

2683



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

Case Reference : **CHI/00ML/OC9/2013/0003**

Property : **Flat 12 Somerhill Court, Holland Road, Hove, East Sussex, BN3 1RQ**

Applicant : **Somerhill Court Hove Limited**

Representative :

Respondent : **Jason Mark Baines**

Representative :

Type of Application : **Costs of new lease : Sections 60 and 91 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act")**

Tribunal Members : **Judge P R Boardman (Chairman) and Mr K M Lyons FRICS**

Date and venue of Hearing : **Decided on the papers without a hearing**

Date of Decision : **9 July 2013**

DECISION

Introduction

1. This application by the Applicant/Landlord is for the Tribunal to determine the costs to be paid by the Respondent/Leaseholder incurred in connection with a notice of claim for a new lease under section 42 of the 1993 Act relating to the property
2. The Tribunal issued directions on 13 February 2013, including directions that :
 - a. it intended to proceed to determine the matter on the basis of written representations and without an oral hearing pursuant to regulation 13 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 as amended
 - b. the Applicant/Landlord should provide full details of its claim by 15 March 2013
 - c. the Respondent/Leaseholder should serve points of dispute by 12 April 2013
3. The Applicant/Landlord served a statement and documents in accordance with the directions
4. On 24 April 2013, following a call to the Tribunal by the Respondent/Leaseholder, the Tribunal sent to the Respondent/Leaseholder copies of the application form and supporting documents, the Tribunal's directions dated 13 February 2013, and the statement by the Applicant/Landlord served in accordance with the directions, and extended the time for the Respondent/Leaseholder to serve points of dispute to 22 May 2013
5. The Tribunal has received no points of dispute, or any subsequent correspondence, from the Respondent/Leaseholder despite further letters from the Tribunal, including a letter dated 6 June 2013 stating that in the event that no submissions were received the matter would be determined on the evidence submitted by the Applicant/Landlord only

6. Documents

7. The documents before the Tribunal are the documents in the Applicant/Landlord's bundle pages 1 to 46

8. Statutory provisions

9. Section 60 provides as follows :

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

Statement by Claire Lisa Whiteman 6 February 2013

10. Ms Whiteman stated that the sequence of events was as follows :
 - a. the Applicant/Landlord was the freeholder of the property
 - b. the Respondent/Leaseholder served a claim notice under section 42 of the 1993 Act dated 14 June 2012

- c. correspondence followed, and the Respondent/Leaseholder deduced title
 - d. on 24 July 2012 the Applicant/Landlord served a counter notice under section 45 of the 1993 Act
 - e. on 15 October 2012 the solicitors for the Respondent/Leaseholder advised that they were no longer instructed
 - f. further correspondence followed, but the Respondent/Leaseholder did not respond
 - g. by virtue of section 53 of the 1993 Act the Respondent/Leaseholder's notice was deemed withdrawn on 26 January 2013
11. The Applicant/Landlord's schedule of costs dated 6 February 2013 is attached as an appendix to this decision
 12. Documents in the Applicant/Landlord's bundle of documents included correspondence, a copy of an invoice from Austin Gray dated 5 July 2012 for £495 plus VAT, and an accounts record showing the sum of £24 for Land Registry fees

The Tribunal's findings

13. General findings

14. The Tribunal makes the following general findings about costs which are payable by a leaseholder under section 60 of the 1993 Act :
 - a. in the first place, section 60 does not seek to limit those costs which are payable by a landlord in relation to a claim for a new lease, but seeks only to identify such of those costs which are payable by the leaseholder
 - b. in the second place, it would have been very easy for Parliament to have provided for the leaseholder to have been liable for all the landlord's costs, and then on an indemnity basis, if that had been Parliament's intention
 - c. in the third place, and on the contrary, subsection 60(1) provides only that the Applicant is to be liable for :
 - reasonable costs
 - of and incidental to the specific matters set out in subparagraphs (a) to (c) of section 60(1)
 - to the extent that they have been incurred by the landlord in pursuance of the claim notice under section 42 of the 1993 Act
 - d. in the fourth place, the test of reasonableness is that set out in subsection 60(2)
 - e. in the fifth place, the list of specific matters set out in subparagraphs (a) to (c) is exhaustive, so that if an item of costs does not relate to one of those matters it is not payable by the

leaseholder, whether or not the item of costs is reasonable

15. Charging basis

16. The Tribunal finds that the Applicant/Landlord's schedule of costs shows that :

- a. time had been charged in 6-minute units
- b. the hourly rate charged was £225 an hour for Claire Whiteman and £125 an hour for Adam Combloom

17. The Tribunal finds, from its collective knowledge and expertise in these matters, that, in the circumstances of this particular case :

- a. the claimed 6-minute charging unit was reasonable
- b. the hourly rates claimed were reasonable

18. There is no evidence before the Tribunal about whether or not the Applicant/Landlord is registered for VAT, but, if not, then VAT will be added to the figures found by the Tribunal to be payable by the Respondent/Leaseholder

19. Fees for preparing counter notice £67.50

20. The Tribunal finds that :

- a. this is not a specific matter listed in subsection 60(1) in respect of which the leaseholder is liable for the landlord's costs
- b. the cost of this item cannot be "of or incidental to" any investigation referred to in subsection 60(1)(a) because by its very nature the counter-notice can be served only after that investigation
- c. it is not "of or incidental to" any of the other matters referred to in subsection 60(1)
- d. the Respondent/Leaseholder is not liable for this item

21. Letters and other "attendances on documents"

22. The Tribunal notes that the Respondent/Leaseholder has not challenged any of the items claimed, and the Tribunal finds that each of the items are, in the circumstances of this particular case, reasonable, and are payable by the Respondent/Leaseholder

23. Other expenses

24. The Tribunal finds that the fees of Austin Gray are, in the circumstances of this particular case, reasonable, and that those fees, and the Land Registry fees claimed, are payable by the Respondent/Leaseholder

Appeals

1. A person wishing to appeal against this decision must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to admit the application for permission to appeal
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result which the person is seeking

Dated 9 July 2013

.....
Judge P R Boardman
(Chairman)



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

Case Reference : **CHI/00ML/OC9/2013/0003**

Property : **Flat 12 Somerhill Court, Holland Road, Hove, East Sussex, BN3 1RQ**

Applicant : **Somerhill Court Hove Limited**

Representative :

Respondent : **Jason Mark Baines**

Representative :

Type of Application : **Costs of new lease : Sections 60 and 91 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the 1993 Act”)**

Tribunal Members : **Judge P R Boardman (Chairman) and Mr K M Lyons FRICS**

Date and venue of Hearing : **Decided on the papers without a hearing**

Date of Decision : **9 July 2013**

Appendix

**LANDLORD'S SCHEDULE OF COSTS
SECTION 42 NOTICE OF CLAIM TO EXERCISE RIGHT**

Notice Date:	14 June 2012
Property:	12 Somerhill Court, Holland Rd, Hove, BN3 1RQ
Tenant:	Jason Mark Baines
Landlord:	Somerhill Court Hove Limited

DESCRIPTION OF FEE EARNERS:-

Name	Grade	Hourly Rate
Claire Whiteman	A	225.00
Adam Cornbloom	D	125.00

Item	No.	Rate	Hours	Amount	Total
Letters to Client					
Claire Whiteman	8		48	225.00	180.00
Letters to Other Side					
Claire Whiteman	4		24	225.00	90.00
Letters to Valuer					
Claire Whiteman	3		18	225.00	67.50
Attendances on documents					
Claire Whiteman					
<i>Considering s.42 notice and title docs</i>	5		30	225.00	112.50
<i>Considering lease</i>	2		12	225.00	45.00
<i>Preparing counter-notice</i>	3		18	225.00	67.50
<i>Considering valuation</i>	1		6	225.00	22.50
Adam Cornbloom					
<i>Considering notices and title docs</i>	4		24	125.00	50.00
Other Expenses					
Vatable					
<i>Valuation fee</i>					495.00
Non-Vatable					
<i>Land Registry fee</i>					24.00
SUB TOTAL					1,154.00
		VAT on Solicitors' fees	20%		127.00
		VAT on other expenses	20%		99.00
GRAND TOTAL					1,380.00

The costs stated above do not exceed the costs which the Landlord is liable to pay in respect of the work which this statement covers. Other expenses have been incurred in the amounts stated above and will be paid to the persons stated.

Dated: 6-2-13

Signed: 

Name of Firm of Solicitors: Dean Wilson LLP

Name of Partner: Claire Whiteman

For the Party: Landlord

Date	Fee Earner	Activity	Recorded				Unbilled:				Narrative
			Hrs:mins	Items	Cost	Fees	Hrs:mins	Items	Cost	Fees	
21/06/12	CLW	LETTER TO OTHER SIDE	0:06		22.50	22.50	0:06		22.50	22.50	
21/06/12	CLW	PREPARATION	0:06		22.50	22.50	0:06		22.50	22.50	
21/06/12	CLW	LETTER TO CLIENT	0:06		22.50	22.50	0:06		22.50	22.50	
22/06/12	CLW	LETTER TO CLIENT	0:06		22.50	22.50	0:06		22.50	22.50	
27/06/12	CLW	PREPARATION	0:12		45.00	45.00	0:12		45.00	45.00	checking notice before inst valuer against oces etc received today
27/06/12	CLW	LETTER	0:06		22.50	22.50	0:06		22.50	22.50	inst to expert
29/06/12	CLW	PREPARATION	0:06		22.50	22.50	0:06		22.50	22.50	considering lease terms re Insurance
29/06/12	CLW	LETTER	0:06		22.50	22.50	0:06		22.50	22.50	to expert re lease
09/07/12	CLW	LETTER	0:06		22.50	22.50	0:06		22.50	22.50	
09/07/12	CLW	PREPARATION	0:06		22.50	22.50	0:06		22.50	22.50	considering valuation to advise
16/07/12	CLW	LETTER TO OTHER SIDE	0:06		22.50	22.50	0:06		22.50	22.50	
16/07/12	CLW	PREPARATION	0:18		67.50	67.50	0:18		67.50	67.50	
24/07/12	CLW	PREPARATION	0:06		22.50	22.50	0:06		22.50	22.50	
06/08/12	CLW	LETTER TO CLIENT	0:06		22.50	22.50	0:06		22.50	22.50	
21/08/12	CLW	LETTER	0:06		22.50	22.50	0:06		22.50	22.50	
28/08/12	CLW	LETTER TO CLIENT	0:06		22.50	22.50	0:06		22.50	22.50	AND CHECKING TIMESCALES
26/09/12	CLW	LETTER TO CLIENT	0:06		22.50	22.50	0:06		22.50	22.50	
26/09/12	CLW	LETTER TO OTHER SIDE	0:06		22.50	22.50	0:06		22.50	22.50	
15/10/12	CLW	LETTER TO CLIENT	0:06		22.50	22.50	0:06		22.50	22.50	
22/10/12	CLW	DICTATION	0:06		22.50	22.50	0:06		22.50	22.50	
30/10/12	AFC	PREPARATION	0:30		62.50	62.50	0:30		62.50	62.50	Part 8 Claim Form
31/10/12	CLW	PREPARATION	0:06		22.50	22.50	0:06		22.50	22.50	
01/11/12	AFC	PREPARATION	0:06		12.50	12.50	0:06		12.50	12.50	Amendments to Part 8 Claim Form
01/11/12	AFC	LETTER TO CLIENT	0:06		12.50	12.50	0:06		12.50	12.50	
01/11/12	AFC	LETTER TO COURT	0:06		12.50	12.50	0:06		12.50	12.50	
12/11/12	AFC	LETTER TO CLIENT	0:06		12.50	12.50	0:06		12.50	12.50	
06/12/12	CLW	PREPARATION	0:06		22.50	22.50	0:06		22.50	22.50	
06/12/12	AFC	PREPARATION	0:18		37.50	37.50	0:18		37.50	37.50	Schedule of Costs
06/12/12	AFC	LETTER TO OTHER SIDE	0:06		12.50	12.50	0:06		12.50	12.50	
06/12/12	AFC	LETTER TO COURT	0:06		12.50	12.50	0:06		12.50	12.50	
19/12/12	AFC	TEL TO COURT	0:06		12.50	12.50	0:06		12.50	12.50	
02/01/13	CLW	PREPARATION	0:06		22.50	22.50	0:06		22.50	22.50	
14/01/13	CLW	PREPARATION	0:24		90.00	90.00	0:24		90.00	90.00	skeleton
14/01/13	CLW	LETTER TO OTHER SIDE	0:06		22.50	22.50	0:06		22.50	22.50	
14/01/13	CLW	PREPARATION	0:06		22.50	22.50	0:06		22.50	22.50	costs
4/01/13	CLW	LETTER TO COURT	0:06		22.50	22.50	0:06		22.50	22.50	
7/01/13	CLW	LETTER	0:06		22.50	22.50	0:06		22.50	22.50	
7/01/13	AFC	IN COURT	0:12		25.00	25.00	0:12		25.00	25.00	
7/01/13	AFC	TRAVEL TO HEARING	0:12		25.00	25.00	0:12		25.00	25.00	
7/01/13	AFC	PREPARATION	0:12		25.00	25.00	0:12		25.00	25.00	Preparing for Hearing.
7/01/13	AFC	WAITING FOR HEARING	0:30		62.50	62.50	0:30		62.50	62.50	
10/01/13	CLW	LETTER TO OTHER SIDE	0:06		22.50	22.50	0:06		22.50	22.50	

Accounts Enquiry - matter: Somerhill Court Hove Ltd / 12 Somerhill Court, Hove (24507/11)

Date	Fee Earner	Activity	Recorded			Unbilled:			Fees	Narrative
			Hrs:mins	Items	Cost	Hrs:mins	Items	Cost		
22/01/13	CLW	LETTER TO OTHER SIDE	0:06		22.50	0:06		22.50	22.50	
22/01/13	CLW	LETTER TO CLIENT	0:06		22.50	0:06		22.50	22.50	
30/01/13	AFC	PREPARATION	0:18		37.50	0:18		37.50	37.50	Schedule of Costs
30/01/13	AFC	PREPARATION	0:12		25.00	0:12		25.00	25.00	Considering file and preparing LVT app form.
Totals:			6:48		1220.00	6:48		1220.00	1220.00	