



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

Case reference : **LON/00AK/OC9/2019/0173**

Property : **Flat 44 Oakwood Close (and Garage 6), Chase Road, London N14 4JY**

Applicant : **Daejan Properties Limited**

Respondent : **Elliot William Groves**

Type of application : **Costs under section 60 Leasehold Reform, Housing and Urban Development Act 1993**

Tribunal member : **Judge P Korn**

Date of decision : **10th October 2019**

DECISION

Decision of the Tribunal

The costs payable by the Respondent to the Applicant pursuant to section 60 Leasehold Reform, Housing and Urban Development Act (“**the 1993 Act**”) are £4,089.30 (inclusive of VAT).

The application

1. The Applicant has made an application for the determination of the reasonable costs payable under section 60(1) of the 1993 Act and arising out of the Respondent seeking the grant of a new lease following the giving of a notice under section 42 of the 1993 Act.
2. The costs claimed amount to £4,089.30 inclusive of VAT. As per the application itself, this sum comprises legal fees of £3,000.00 inclusive of VAT, valuation fees of £1,020.00 inclusive of VAT, courier fees of £36.30 inclusive of VAT and Land Registry fees of £33.00.

Paper determination

3. In its directions the Tribunal stated that the matter would proceed as a paper track determination (i.e. without an oral hearing) unless either party requested an oral hearing. As neither party has requested an oral hearing, this matter is being dealt with by way of determination on the papers alone.

Applicant’s case

Background

4. The Applicant is the freehold owner of (inter alia) the Property and the Respondent is the long leasehold owner of the Property. On or about 17th September 2018 a Ms Nicky Estelle Nagioff served a Notice of Claim on the Applicant pursuant to section 42 of the 1993 Act seeking to acquire a new lease of the Property. The benefit of that Notice of Claim was then assigned to the Respondent on or about 26th September 2018.
5. On or about 21st November 2018 the Applicant’s solicitors served a counter-notice on the Respondent pursuant to section 45 of the 1993 Act admitting his entitlement to the grant of a new lease. No further correspondence was received from the Respondent, and then on 27th June 2019 the Applicant’s solicitors wrote to the Respondent advising that following the Respondent’s failure to make the appropriate application to the First-tier Tribunal in accordance with section 48 of the 1993 Act within the statutory time limit the Notice of Claim was deemed to have been withdrawn.

6. No agreement was reached as to the statutory costs payable to the Applicant, and accordingly on or about 1st August 2019 the Applicant applied to the First-tier Tribunal seeking a determination as to the costs payable.

Details of the costs incurred

7. The Applicant's written submissions contain a detailed statement and breakdown of costs incurred together with copies of supporting invoices, and these have also been sent to the Respondent's solicitors. The Applicant has also explained its basis of charging and has referred the Tribunal to some recent cases.

Lack of response from Respondent

8. The Respondent has not submitted a statement of case in response to the Applicant's submissions. The Applicant submits that on the basis that no objections have been raised the Applicant's position is undisputed.

The relevant legal provisions

9. Section 60(1) and (2) of the 1993 Act read as follows:-

“(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.”

Tribunal’s decision

10. Section 60 allows the landlord to recover certain costs where a notice has been served by the tenant under section 42. Section 60 does not limit this right to a situation in which the service of the notice leads to the granting of a new lease, and therefore there is no reason in principle why the Applicant should not be able to claim costs under section 60 simply because the lease was not completed.
11. The Applicant has provided a detailed account of the background to the application and detailed submissions as to the payability of the costs sought in its application. By contrast the Respondent has not engaged with this process at all.
12. It is possible that the Respondent might have been able to raise valid questions on some elements of the costs sought by the Applicant, but the Respondent has raised no questions at all. The Tribunal still needs to be satisfied on the balance of probabilities that the costs sought are payable under section 60(1), but having considered the Applicant’s submissions and in the absence of a challenge by the Respondent I am satisfied on the balance of probabilities that the costs sought are payable in their entirety. Accordingly the costs sought are payable in full.

Name: Judge P Korn

Date: 10th October 2019

RIGHTS OF APPEAL

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

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