acquired in pursuance of a notice under section 13 or 42, specify in its determination property which is less extensive than that specified in that notice.

(10) Paragraphs 1 to 3 and 7 of Schedule 22 to the Housing Act 1980 (provisions relating to leasehold valuation tribunals constituted for the purposes of Part I of the Leasehold Reform Act 1967) shall apply to a leasehold valuation tribunal constituted for the purposes of this section; but—

(a) in relation to any proceedings which relate to a claim made under Chapter I of this Part of this Act, paragraph 7 of that Schedule shall apply as if the nominee purchaser were included among the persons on whom a notice is authorised to be served under that paragraph; and

(b) in relation to any proceedings on an application for a scheme to be approved by a tribunal under section 70, paragraph 2(a) of that Schedule shall apply as if any

person appearing before the tribunal in accordance with subsection (6) of that section were a party to the proceedings.

(11)

In this section—

“the nominee purchaser” and “the participating tenants” have the same meaning as in Chapter I;

“the terms of acquisition” shall be construed in accordance with section 24(8) or section 48(7), as appropriate; and the reference in subsection (10) to a leasehold valuation tribunal constituted for the purposes of Part I of the Leasehold Reform Act 1967 shall be construed in accordance with section 88(7) above.

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

### **Section 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.

### **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).