

Y TRIBIWNLYS EIDDO PRESWYL  
RESIDENTIAL PROPERTY TRIBUNAL  
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0015/07/24

In the matter of 75 Halliard Court, Barquentine Place, Atlantic Wharf, Cardiff, CF10 4NH

In the matter of an Application under Section 91(2)(d) of the Leasehold Reform Housing and Urban Development Act 1993 ("LRHUDA").

APPLICANTS                Brightsplit Limited

RESPONDENTS            David John Norris and Sian Norris

**DECISION ON COSTS**

**The Tribunal determines that the Applicants reasonable costs properly recoverable from the Respondent are a total of £2452.10 including vat.**

**The Respondent has already paid a deposit of £1200 to the Applicant so that the balance of £1252.10 is payable.**

**BACKGROUND**

1. This case relates to the Respondent's attempts to extend the lease of their flat and the service of three separate s.42 notices upon the Applicant by the solicitor acting for the respondent.
2. The three notices were dated 7<sup>th</sup> February 2022, 6<sup>th</sup> May 2022 and 6<sup>th</sup> February 2023.
3. For the purposes of this decision it is noted that all the notices were invalid and were withdrawn or deemed to have been withdrawn.
4. It is not necessary for the Tribunal to analyse the reasoning behind this, as it is not in dispute.
5. The Applicant has applied to the Tribunal under s.91(2)(d) LRHUDA for a determination of the reasonable costs payable under s.60 of LRHUDA.
6. Section 60 of the Act provides as follows:  
"60. - Costs incurred in connection with new lease to be paid by tenant.

(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 purpose 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Where by virtue of any provision of this Chapter the tenant's notice ceases to have effect, or is deemed to have been withdrawn, at any time, then (subject to subsection (4)) the tenant's liability under this section for costs incurred by any person shall be a liability for costs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."

7. The Applicant's solicitor has submitted to the Tribunal a detailed Statement of Case dated 7<sup>th</sup> August 2023, subject to the correction contained in an email to the Tribunal dated 27<sup>th</sup> September 2024.

8. The Respondent's solicitor has submitted to the Tribunal a concise Statement of Case in Response, the exact date in August 2023 is unclear, although the date has no bearing on this decision.

9. The Respondent's case falls into two separate categories as set out in The Statement of Case in Response:

**(1)**

" 2. An application was made by the Respondents on 8<sup>th</sup> August 2022 to determine the terms of the Respondent's acquisition and was withdrawn on 2<sup>nd</sup> November 2022 on hearing after submissions were made by both parties.

3. No application was made by the applicants in the course of those proceedings in respect of costs, and no order was made by the Tribunal in respect thereof.

4. Those proceedings were thereafter concluded with no order for costs in the Applicant's favour.

5. It is denied that the Applicant is entitle (sic) to the costs as claimed or at all.

**(2)**

"If the Tribunal is minded to grant costs, the costs are excessive, and it is submitted that costs should be limited to a charging rate of £208.00 per hour and no more than two hours spent. The Respondents submit that the Applicant should receive no more

than £582.40 plus VAT representing 4 letters, 4 calls and 2 hours preparation at £108.00 per hour as opposed to a claim of £,372.10 of the distribution claim only the Land Registry fee is accepted, and having received a deposit of £1,200 should remit the balance to the respondents. No claim has been made for Surveyors Fees”.

10. The Tribunal is satisfied that it has the power to determine the reasonable costs in this matter and an application has been made under s.91(2)(d) LRHUDA for these to be determined. The application includes reference to the surveyor’s fees.
11. An application was made in August 2022 to the Tribunal. The Tribunal requested that the parties make submissions in relation to jurisdiction after which the matter was withdrawn. As such it was not necessary for the Tribunal at the time to issue a decision or consider the question of costs.
12. The Tribunal is satisfied that the liability for the Respondent to pay the Applicant’s reasonable costs arises clearly under s.60 LRHUDA. No specific order of the Tribunal is required.
13. In the experience of the Tribunal costs such as these are routinely paid by a defaulting party following service of say a defective notice without an order from a tribunal.
14. The Tribunal is satisfied that the serving of s.42 notices and advising clients in this area of the law is a specialised and at times technical area of law. In the experience of the Tribunal, it is a litigious area of the law and drafting and validity points are often taken.
15. The difficulties are amply demonstrated in this case by the Respondent having served three notices, none of which have been valid. The work justifies the use of a senior solicitor experienced in this area of the law.
16. The Respondent has not provided any evidence to support an hourly rate of £108 per hour and in the judgment and experience of the Tribunal this is far below what any competent senior solicitor would charge as an hourly rate for a matter such as this. The rate suggested by the Respondent is below that which a trainee solicitor, or paralegal, would currently be charged out in a private paying matter in the judgment and experience of the Tribunal.
17. In the Applicant’s Statement of Case there is reference to the decision in the case of Sinclair Gardens Investments (Kensington) Limited and Paul Kenneth Charles Wisbey & Lesley Barbara Mary Wisbey [2016] UKUT 0203 (LC).
18. This was a case decided in 2016 some 8 years ago regarding costs in relation to a s.42 notice, as is the present case.
19. The Sinclair Gardens Investments case confirmed that this was a specialised area of law and that an hourly rate of £250 per hour was reasonable.

20. Taking all of the above into account and that the Sinclair Gardens Investment account was decided 8 years ago, (and allowing for inflation), the Tribunal is satisfied that an hourly rate of £285 is reasonable.
21. The Tribunal has considered the Applicants Schedule of Legal Costs provided.
22. The total time spent dealing with the three notices amounts to 3.9 hours, ie 1.3 hours per notice.
23. The work required by the Applicant's solicitors would include in relation to each notice, perusal and consideration of the notice, consideration of whether the Respondent was a qualifying tenant, advising and taking instructions from the client, drafting a counternotice, considering valuation advice and all the necessary correspondence by letter, email and telephone calls.
24. Put simply, the Tribunal is satisfied that a total of 3.9 hours for all of this work dealing with the three notices, all of which were invalid for different reasons, falls well within the range of what is a reasonable amount of time.
25. In the judgment and experience of the Tribunal a figure well in excess of 3.9 hours could be justified and it might be said that the Respondent has got off lightly in the circumstances.
26. The Respondent has not disputed the amount of the valuer's invoice of dated 13<sup>th</sup> February 2023 and the Tribunal is satisfied in its judgment and experience that the fee of £900 + vat falls well within the range of what is reasonable for such advice.
27. The Respondent has referred in the Statement of Case in Response "of the distribution claim only the Land Registry fee is accepted". The Tribunal assumes that it should say disbursements and it appears that the Respondent is objecting to the costs "Postage Special/Signed For".
28. The Law Society Legal Handbook Leasehold Enfranchisement and the Right to Manage (Third Edition) ("the Handbook") which also deals with lease extensions states "Service of notices is a perennial area for dispute and difficulty. Failure to serve a notice correctly can have disastrous consequences".
29. The Handbook suggests that to avoid such difficulties service by first class post and recorded delivery is an option.
30. Accordingly, the Tribunal is satisfied that in this litigious area of law it is prudent to serve notices by first class post and also recorded delivery and as such the costs of £22.30 for the service of the three counter notices is reasonable.

Dated this 24<sup>th</sup> day of October 2024

Tribunal Judge R Phillips