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

Case Reference	:	LON/OOAG/OC9/2016/0234
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Property	:	Flat 12 Allingham Court, Haverstock Hill, London NW3 2AH
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Applicant	:	Penelope Gibbs (leaseholder)
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Representative	:	Lewis Nedas Law
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Respondents	:	Metropolitan Properties (FGC) Ltd
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Representative	:	Wallace LLP (solicitors)
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Type of Application	:	Application under section 91(2)(d) of the Leasehold Reform, Housing and Urban Development Act 1993 ('the Act') to determine the costs payable under section 60 of the Act
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Tribunal Members	:	Patrick M J Casey MRICS
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Date and venue of Hearing	:	The tribunal considered the application on the basis of the papers filed and without an oral hearing on 10 August 2016
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Date of Decision	:	1 September 2016
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DECISIONS

Summary of the decisions

1. It is determined that the landlord is entitled to recover the following costs which are payable by the leaseholder under section 60 of the Act. These are valuer's fees of £969.50 plus VAT of £193.90.

Introduction

2. This is an application for a determination of costs. It is made under section 91(2)(d) of the Leasehold Reform Housing and Urban Development Act 1993. Under section 60 a claimant leaseholder is required to pay the reasonable costs incurred by the landlord in connection with a claim for a new lease.
3. In this matter the applicant is the leaseholder of the subject premises who has exercised her right to seek a new lease under the provisions in Chapter 2, Part I of the Act. The respondent is landlord under the lease. The claimant is represented by Lewis Nedas Law; the landlords are represented by Wallace LLP, a firm of solicitors.
4. Her claim was made in a notice dated 8 August 2014. In response the landlords gave a counter-notice dated 22 October 2014. Their counter-notice admitted the claim but made counter-proposals on the premium and on the proposed terms of the new lease.
5. As the parties failed to reach agreement on the premium to be paid and the terms of the new lease an application was made by the leaseholder to the tribunal for a determination of these disputes.
6. On or about 20 May 2015 terms of acquisition of the new lease were agreed between the parties and the tribunal were advised that the terms had been agreed. As the question of the landlords costs under section 60 had not been resolved directions were given dated 7 June 2016 for the determination of these costs. These directions required the leaseholder to respond to the landlord's claim for costs and for the landlord to prepare a bundle of documents.
7. The directions also stated that the matter should be dealt with without an oral hearing. However, each party was given the option of seeking a hearing. Neither party having sought a hearing, the tribunal considered the application on the basis of the papers filed on 10 August 2016.

The decisions

8. The directed bundles of documents were duly filed with the tribunal and I considered all of the documents in the bundle as part of my consideration of the costs claims. The bundle included the notices, the application, the directions, details of the costs claimed by the landlord and supporting invoices, the landlord's written submissions on costs the leaseholder's reply to the claim and correspondence between the parties.
9. The landlord claims a valuation fee of £969.50 plus VAT.
10. Section 60 provides that the Tenant shall be liable for 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 ...”
11. On receipt of the leaseholder's claim the landlord instructed Messrs Chesterton Humberts to provide valuation advice which they duly did to enable the landlord's proposals as to the premium payable to be included in the counter notice. In the course of subsequent negotiations between the parties valuers not only was the premium agreed but also the landlord's valuer's valuation fee payable under S60 in the sum of £957.90 plus £5.60 for travel and £6.00 for Land Registry searches giving a total of £969.50 plus £193.90 VAT. Chesterton Humberts invoice for this sum sent to and paid by the Landlord is included in the bundle.
12. In the light of this agreement and my own knowledge and experience of the fees charged for valuations under Schedule 13 of the Act it is my decision that this fee is reasonable and payable by the Tenant to the Landlord under the provisions of S60.
13. However in the completion statement produced by Wallace LLP and provided to the Tenant's solicitors on June 2015 the amount stated for the valuation fee inclusive of VAT was £900. The sums demanded in the completion statement were duly paid and the grant of the new lease was completed on 30 July 2015.

14. The error was brought to Wallace LLP's attention on or around 18 August and they wrote to Lewis Nedas Law enclosing the open correspondence between the valuers agreeing the fee and requesting payment of the balance of £263.40. The request was declined on the basis that the sums asked for in the completion statement had been paid in full. Lewis Nedas Law should themselves have been aware of the error as they wrote to Wallace on 13 April 2015 confirming agreement of the premium and the fees though they quoted these as £969.50 inclusive. This may itself have been a misreading by them of the Tenant's valuer's e-mail of 10 April confirming the agreed sums with fees for the freeholder's valuer said to be "£969.50 inc disbursements and VAT".
15. Whether or not the Tenant's argument based on having paid the sums demanded in the completion statement is a defence against paying the difference between the amount paid and the amount determined as payable under S60 by this Tribunal is not a matter within the tribunal's jurisdiction.

Patrick M J Casey, 1 September 2016

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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

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.

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

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix

Section 91

Jurisdiction of leasehold valuation tribunals.

(1)

Any jurisdiction expressed to be conferred on a leasehold valuation tribunal by the provisions of this Part (except section 75 or 88) shall be exercised by a rent assessment committee constituted for the purposes of this section; and any question arising in relation to any of the matters specified in subsection (2) shall, in default of agreement, be determined by such a rent assessment committee.

(2)

Those matters are—

(a)

the terms of acquisition relating to—

(i)

any interest which is to be acquired by a nominee purchaser in pursuance of Chapter I, or

(ii)

any new lease which is to be granted to a tenant in pursuance of Chapter II, including in particular any matter which needs to be determined for the purposes of any provision of Schedule 6 or 13;

(b)

the terms of any lease which is to be granted in accordance with section 36 and Schedule 9;

(c)

the amount of any payment falling to be made by virtue of section 18(2);

[F1(ca)

the amount of any compensation payable under section 37A;]

[F2(cb)

the amount of any compensation payable under section 61A;]

(d)

the amount of any costs payable by any person or persons by virtue of any provision of Chapter I or II and, in the case of costs to which section 33(1) or 60(1) applies, the liability of any person or persons by virtue of any such provision to pay any such costs; and

(e)

the apportionment between two or more persons of any amount (whether of costs or otherwise) payable by virtue of any such provision.

(3)

A rent assessment committee shall, when constituted for the purposes of this section, be known as a leasehold valuation tribunal; and in the following provisions of this section references to a leasehold valuation tribunal are (unless the context otherwise requires) references to such a committee.

(4)

Where in any proceedings before a court there falls for determination any question falling within the jurisdiction of a leasehold valuation tribunal by virtue of Chapter I or II or this section, the court—

(a)

shall by order transfer to such a tribunal so much of the proceedings as relate to the determination of that question; and

(b)

may then dispose of all or any remaining proceedings, or adjourn the disposal of all or any such proceedings pending the determination of that question by the tribunal, as it thinks fit;

and accordingly once that question has been so determined the court shall, if it is a question relating to any matter falling to be determined by the court, give effect to the determination in an order of the court.

(5)

Without prejudice to the generality of any other statutory provision—

(a)

the power to make regulations under section 74(1)(b) of the Rent Act 1977 (procedure of rent assessment committees) shall extend to prescribing the procedure to be followed consequent on a transfer under subsection (4) above; and

(b)

rules of court may prescribe the procedure to be followed in connection with such a transfer.

(6)

Any application made to a leasehold valuation tribunal under or by virtue of this Part must comply with such requirements (if any) as to the form of, or the particulars to be contained in, any such application as the Secretary of State may by regulations prescribe.

(7)

In any proceedings before a leasehold valuation tribunal which relate to any claim made under Chapter I, the interests of the participating tenants shall be represented by the nominee purchaser, and accordingly the parties to any such proceedings shall not include those tenants.

(8)

No costs which a party to any proceedings under or by virtue of this Part before a leasehold valuation tribunal incurs in connection with the proceedings shall be recoverable by order of any court (whether in consequence of a transfer under subsection (4) or otherwise).

(9)

A leasehold valuation tribunal may, when determining the property in which any interest is to be acquired in pursuance of a notice under section 13 or 42, specify in its determination property which is less extensive than that specified in that notice.

(10)

Paragraphs 1 to 3 and 7 of Schedule 22 to the Housing Act 1980 (provisions relating to leasehold valuation tribunals constituted for the purposes of Part I of the M3Leasehold Reform Act 1967) shall apply to a leasehold valuation tribunal constituted for the purposes of this section; but—

(a)

in relation to any proceedings which relate to a claim made under Chapter I of this Part of this Act, paragraph 7 of that Schedule shall apply as if the nominee purchaser were included among the persons on whom a notice is authorised to be served under that paragraph; and

(b)

in relation to any proceedings on an application for a scheme to be approved by a tribunal under section 70, paragraph 2(a) of that Schedule shall apply as if any

person appearing before the tribunal in accordance with subsection (6) of that section were a party to the proceedings.

(11)

In this section—

“the nominee purchaser” and “the participating tenants” have the same meaning as in Chapter I;

“the terms of acquisition” shall be construed in accordance with section 24(8) or section 48(7), as appropriate; and the reference in subsection (10) to a leasehold valuation tribunal constituted for the purposes of Part I of the Leasehold Reform Act 1967 shall be construed in accordance with section 88(7) above.