3005

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	LON/00AZ/OC9/2014/0205
Property	:	Flat 31, Dalton House, John Williams Close, London SE14 5XF
Applicant	:	Paul John Bradley and Katherine Louise Bradley
Representative	:	Leeds Day
First Respondent	:	Chime Properties Limited
Representative	:	Maxwell Winyard
Second Respondent	:	Eastgate SE14 (Blocks E,F,G and H) Management Company Limited
Representative	:	None
Type of Application	:	Enfranchisement
Tribunal Members	:	Mr Robert Latham
Date and venue of Hearing	:	25 March 2015 at 10 Alfred Place, London WC1E 7LR
Date of Decision	:	27 March 2015

DECISION

The Tribunal finds that the following costs sought by the Second Respondent are payable by the Applicant: Legal Costs of £350 + VAT.

Introduction

1. This is an application under section 91 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act"). On 30 October, Paul and Katherine Bradley ("the tenants") issued an application to the tribunal, to determine four issues: (a) the premium to be paid to Chime Properties Limited who is both landlord and freeholder ("the landlord"); (b) the terms of any new lease between the parties; (c) the landlord's costs; and (d) the costs of Eastgate SE14 (Blocks E,F,G and H) Management Company Limited ("the management company").

2. The following issues have been agreed: (a) the premium to be paid for the lease extension; (b) the terms of the lease; and (c) the landlord's costs (£1,497). The only outstanding issue is the costs payable by the tenants to the management company.

3. On 30 January 2015, the Tribunal issued directions for the outstanding issue of costs to be dealt with on the papers. In a letter dated 3 February 2015, the management company set out their claim for costs. The letters sets out a detailed schedule of costs which totals £450 (exc VAT). However, it states that it is willing to limited their claim to £350 + VAT. The schedule refers to "administration charges" of £150. However, these do not seem to be part of the current claim for costs and no particulars have been provided.

4. By a letter dated 16 February 2015, the tenants sets out their case in response. They propose that costs should be limited to £122.50.

5. There has been some confusion as a result of which the tribunal issued further directions on 2 March and 18 March. It is common ground that the management company is a "relevant person" to the application pursuant to Section 60(6) of the Act and that the Tribunal has jurisdiction to determine the outstanding claim for costs, albeit that the costs payable by the tenants to the landlord have been agreed.

The Statutory Provisions

6. Section 60 provides, insofar as relevant for the purposes of this decision:

> "(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—
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> (a) any investigation reasonably undertaken of the tenant's right to a new lease;
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> (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.

.....

(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... or any third party to the tenant's lease."

The Principles

7. *Drax v Lawn Court Freehold Limited* [2010] UKUT 81 (LC) dealt with costs under section 33 of the 1993 Act, rather than section 60, but the principles established in *Drax* have a direct bearing on costs under section 60. In summary, costs must be reasonable and have been incurred in pursuance of the section 42 notice in connection with the purposes listed in sub-paragraphs 60(1)(a) to (c). The nominee purchaser is also protected by section 60(2), which limits recoverable costs to those that the lessor would be prepared to pay if he were using his own money rather than being paid by the nominee purchaser.

8. This does, in effect, introduce 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 lessor should only receive his costs where it has explained and substantiated them. It does not follow that this is an assessment of costs on the standard basis. That is not what section 60 says, nor is *Drax* an authority for that proposition. Section 60 is self-contained.

The Tribunal's Determination

9. The management company is a relevant person for the purposes of the application for the lease extension. As was held by the Upper Tribunal in

Dashwood Properties Ltd v Beril Prema Chrisostom-Gooch("Dashwood") [2012] UKUT 215 (LC), in respect of intermediate landlords, it is not unreasonable for a management company to carry out an independent investigation of the tenant's right to a new lease. It may be that there are areas of conflict between landlord and managing agent, as a result of which it is open to the management company to carry out its own investigations. It is not incumbent on a management company to rely on the investigations carried out by the competent landlord.

10. The caveat contained in section 60(2) of the Act is there to ensure that the relevant person does not simply incur costs, knowing that those costs will be paid by the lessee, without there being any necessity to do so. Any costs sought must also fall within the scope of sub-paragraphs (a) to (c) of Section 60(1).

11. The Solicitor for the managing agents describes how it has acted for many management companies on leasehold extensions. Issues have arisen, such as whether there has been a change of ownership of the freehold title since the original grant, whether an intermediate lease has been granted in favour of a management company, or whether the reversionary interest in blocks of flats has been transferred separately from the communal areas. The freeholder and the tenant's solicitors may have failed to have correctly draft the lease extension because of dealings in the title subsequent to the original grant. As Solicitor for the managing agent, there is a duty to advise that the lease has been properly drafted.

12. The tenants do not dispute the hourly rate charged by the solicitor for the managing company (£245ph). They rather challenge a number of items of work for which costs are claimed. The Tribunal refer to the numbered Schedule of Costs that they have prepared:

(i) Item 3 (£24.50) and 5 (£24.50): The tenants express surprise that the solicitor should have given an estimate of costs at this stage. The Tribunal disagrees. In any event, the letters further request a copy of the lease plan and leasehold title. These sums are allowed.

(ii) Item 7 (£73.50): The tenants dispute that it was necessary to check the title plans, acknowledge receipt of the Section 42 Notice or to assert that the managing company was a "relevant person". The Tribunal disagrees. The managing agent is an relevant person and was entitled to confirm its interest in the application.

(iii) Item 8 (£24.50). The tenants assert that it was not for the management company to check the validity of the notice. It was rather a matter for the landlord. The landlord had already served the Counter Notice so there was nothing further that the management company could have done. The tribunal agrees and disallows this sum.

(iv) Item 12 (£24.50). The Tribunal is satisfied that this letter relates to the application to the tribunal and is therefore outside the scope of sub-paragraphs (a) to (c). This sum is disallowed.

(v) Item 13 (£24.50): The tribunal disallows this sum for perusing an in-coming e-mail.

(vi) Item 19 (£24.50): The Tribunal agrees that this is a duplication of Item 15. This is therefore disallowed.

(vii) Item 23 (£122.50). This relates to the future costs to be incurred relating to the form of the lease and the execution of the same. The tenants suggest that this is outside paragraphs (a) to (c) and suggest that this is conceded by the managing agents. The managing agents make no such concession, but rather seek to justify their claim for what may be considered to be administrative duties. The Tribunal does not consider that the sum claimed is unreasonable.

13. The Tribunal disallows sums totalling £98.00. However, this merely reduces the sum claimed in the schedule £450 to £352.00. The Solicitors for the managing agents are restricting their claim to £350 + VAT, so this sum is allowed in full. It is a relatively modest sum for the limited checks which the managing agents were entitled to make. The Solicitors have identified in their Schedule a number of items of work which fall outside the scope of sub-paragraphs (a) to (c) and have made no claim for these.

Robert Latham,
Tribunal Judge

27 March 2015