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

Case Reference : BIR/41UF/OC9/2016/0041

Property : 46 Melrose Drive, Perton, Wolverhampton, West Midlands,
WV6 7XQ.

Applicant : Cavernlodge Limited

Representative : Messrs Stevensons Solicitors

Respondent : Ms M. Taylor

Representative : Messrs Woodhouse & Company Solicitors

Type of Application : Determination of the landlord's reasonable costs relating to
the grant of a lease renewal under s.91(2)(d) of The Leasehold
Reform Housing & Urban Development Act 1993

Tribunal Members : I.D. Humphries B.Sc.(Est.Man.) FRICS
Judge D.R. Salter LL.B

Determination : By written representations

Date of Decision : **10th April 2017**

DECISION

Introduction

- 1 This is an application under section 91(2)(d) of The Leasehold Reform Housing & Urban Development Act 1993 ('the Act') to determine the landlord's legal costs and surveyor's fees payable under section 60 of the Act by the tenant in connection with the preparation of a new lease.
- 2 The Applicant is the landlord of 46 Melrose Drive, Perton, Wolverhampton, WV6 7XQ which was let by lease dated 26th March 1982 for a term of 99 years from 29th September 1981.
- 3 On 28th April 2015, the Respondent (tenant) served notice to claim a new lease under section 42 of the Act, and on 22nd June 2015 the landlord served a counter notice admitting the claim.
- 4 The premium for the new lease was agreed by the parties and the landlord incurred consequent legal costs and surveyor's fees. However, it would appear from the papers submitted to the Tribunal that the Respondent's notice of claim was treated in due course as a deemed withdrawal under section 53(1)(b) of the Act. Notwithstanding this apparent outcome, the landlord applied to the First-tier Tribunal by an application dated 14th December 2016 for its reasonable costs to be determined in accordance with section 60 of the Act.
- 5 Directions were issued by a procedural judge on 16th December 2016. Neither party requested a Hearing. Consequently, the matter was determined by the First-tier Tribunal on 16th March 2017 following receipt of written representations from the parties.

The Law

- 6 The items for which costs can be claimed are listed in section 60 of the Act:

'(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.

...

(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 [now the First-tier Tribunal of the Property Chamber] incurs in connection with the proceedings.'

- 7 By section 91(2)(d) of the Act, any dispute as to the amount of such costs is to be determined by a leasehold valuation tribunal, a jurisdiction now transferred to the First-tier Tribunal of the Property Chamber.

Legal Costs

Landlord's Submission

- 8 Messrs Stevensons submitted a statement of case dated 12th February 2017 in which they claimed £910.00 legal fees plus VAT and disbursements. This was also the figure to be found in the application.

The Statement did not include a detailed time sheet or analysis of the fee claimed but in supporting documents, Stevensons submitted a copy of a completion statement with a full time sheet and analysis of the action taken by the firm, the name of the individual responsible for each area of work and their charge out rates. The solicitor in overall charge, G. Stevenson, a Grade B fee earner, charged £265.00 per hour and Andrea Haynes, a licensed conveyancer, £195.00 per hour, plus VAT in each case. The total legal costs in that completion statement were £1,014.63 plus VAT.

- 9 They also cited in support of their claim for legal costs the decision of the Upper Tribunal in *Sinclair Gardens Investments (Kensington) Limited* (CHI/43UD/OC9/2016/005) and *P.K.C. & L.B.M. Wisbey* [2016] UKUT 0203 (LC) which was determined by H.H. Judge Huskinson on 26th April 2016.

Tenant's Submission

- 10 Messrs Woodhouse & Co. submitted a document dated 1st February 2017 in reply to the Applicant's application for costs. In that document, reliance was placed on correspondence from their client's Valuer, A.Perrin MRICS of Messrs Fraser Wood Chartered Surveyors, quoting a letter from the landlord's agents at that time dated 2nd March 2015, in which the landlord had offered to grant a new lease by negotiation for a premium which varied depending on the length of lease that might be agreed by the parties, and costs of £576.00. There was no analysis of these costs but they were said to be a maximum charge.

Reference was also made to subsequently projected legal costs of between £950.00 to £1,000.00 (plus VAT and disbursements). It was claimed that such costs appeared to be disproportionate to the work involved.

Tribunal Determination

- 11 The Tribunal carefully considered all the documents submitted and cases cited. It found that the initial cost quoted by the landlord (see paragraph 10 above) was set out in correspondence marked 'subject to contract and without prejudice', and was clearly part of a settlement offer that had not been accepted by the tenant. There had been no agreement on terms at this point and the offer of a negotiated settlement was superceded by the tenant's service of a section 42 notice on 28th April 2015. As soon as the notice was served, it created a statutory liability on the tenant to pay the landlord's reasonable legal costs and surveyor's fee (see section 60 of the Act), whether or not it led to eventual completion of a new lease.
- 12 As to the amount of legal fees claimed, the Tribunal compared the amount set out in Stevensons' time sheet with the amount claimed in the application and statement of case. In relation to the former, the Tribunal found the charge out rates of the individuals dealing with the transaction and time input to be fair and reasonable, with the exception of the final item marked 'TBC - work to be carried out to complete' with the entry of a provisional sum of £81.25, as there was no evidence that the lease had been completed. The resulting costs were therefore £933.38, but as the application and statement of case claimed legal costs of £910.00 the Tribunal determines that the costs be restricted to this lower sum.

Surveyor's Fee

Landlord's Submission

- 13 The landlord had instructed Mr G.Evans FRICS of Bureau Property Consultants and claimed his fee of £545 plus VAT. Mr Evans wrote to Messrs Stevensons on 10th January 2017 identifying the action he had taken following receipt of instructions. His letter and invoice were included in the submission made by Stevensons on behalf of the Applicant.

Tenant's Submission

- 14 Messrs Woodhouse did not make a specific representation in respect of surveyor's fees.

Tribunal Determination

- 15 For the reasons given in paragraph 10 above, the Tribunal disregards the landlord's initial offer as it was part of a 'subject to contract' offer to agree terms for a lease extension that included different premium options and lease lengths that had not been accepted by the tenant.
- 16 Applying its general knowledge and experience (but no secret knowledge), the Tribunal finds the valuation fee of £545 plus VAT reasonable for a lease extension of this type and in line with general market practice.

VAT

- 17 The landlord advises that it is not registered for VAT and, consequently, unable to re-claim VAT from HMRC. Accordingly, the Tribunal finds VAT to be payable at the standard rate.

Disbursements

- 18 The landlord claimed disbursements of £12.00 for Land Registry entries and £8.18 for 'Special/Signed for' Deliveries.
- 19 The Tribunal finds both these charges to be fair and reasonable.

Summary

- 20 The Tribunal therefore determines the following costs to be fair and reasonable pursuant to section 91(2)(d) of the Act:

Legal fee	£ 910.00
VAT @ 20%	£ 182.00
Valuer's fee	£ 545.00
VAT @ 20%	£ 109.00
Land Registry entries	£ 12.00
Special / Signed For deliveries	£ 8.18

Total	£ 1,766.18

(One Thousand Seven Hundred and Sixty Six Pounds Eighteen Pence)

I.D. Humphries B.Sc.(Est.Man.) FRICS
Chairman

Application to the Upper Tribunal/Appeal Provisions

A person wishing to appeal this decision to the Upper Tribunal (Property Chamber) must seek permission to do so by making a written application to the First-tier Tribunal at the Regional Office which has been dealing with the case which application must:

- a. be received by the said office within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
- b. identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

If the application is not received within the 28-day limit, it must include a request for extension of time and the reasons for it not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal.