

4427



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

**Case Reference** : LON/00AJ/OC9/2016/0467

**Property** : 18 Hill Court, Hanger Lane, London  
W5 3DF

**Applicant** : Mr Seyed Mostafavi

**Representative** : Mr S Mostafavi In Person

**Respondent** : Dorrington Residential Limited

**Representative** : Pemberton Greenish LLP  
(Not represented at the hearing)

**Type of Application** : Section 91 Leasehold Reform,  
Housing and Urban Development  
Act 1993 – determination of costs  
payable pursuant to section 60

**Tribunal Members** : Judge John Hewitt  
Mr Richard Shaw FRICS

**Date and venue of  
Hearing** : 18 January 2017  
10 Alfred Place, London WC1E 7LR

**Date of Decision** : 27 January 2017

---

**DECISION**

---

10. At the hearing the applicant appeared in person to present his case. The respondent was neither present nor represented. In the light of the letter mentioned in paragraph 9 above we were satisfied that the respondent had been notified of the hearing and that it was in the interests of justice to proceed with the hearing in the absence of the respondent, in accordance with rule 34.

**Background to the claim to a new lease, the facts of which we accept**

11. The applicant (Mr Mostafavi) told us that Hill Court is a block of 32 two bedroom and one bathroom flats of fairly standard size. It stands adjacent to Cresta Court a block of 40+ similar flats also owned by the respondent.
12. Mr Mostafavi sought a voluntary extension of his lease of flat 18 and was quoted terms. The financial terms were acceptable to him but the respondent wished to include in the proposed new lease provisions requiring the lessee to obtain landlord's written consent to assign the lease or sublet the flat. These provisions were not in the current lease. Mr Mostafavi told us he is an investor who had acquired the lease with a view to subletting the flat at market rent, and the proposed changes to the lease were not acceptable to him.
13. Thus, the voluntary lease extension did not progress and instead Mr Mostafavi exercised his statutory right to a new lease. His entitlement to a new lease was admitted.
14. Mr Mostafavi said that the draft new lease submitted by the respondent was in quite a different format to his existing lease and it included changes to the alienation provisions which, he says, the respondent was well aware were not acceptable to him. In consequence, there was quite a deal of backwards and forwards between the respective solicitors on lease terms. In the absence of agreement Mr Mostafavi made an application to the tribunal for the lease terms in dispute to be determined. The application was listed for a hearing on a Tuesday. At about 4pm on the day before, the respondent's solicitors called him to say that the respondent withdrew the alienation provisions in dispute so that the hearing did not need to go ahead.
15. Shortly thereafter the terms of the new lease were agreed and the matter was completed.

**The basis of statutory costs**

16. So far as material, 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*

Cresta Court comprise a development of 72 + modest flats where sales and lease extensions occur routinely.

20. We accept that it is not unreasonable for the respondent to engage external solicitors with expertise in this area to act for it on a lease extension. We also accept that it is not unreasonable for the respondent to engage a firm with which it has an established connection, and which firm has a good spread of fee-earners ranging from highly skilled partners and associates through to lesser qualified staff and paralegals.
21. We do not consider it reasonable for the respondent to have engaged a fee-earner at a charge-out rate of £330 for this lease extension. We find that if the respondent was to be responsible for the legal costs itself, it would not have incurred the costs of a fee-earner at a charge-out rate of any more than £280.
22. The applicant's statement of case challenged in some detail quite a few of the claims to time, and sought further detail, but the respondent's statement of case does not provide that detail.
23. We also bear in mind that the starting point is that the applicant is entitled to a new lease in the same terms, subject to any modifications which may be permitted by virtue of section 57 of the Act.
24. It appears that the respondent has adopted a new house style lease for this development. Instead of producing to the applicant a copy of the existing lease showing any amendments sought pursuant to section 57, the respondent's solicitors produced the current house style. Inevitably this entailed the applicant's solicitor in having to undertake much more work than ought to have been the case, because he had to undertake a detailed comparison of the two documents which were quite different in format.
25. Further, the new house style draft submitted contained new alienation provisions which the respondent, and its solicitors knew, or ought to have known, were unacceptable to the applicant because those same provisions had been rejected by him when the parties were negotiating the possibility of a voluntary lease extension, as opposed to a statutory lease extension.
26. Most, if not all, of the subsequent time spent by both parties over the terms of the new lease focussed on these provisions, which were, unilaterally dropped by the respondent late in the afternoon before a tribunal was to determine the terms of the lease. We find that the time claimed in respect of the new lease terms was unreasonably incurred and would not have been incurred if the respondent was personally liable for the costs incurred.
27. Thus, in respect items 9-15 in Appendix A we have allowed a total of one hour for negotiating lease terms which we find to be more than

£1,000 + VAT, making full use of the information and data already with the party and his valuers.

35. We have given careful consideration to the valuation costs claimed to have been incurred. These were set out in a schedule at [5]. We have used that to prepare Appendix B which is attached to this decision. In paragraphs 1-4 of his statement of case the applicant has challenged several of the amounts of time claimed. For example, travel to/from the inspection and the amount of time taken on the inspection itself. For the inspection the claim is for 30 minutes. Initially Carter Jonas informed the applicant the inspection should take '5-10 minutes'. The applicant's tenant informed him that the surveyor was only there for a few minutes. In paragraph's 1 and 2 of the respondent's response at [37] simply fails to address the challenges adequately and no evidence is provided to support the time claimed for. We find that any more than 1 hour for travel and 15 minutes for the inspection was unreasonably incurred.
36. Given the basic information readily available to the respondent and its valuer, we find that the claim for 2 hours on research was unreasonably incurred and would not have been incurred if the respondent was paying the fees itself. For the same reasons we also reject the claim for 1 hour report writing and checking the calculations. As we have already mentioned sub section 60(1)(b) concerns the costs of a valuation, not a report.
37. We have tested the finding set out in paragraph 34 above by assessing a reasonable amount of time required on the various tasks at a charge-out rate of £250 and we arrive at a figure of just below £1,000.
38. In the circumstances and for these reasons we determine that the valuation costs payable by the applicant to the respondent amount to £1,200 made up as to:

Valuation fees	£1,000.00
VAT @20%	<u>£ 200.00</u>
	<b>£1,200.00</b>

Judge John Hewitt  
27 January 2017

## Appendix A

LON/00AJ/OC9/2016/0467

Item No.	Date	Brief description	Units	Sum	Units	Sum	Tribunal comments
			Claimed	Claimed	Allowed	Allowed	
1	14.10.15	Considering s42 notice etc	6	£ 198.00	6	£ 112.00	Time claimed reasonable
2	20.10.15	Email to valuer	1	£ 33.00	1	£ 28.00	As above
3	02.11.15	Letters out	5	£ 165.00	5	£ 140.00	As above
4	04.11.15	Email to A	1	£ 33.00	1	£ 28.00	Conceded by A
5	11.11.15	Considering valuer's report, investigating the claim and status of A, reporting to R on matters to include in counter-notice	13	£ 429.00	10	£ 280.00	Time claimed unreasonable
6	03.12.15	Checking A's title, serving counter-notice and reporting to R	4	£ 132.00	2	£ 56.00	Time claimed unreasonable, A's title already checked see 5 above
7	23.05.16	Sending further copy draft lease to A	1	£ 33.00	1	£ 28.00	Conceded by A
8	02.06.16	Email to A re alienation provisions	1	£ 33.00	1	£ 28.00	Reasonable
9	06.09.16	Correspondence on amends to draft lease	3	£ 99.00			
10	07.09.16	As above	1	£ 33.00			
11	08.09.16	As above	4	£ 132.00			
12	09.09.16	As above	1	£ 33.00			
13	16.09.16	As above	3	£ 99.00			
14	21.09.16	As above	3	£ 99.00			
15	22.09.16	As above	2	£ 66.00	10	£ 280.00	Allowed to cover items 9-15
16	26.09.16	Sending revised and agreed draft lease to A	4	£ 132.00	2	£ 56.00	Time claimed unreasonable
17	03.10.16	Prep engrossments and mailinf them out	3	£ 99.00	3	£ 84.00	Reasonable
18	06.10.16	Prep completion statement	5	£ 165.00	2	£ 56.00	Straightforward task
19	07.10.16	Call to A and sending him completion statement	2	£ 66.00	2	£ 56.00	Reasonable
20		Anticipated time	10	£ 330.00	2	£ 56.00	No details provided ? Completion
		<b>Totals</b>		<b>£ 2,409.00</b>		<b>£ 1,288.00</b>	

## Appendix B

LON/00AJ/OC9/2016/0467

Task	Time	Fees	Tribunal Comments
	Claimed	Claimed	
Travel to/from inspection	1.5 hrs	£ 562.50	Unreasonable cost and time, 1.0 hr quite sufficient
Inspection	0.5 hrs	£ 187.50	Unreasonable costs and time 0.25 hrs quite sufficient
Research on comparables	2.0 hrs	£ 750.00	As above 0.5 hrs quite sufficient
Reading legal documents	0.5 hrs	£ 187.50	Time reasonable but cost unreasonable
Producing calculations	0.5 hrs	£ 187.50	As above
Report writing and checking calculations (By Associate)	1.0 hr	£ 250.00	Time unreasonable, a valuation was required, not a report
Report printing, copying and scanning	0.5 hrs	£ 75.00	None of these activities was reasonably required
<b>Total</b>		<b>£ 2,200.00</b>	