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

Case Reference : **BIR/00AX/Oc9/2014/0005**

Property : **Flat D, Claremont Gardens, Surbiton,
Surrey KT6 4TL**

Applicant : **Ms Claire McCarthy**

Representative : **None**

Respondent : **Plainworth Limited**

Representative : **Mr A D Cummings**

Type of Application : **Application for determination of
reasonable costs under section
91(2)(d) of the Leasehold Reform,
Housing and Urban Development Act
1993**

Tribunal Members : **Judge C Goodall LLB
Mr J Turner FRICS**

**Date and venue of
hearing** : **13 August 2014 at 10
Alfred Place, London**

Date of Decision : **27 AUG 2014**

DECISION

Background

1. On 21 December 2012 the Applicant served a notice on the Respondent under section 42 of the Leasehold Reform, Housing & Urban Development Act 1993 (“the Act”) seeking to exercise her right to claim an extended lease.
2. The Respondent served a counter notice dated 1 February 2013 admitting the Applicant’s right to an extended lease.
3. A draft lease was produced in about April 2014. The parties sought to agree a price for the lease extension but failed to do so. The Applicant applied to the Tribunal on 21 April 2013 for a determination of the price. This application was determined in a Tribunal decision dated 11 Sept 2013.
4. However the parties had not agreed costs, and by 11 January 2014, the transaction had not completed.
5. The Applicant accepts that on that date her application for an extended lease was deemed withdrawn by virtue of section 53 of the Act.
6. Section 60 of the Act obliges any person who serves a notice under section 42 of the Act to pay the costs as set out in section 60. Section 91 of the Act gives the Tribunal the jurisdiction to determine the costs if they are not agreed.
7. The Respondent has claimed certain amounts as costs, which are not agreed by the Applicant. She therefore applied to this Tribunal on 12 June 2014 for a determination of the reasonableness of those costs.
8. The Application was submitted to the London Region office of the First-tier Tribunal (Property Chamber). However, one member of the London Panel has a conflict of interest, and this case has therefore been transferred to the Midlands Region of the Tribunal, which operates separately and independently from the London Region.
9. The case was heard on 13 August 2014 at the London hearing rooms of the Tribunal. The Applicant was present and represented herself. The Respondent was represented by Mr Cummings, a director of the Respondent company.
10. This decision is the outcome of the Application.

The law

11. Section 60 of the Act provides as follows:

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 [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.

Details of the Respondent's costs claim

12. The Respondent has claimed reimbursement of two fees it has paid. The first is surveyor's fees of £820 plus VAT of £164, totalling £994; the second is legal costs of £3,200 plus VAT of £640 plus disbursements of £23 totalling £3,863.00.

13. The documents produced for the hearing contained a written explanation of the surveyor's fees provided by the firm who carried out the work. Their evidence was that their standard hourly rate was £235 per hour. The surveyor said that four hours had been spent on the work, made up as follows:

Work	Time
Open file, write to client to confirm instructions, write to lessee to request access and copy correspondence to solicitors	0.5 hours
Speak to tenant, arrange date and time to inspect	0.00
Travel to property, carry out internal and external inspection and return to office	2 hours
Research market values and prepare valuation	0.5 hours
Dictate report, covering letter and invoice	0.5 hours
Read draft report and covering letter, amend and correct, print, sign and post	0.5 hours
Total	4 hours

14. The surveyor decided to charge 3.5 hours instead of 4 hours, hence the charge of £820 plus VAT.
15. As will be apparent later, there was no supporting information to justify the solicitor's charges.

The hearing

16. As an initial point, the Tribunal raised compliance by the Respondent with directions issued by the Tribunal. The Tribunal had issued directions in this application on 19 June 2014. Direction 2 provided that "the landlord shall send the following documents to the tenant by 3 July 2014:-

- "A schedule of costs sufficient for a summary assessment.

The schedule shall identify the basis for charging legal and/or valuation costs. If costs are assessed by reference to hourly rates, detail shall be given of fee earners/case workers, time spent, hourly rates applied and disbursements. The schedule should identify and explain any unusual or complex features of the case."

17. A note, in bold, at the end of the directions said:-

"If any or all of the parties fail to comply with these directions the tribunal may in any event determine the issues in dispute ... on the basis of such information and evidence as is available..."

18. Contrary to the specific direction set out above, in relation to the solicitor's costs claimed, the Respondent did not provide the Tribunal with any information about hourly rates, the detail of the work carried out, the category of fee earner involved, or the time spent on the matter. The only

evidence available to the Tribunal to explain the basis for the solicitor's costs was a note set out on a completion statement supplied to the Applicant in October 2013, when both parties were probably still expecting that an extended lease would be completed. That note stated that solicitor's costs were £2,200 plus VAT (not £3,200 plus VAT which is the claim now) for legal costs, including:-

“taking instructions, reviewing initial notice; investigating title; obtaining valuation advice and liaising with client / valuer as to counter proposal to be made; drafting counter notice; chasing for acknowledgement of counter notice; drafting lease; extensively negotiating lease terms with leaseholder; liaising with client regarding lease terms, reporting to client on final lease terms agreed and obtaining approval of same; general correspondence in relation to notice and conveyancing aspects.”

19. The Tribunal explained to Mr Cummings that it would be extremely difficult for the Tribunal to assess whether the legal costs he was seeking were reasonable if the Tribunal had no information about the detail of what work was done, when, who by, and at what rate. Mr Cummings said that this information was confidential and his solicitors had not been willing to release it. He asked for an adjournment to try and obtain further information. After a short deliberation, the Tribunal informed Mr Cummings that it was not willing to allow this. The directions were quite clear, as were the consequences of failure to comply. The Applicant had clearly flagged in her statement to the Tribunal that the Respondent had not complied with this direction, and the Respondent should have been well aware of the issue. There was no good reason why the application should not now proceed; the Applicant was ready as were the Tribunal. It was the Tribunal's view that the case should proceed.
20. The Applicant then set out her case. She suggested that the solicitor's fees were too high for a number of reasons, being:-
 - a. The proposed extended lease was a short document of 6 pages in standard form, and the Respondents solicitor had made it clear that no amendments would be accepted, so the work required on preparing the lease should have been straightforward and limited in time.
 - b. The draft lease contained typing and drafting errors which she should not be required to pay for correcting.
 - c. The solicitor had spent too much time explaining basic legal points to her. The Applicant had told the Respondent's solicitor on 8 Feb 2013 that she was a qualified solicitor and did not need basic legal points explained. An example she gave was a detailed explanation (in writing) of a proposed increase of the registration fee for registering

a transfer or assignment of the lease with the landlord, in the extended lease. She said to the Tribunal that the explanation had been almost insulting to a qualified property solicitor, but unfortunately she did not produce the written document showing this.

- d. The Applicant challenged any suggestion that there had been extensive lease negotiations (as set out in the narrative to the completion statement); she said the lease was short and she had only proposed a few amendments. She could not quantify how many, but insisted there were not many.
 - e. The Applicant said the Respondent's solicitors had behaved unethically and had taken advantage of her in failing to point out the time limit. However, she did not advance a legal basis for suggesting that if that was the case, it should reduce or absolve her of liability to pay costs under section 60 of the Act.
 - f. The solicitors had charged a disbursement of £23 for official land registry copies of the registers and of the existing lease. The Applicant said she had already provided these to the Respondent's solicitor and she should not have to pay twice for these disbursements.
21. In her statement, the Applicant accepted that approximately 3 hours would be an appropriate time for the Respondent's solicitors to have taken on the case at the very most, but this suggestion was subject to seeing what work had actually been done.
22. So far as the surveyor's fees were concerned, the Applicant said the surveyor had only been inside the property for about 5 minutes. She said the travel time from Wimbledon, where the surveyor's office is based, is about 7 minutes by train, and her view was that the total time for travel and inspection should not have exceeded one hour.
23. She also disputed the amount of time to open the file, saying that the work set out for this element by the surveyor should have taken less than 30 minutes.
24. The Applicant said her own surveyor had charged her £450 plus VAT, which was in her view a reasonable fee.
25. The Respondent's case was that the fees were reasonable. Mr Cummings said that both the surveyor and the solicitor's instructed in this case were the regular professional firms instructed by the Respondent and he was entitled to use those firms. He said there had been a considerable amount of legal work required, as this had been a case where his solicitor had had to battle with the Applicant, involving her in more time than was normal for a

transaction such as this. He said that he received copies of the email exchanges and he thought there were probably about 40 email exchanges between the Applicant and his solicitor. None of this documentation, however, was produced to the Tribunal.

26. Mr Cummings said that there was no letter setting out the standard rates his solicitor would charge. He said that most lease extension transactions the Respondent was involved in resulted in solicitor's fees of around £800.00 to £1,000.00. He said it was not his practice to challenge the bills submitted to him by his solicitors; he trusted that they would not charge more than a reasonable amount.

Deliberations

27. The task of the Tribunal is to determine the reasonable costs which the Respondent is entitled to claim under section 60 of the Act. Reasonable means just that; and under section 60 the Tribunal has to also consider what a reasonable amount might be as if the person reclaiming the costs were paying them themselves.
28. So far as the surveyor's fees are concerned, the Tribunal takes little account of the amount charged by the Applicant's own surveyor. No detail of what work he had done, or what time he had spent, had been provided, nor the level of seniority or experience of the surveyor concerned.
29. The surveyor's hourly rate is considered by the Tribunal to be reasonable, and there was no real challenge to it from the Applicant. There is direct evidence from the Applicant which suggests the time spent on the inspection of two hours might be a little high. The journey time should not have been great, and the internal inspection was apparently short. The Tribunal considers a fair and reasonable allowance for the inspection is 1.5 hours, resulting in an overall time charge of 3 hours at £235 per hour, which is £705.00. The Tribunal does not agree that an allowance of half an hour for work opening the file and confirming instructions to the necessary parties is excessive. The Tribunal determines that £705 is payable by the Applicant.
30. So far as the solicitor's fees are concerned, unfortunately, neither the Applicant nor the Respondent produced evidence to show how much time had been spent on the matter by the solicitors and how easy or complex the transaction had in fact been. The Applicant said she had not been difficult to deal with or added cost by raising unnecessary points; the Respondent said she had. The Tribunal does not consider there is enough evidence before it to determine that the Applicant made this transaction unusually complex or difficult or time consuming by her conduct.
31. The Tribunal also considered that the Applicant's point about the limited length of the draft lease, and the fact that some of her amendments were

simply requested to correct some drafting errors (the Tribunal having seen the first draft of the extended lease), had merit. Certainly this transaction should not have required a bill of £3,200 for legal costs to be run up. That seems an excessive amount to the Tribunal.

32. The Tribunal must do the best it can on the very limited evidence available in this case to assess what is a reasonable sum for the Respondent's solicitor's costs. Doing the best it can, it assesses the costs in the sum of £800.00. This accords with Mr Cummings's own evidence that such a sum is reasonably normal in transactions his company is involved with of this type. The Tribunal received direct evidence from the Applicant that she had already supplied the official copies of the land registers which the solicitor's had then charged as a disbursement. The Tribunal accepts the Applicant's evidence and does not allow these disbursements.
33. If the Respondent is not registered for VAT, or if the invoices it has paid for the surveyor's and solicitor's fees relate entirely to exempt VAT supplies, so that it will not be possible for the Respondent to reclaim the VAT it has paid on the surveyor's and solicitor's costs, the Applicant will be liable to reimburse the VAT on the sums ordered to be paid in this determination. If the Respondent is registered for VAT and the surveyor's and solicitor's fees do not relate entirely to exempt VAT supplies, the Respondent will be able to reclaim the VAT it has paid on such costs and the Applicant will only be liable to pay the amount determined as payable (with no VAT added) in this decision.
34. There was one point raised in the documentation by the Applicant but not canvassed at the hearing, namely how the statutory deposit which she had paid of £1,200 should be dealt with. The Tribunal has no jurisdiction to make any order in relation to this deposit. The Respondent's solicitor has properly suggested anyway in open correspondence that the deposit should be used to discharge the Applicant's liability for costs in any event. The Tribunal simply draws the attention of the parties to paragraph 3 of Schedule 2 of the Leasehold Reform (Collective Enfranchisement etc.) Regulations 1993, which deals clearly with the point.

Summary

35. The Applicant is liable to reimburse the Respondent for the costs due to it under section 60 of the Act in the sum of £705 for surveyor's fees, and the sum of £800 for solicitor's costs. The Applicant may also be liable to pay VAT on these sums (see paragraph 33 above).

Appeal

36. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must

apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall
Chair
First-tier Tribunal (Property Chamber)