FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BH/0C9/2016/0360**
Property	:	**2 Greenacre Gardens, London E17 9EX**
Applicant	:	**Barrett Road (Block D) Management Co Ltd**
Representative	:	**Cavendish Legal Group**
Respondent	:	**Richard Schwartz**
Representative	:	**S.S. Basi & Co**
Type of application	:	**Section 91(2)(d) of the Leasehold Reform, Housing and Urban Development Act 1993**
Tribunal members	:	**Judge Amran Vance**
Date of determination and venue	:	**8 February 2017 at 10 Alfred Place, London WC1E 7LR**
Date of decision	:	**8 February 2017**

DECISION

Summary of the tribunal's decision

1. The tribunal determines that the section 60 statutory costs payable by the respondent to the applicant amount to £1,474 plus VAT where applicable.

Background

2. This is an application brought under section 91(2)(d) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") in respect of 2 Greenacre Gardens, London E17 9EX ("the Flat"). The applicant seeks a determination of the reasonable costs payable to it under section 60(1) of the Act following service of a Notice of Claim to acquire a new lease of the Flat.

3. The respondent's leasehold interest in the Flat is under the terms of a lease dated 2 March 1992 granted for a term of 99 years from 25 June 1991 made between (1) John Bickel and Dennis Cope; (2)Michael Robert Taylor; and (3) the respondent.

4. On or around 8 October 2015 the respondent, through his solicitor, made a claim to acquire a new lease of the Flat by way of a notice of claim under section 42 of the Act. The proposed premium was £2,000.

5. In a letter dated 16 October 2015, sent by the applicant's solicitors to the respondent's solicitor, the applicant requested that the respondent pay a deposit on account of the premium payable and to deduce title by providing up to date office copy entries and a copy of the relevant lease. The applicant states that there was no response to that letter and they therefore sent a chaser letter on 10 November 2015. The reply to that letter from the respondent's solicitor dated 23 November does not address the points made in the applicant's solicitors' letter of 10 November 2015.

6. On 2 December 2016, the applicant's solicitors sent a letter to the respondent's solicitor enclosing a landlord's counter-notice under section 45 of the Act. That counter-notice was served without prejudice to the contention that the tenant's

notice of claim was invalid because the amount of the premium quoted was unrealistically low. In the counter-notice the applicant admitted that the respondent had, on the relevant date, the right to acquire a new lease for of the Flat, but rejected the proposals contained in the tenant's notice of claim and proposed a premium of £10,115.

7. By letter dated 14 June 2016, the applicant's solicitors notified the respondent's solicitor that they considered the section 42 notice served by the respondent was deemed withdrawn and requested payment of their client's legal costs limited at £950 plus VAT and valuation costs of £650 plus VAT.

8. The respondent's solicitors response, in a letter dated 13 July 2016 was that if, as the applicant asserted, the notice was invalid, it followed that there was no notice and therefore no costs are payable.

9. No agreement was reached in respect of the statutory costs payable by the respondent to the applicant under s.60 of the Act and on 10 August 215 the tribunal received an application from the applicant seeking a determination of those costs.

10. The applicant seeks the following costs:

Legal fees	£1,250.00 plus VAT
Land Registry Fees	£24
Tribunal Fee	£100
Valuer's Costs	£650 plus VAT

The statutory provisions

11. Section 60 of the 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.

Directions and the schedule of costs

12. The tribunal issued its standard costs directions on 6 September 2016 providing for the applicant to send the respondent a schedule of costs for summary assessment including copies of the invoices substantiating the claimed costs and for the tenant to provide a statement of case and any legal submissions in relation to the costs claimed.

13. The tribunal directed that it was content to determine the matter on the papers unless either party requested an oral hearing. No party requested a hearing and the application was determined on the papers on 8 February 2017. The reason for the delayed determination is because the tribunal had to request, on 21 November 2016, that the applicant comply with the tribunal's directions and provide a bundle of documents for use at the paper determination. It also had to request, on 12 January 2017, that the applicant provide copies of invoices for the costs claimed.

14. The respondent has failed to respond to the tribunal's directions and has made no submissions challenging the amount of costs sought.

The principles

15. The proper basis of assessment of costs in enfranchisement cases under the 1993 Act, whether concerned with the purchase of a freehold or the extension of a lease, was set out in the Upper Tribunal decision of *Drax v Lawn Court Freehold Ltd* [2010] UKUT 81 (LC), LRA/58/2009. That decision (which related to the purchase of a freehold and, therefore, costs under section 33 of the Act, but which is equally applicable to a lease extension and costs under section 60) established that costs must be reasonable and have been incurred in pursuance of the initial notice and in connection with the purposes listed in sub-sections [60(1)(a) to (c)]. The applicant tenant is also protected by section

60(2) which limits recoverable costs to those that the respondent landlord would be prepared to pay if it were using its own money rather than being paid by the tenant.

16. In effect, this introduces what was described in *Drax* as a "(limited) test of proportionality of a kind associated with the assessment of costs on the standard basis." It is also the case, as confirmed by *Drax*, that the landlord should only receive its costs where it has explained and substantiated them.

17. It does not follow that this is an assessment of costs on the standard basis (let alone on the indemnity basis). This is not what section 60 says, nor is *Drax* an authority for that proposition. Section 60 is self-contained.

18. The tribunal has had regard to the comments of Professor Farrand QC in the decision relied upon by the applicant in *Daejan Investments Freehold Ltd v Parkside 78 Ltd* (LON/ENF/1005/03), in which, at paragraph 8, he stated:

> *"As a matter of principle, in the view of the Tribunal, leasehold enfranchisement may understandably be regarded as a form of compulsory purchase by tenants from an unwilling seller and at a price below market value. Accordingly, it would be surprising if reversioners were expected to be further out of pocket in respect of their inevitable incidental expenditure incurred in obtaining the professional services of valuers and lawyers for a transaction and proceedings forced upon them. Parliament has indeed provided that this expenditure is recoverable, in effect, from tenant-purchasers subject only to the requirement of reasonableness...".*

The tribunal's determination and reasons

19. The respondent has played no part in these proceedings. However, as referred to above, in its letter of 13 July 2016, his solicitor asserted that if the claim notice was invalid, it followed that there was no notice and no costs are payable. I consider that there is no merit in this suggestion. A tenant who serves what turns out to be an invalid notice of claim is estopped from denying

liability to pay section 60 costs at any time that he asserts that the notice is valid (see *Plintal SA v 36-48A Edgewood Drive RTM Co Ltd* LRX/16/2007). From the correspondence before me it is clear that the respondent has at all material times proceeded on the basis that the notice is valid and has at no time conceded otherwise.

20. I am satisfied that the applicant is entitled to recover section 60 costs up to 2 June 2016. That is the date that the tenant's notice is deemed withdrawn being six months after the date of service of the counter-notice admitting the right to a new lease (as no application under section 48(1) of the Act was made to this tribunal by that date). The applicant is not entitled to recover section 60 costs for work done after 2 June 2016 by virtue of section 60(3) of the Act.

21. As is made clear in the client care letter provided by the applicant's solicitor the hourly rate charged by him was £250 plus VAT. He is a grade A fee earner. His firm is located in London E17. The guideline rates issued by the Senior Courts Costs Office currently suggest a figure of £201 for a Grade A solicitor in that area. The applicant's solicitor's hourly rate is therefore substantially in excess of the guideline hourly rates. However, I am conscious that those rates have not changed since 2010 and that enfranchisement work is complex work. I also note that this is the hourly rate that was quoted to the applicant in the client care letter and that it appears to have been invoiced for costs calculated at that hourly rate. Crucially, the hourly rate has not been challenged by the respondent. Having regard to all these points I consider the hourly rate to be reasonable.

22. The breakdown of costs sought is as follows:

Description	**Time Spent**
Procuring office copy entries	0.1
Letters in from tenant's solicitors x4	0.4
Letters out to tenant's solicitors x 13	1.3
Letters out to valuer x2	0.2
Letters in to valuer x 2	0.2
Letters to client x 7	0.7
Preparing counter notice and investigating title	1
Considering valuation report	0.5
Preparing application for s.60 costs determination	0.5

23. I consider the time spent perusing office copy entries and the letters received from the tenant's solicitors to be reasonable. Normally I would not consider time spent reading letters received to be recoverable separately from the time spent responding to those letters to be reasonable. However, having regard to the content of these letters, the applicant's solicitors have been modest in the time claimed for letters out. When viewed together I consider the time spent for both letters received and letters out to be reasonable. The same is true of the time spent in relation to letters to and from the valuer.

24. As to the 13 letters sent to the tenant's solicitor I appear to have been provided with copies of all 13 letters. One letter dated 2 December 2015 is a duplicate of another letter sent on the same day and I disallow the cost of that letter as unreasonable. Seven letters post-date 2 June 2016 and are therefore not recoverable by virtue of section 60(3). That leaves five letters and having considered their contents, I allow, as reasonable, the costs of those five letters for this item.

25. I consider that the time spent in respect of the letters to and from the valuer is reasonable as is the time spent considering the counter notice and investigating title and considering the valuation report dated 1 December 2015.

26. I have been provided with copies of the five letters to the applicant and have considered their contents. As two post-date 2 June 2016 their cost is not recoverable by virtue of section 60(3). I allow the costs of the remaining three letters as reasonable.

27. Time spent preparing this application is not recoverable by virtue of section 60(5) and is disallowed.

28. I therefore allow the following costs:

Description	Time Spent (hours)	Time Allowed (hours)
Procuring office copy entries	0.1	0.1

Letters in from tenant's solicitors x4	0.4	0.4
Letters out to tenant's solicitors x 13	1.3	0.5
Letters out to valuer x2	0.2	0.2
Letters in to valuer x 2	0.2	0.2
Letters to client x 7	0.7	0.3
Preparing counter notice and investigating title	1	1
Considering valuation report	0.5	0.5
Preparing application for s.60 costs determination	0.5	0
TOTAL	**4.9**	**3.2**

29. The total legal costs payable by the respondent is therefore 3.2 hours at £250 per hour, namely £800 plus VAT.

30. I consider the costs claimed in respect of the land registry fees and the valuer's costs to have been reasonably incurred. I have been provided with a copy of the valuer's report and an email containing his quoted fee. The report is a detailed report and contains a calculation of the premium payable and I am satisfied that the amount is reasonable for the work has carried out.

31. The tribunal fee is not recoverable by virtue of section 60(5) and is disallowed.

32. I therefore determine that the statutory costs payable by the respondent under s.60 of the Act are:

Legal fees	£800 plus VAT
Land Registry Fees	£24
Valuer's Costs	£650 plus VAT
	£1,474 plus VAT where applicable

Name: Amran Vance **Date:** 8 February 2017

ANNEX 1 - RIGHTS OF APPEAL

1. 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.

2. 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.

3. 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.

4. 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.