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

Case Reference : LON/00AM/OC9/2016/0335

Property : Flat C, 89 Downs Park Road,
London E5 8JE

Applicant : Helen Martyn

Respondent : 89 Downs Park Road (Freehold) Ltd

Representative : Bolt Burdon 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 Respondent may recover from the Applicant their legal fees of £1,770 plus VAT, a disbursement of £3 and their valuer's fee of £1,000 plus VAT under section 60 of the Leasehold Reform, Housing and Urban Development Act 1993.

Reasons for Decision

1. The Applicant applied following her 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 Respondent claims:

- a) The fees of their solicitors, Bolt Burdon, in the sum of £2,450 plus VAT;
 - b) £3 disbursement; and
 - c) The fee of their valuer of £1,000 plus VAT.
3. The Respondent's solicitors have asserted that this was a particularly unusual matter for a number of reasons and the Applicant has made a number of contrary assertions, each of which is considered in turn below.
 4. The Applicant served two notices of claim. She withdrew the first one herself due to a problem with a date mentioned in it but served the second one by leaving it on a table at the property. At the time of service, the Respondent was represented by Teacher Stern solicitors. Apparently they considered the validity of both notices but did not charge for doing so. When the Respondent instructed Bolt Burdon instead of Teacher Stern, their new solicitor, Mr Tornike Purcell, felt it prudent to examine the validity of both again.
 5. Mr Purcell has said he was concerned that the second notice might be invalid for an insufficient period of notice. The Applicant asserts that such concern was baseless, and has provided evidence to support her assertion, but that is to miss the point – the award of costs under section 60 of the Act is not to punish the Applicant for any errors she may have made but to compensate the Respondent for costs validly incurred. Even if the notice was valid, it is entirely proper that the Respondent's solicitors should spend time working that out for themselves and then be paid for that work.
 6. At the time of service of the notices of claim, the Applicant was representing herself. She later appointed Ringleys to represent her, although she then made a Tribunal application in which she again represented herself. Mr Purcell implies that this incurred additional cost, although he has not specified how. It would be unsurprising if, while unrepresented, the Applicant had engaged in more correspondence than solicitors would have done and Mr Purcell has claimed a rather high 7 hours and 40 minutes for the email correspondence. However, this time has not been broken down and so there is insufficient evidence to sustain Mr Purcell's implication. Further, this also means that there is insufficient evidence to justify such a long time on email correspondence. In the Tribunal's judgment, 5 hours is the most that could be regarded as reasonable, particularly given that some correspondence and phone calls are separately charged.
 7. It appears to be common ground that there were shortcomings in the Applicant's existing lease due to a lack of provisions as to the responsibility for carrying out services and therefore the payability of any resulting service charges. The Respondent took the opportunity of

the surveyor access and challenges the costs incurred by the aforementioned advice and preparations. However, the Tribunal is satisfied that the wording in the Applicant's email would have raised concerns in the mind of any reasonable reader and the costs incurred in addressing the issue of access seem entirely reasonable.

13. In the circumstances, the Tribunal rejects the Applicant's objections to the Respondent's costs and allows them in full, save that the time for the email correspondence should be reduced in accordance with paragraph 6 above from 7 hours 40 minutes costing a total of £1,955 at £255 per hour to 5 hours at a cost of £1,275 (plus VAT).

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.