

4318



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

Case Reference : LON/00AK/OC9/2016/0313

Property : 55 Angel Close,
London N18 2UB

Applicants : Celal Sen
Jyoti Ney Sen

Representative : Martin Shepherd LLP

Respondent : Oakfield Estates Ltd

Representative : Bude Nathan Iwanier solicitors

Type of Application : Costs on extension of lease

Tribunal : Judge Nicol

Date of Decision : 13th October 2016

DECISION

The Tribunal has determined that the disputed valuation fee of £900 plus VAT is payable by the Applicants to the Respondent.

Reasons for Decision

1. The Applicants applied following their request for a new lease for a determination as to the costs recoverable by the Respondent in accordance with section 60 of the Leasehold Reform, Housing and Urban Development Act 1993 which is set out in the Appendix to this decision.

2. The Applicant disputes one item of costs, namely a fee of £900 plus VAT incurred by the Respondent's valuer, Mr Eric Shapiro.
3. In a letter dated 29th September 2016 the Respondent's solicitors give the impression that they believe their legal fees also to be disputed but there is nothing in the original application or in the Applicant's bundle, provided in accordance with the Tribunal's directions, to suggest that. The original application does set out some proposals for new lease clauses and some counter-proposals but it appears that this is no longer relevant.
4. After the Applicants had originally indicated that they wished to extend their lease, Mr Shapiro, on behalf of the Respondent, said he would value the property on payment of a fee of £850 plus VAT in order to try to reach agreement informally without invoking the statutory process. That fee was paid and Mr Shapiro duly provided a valuation.
5. In the event, informal agreement did not happen and the statutory process was invoked. Following the service of the counter-notice on behalf of the Respondent, Mr Shapiro incurred a further valuation fee of £900 plus VAT which he said in a letter dated 7th September 2016 was required in order to refresh his memory and to research comparables "etc.", requiring steps not required for his first valuation.
6. In due course Mr Shapiro negotiated with Mr Andrew Cohen, the valuer for the Applicants. By letter dated 6th June 2016 to Mr Cohen Mr Shapiro said that the premium for the lease extension had been agreed but also stated,

My valuation fee is £900.00 plus VAT as referred to in my letter to you of 7th April 2016 and my client's agreement to the aforementioned premium is conditional upon this fee being agreed.
7. By letter dated 9th June 2016 Mr Cohen responded,

Am pleased to confirm agreement at £77,629 plus your valuation fees of £900 plus VAT and reasonable legal fees.
8. By letter dated 9th June 2016 the Respondent's solicitors wrote to the Applicants' solicitors in terms similar to Mr Shapiro's, also quoting their legal costs of £1,780 plus VAT.
9. By letter dated 14th June 2016 the Applicants' solicitors responded,

Having spoken to our client our client has agreed the premium of £77,529 plus your clients Statutory Section 60 costs as outlined in your letter of the 9th of June ...

10. By letter dated 10th August 2016 the Tribunal indicated that, the parties having reached agreement, the application had been closed subject to the issue of costs. By letter dated 15th August 2016 the Applicants' solicitors took this to mean that the Tribunal had confirmed it has jurisdiction to deal with the issue of costs. The letter of 10th August 2016 was sent out by a Tribunal clerk and is clearly not a judicial decision, quite apart from the fact that it does not refer to jurisdiction.
11. In fact, the Tribunal's position was set out in its letter of 13th September 2016. Unlike the letter of 10th August 2016, that letter expressly stated that the position had been considered by a judge and the contents were the judge's comments, not those of the clerk. It stated that it appears the Tribunal has no jurisdiction because the costs appear to have been agreed in open correspondence without reservation.
12. The Applicants clearly intend the contents of their bundle of documents to address this argument as previously put by the Respondent's solicitors but it is difficult to discern what their argument is precisely. It would appear that the Applicants believe the fee of £900 to be a duplication of the already-paid fee of £850 and that the apparent agreement between the parties is somehow obviated by Mr Cohen's ignorance of the earlier fee.
13. The problem for the Applicants is that their solicitors agreed the fee in open correspondence as well as Mr Cohen and no excuse is proffered for this. The letters quoted at paragraphs 7 and 9 above are clear and unequivocal. The Tribunal is satisfied that the parties reached agreement and the fee of £900 plus VAT is payable as a result.
14. Even if that were not the case, taking into account its own expert knowledge and experience of the process of obtaining a lease extension, the Tribunal accepts Mr Shapiro's argument that his two valuations were at different times and for different purposes so that his second fee is payable in accordance with section 60 of the Act in any event.
15. By letter dated 28th September 2016 the Applicant's solicitors purported to "submit our claim for our costs our client has incurred to date in bringing this claim to the Tribunal". The Tribunal does not understand this as it has no general jurisdiction on costs. No statutory authority or reasons for the award of such costs has been provided, let alone any prior warning of such a claim, and so the Tribunal has no basis for making any such award.

Name: NK Nicol

Date: 13th October 2016

Appendix of relevant legislation

Leasehold Reform, Housing and Urban Development Act 1993

Section 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.