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

Case Reference : **LON/OOAX/OC9/2016/0173**

Property : **16 Sopwith Avenue, Chessington,
Surrey KT9 1QE**

Applicant : **Mortaza Bijon Ramazani**

Representative : **YVA Solicitors LLP**

Respondent : **Sinclair Garden Investments
(Kensington) Limited**

Representative : **WH Matthews & Co**

Type of Application : **Determination of costs under s60
and s91 Leasehold Reform,
Housing and Urban Development
Act 1993**

Tribunal Members : **Tribunal Judge Dutton
Mr W R Shaw FRICS**

Date determination : **12th December 2016**

DECISION

DECISION

The Tribunal determines that the sum payable by the Applicant in respect of the Respondents costs under the provisions of section 60 of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act) is £2,520, together with the valuation fees of G P Holden FRICS of £870 inclusive of VAT

BACKGROUND

1. This is an application for the determination of the costs payable by the Applicant to the Respondent under the provisions of section 60 of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act).
2. Directions were issued by the Tribunal on 7th October 2016 and subsequently amended on 25th November 2016, confirming that the application would be considered on the documentation filed, without the need for a hearing, unless either party requested one. Neither party did.
3. In preparation for such determination the Applicant had lodged with the Tribunal a file of papers which included the landlord's lengthy statement on costs prepared by WH Matthews & Co (WHM) dated 17th October 2016, correspondence passing between the parties and a statement by Mr Holden, the Respondent's valuer. We have considered these documents before making the decision in this case.
4. The issue in this case is whether the Respondent is prevented from recovering an additional sum of £870 being the valuer's fee which was not recorded in the statement of costs.
5. The Applicant's solicitor, by a letter dated 31st October 2016 purported to agree the section 60 costs at £2,520 in full and final settlement, this being the amount set out in the Landlord's statement. By a letter in reply dated the following day WHM said "*We note that the Landlord's section 60 legal costs are agreed at £2,520. Please confirm if the valuation costs of Geoff Holden in the sum of £870 are also agreed*". A further letter was sent WHM on 4th November which said "*We served upon you a witness statement of Paul Chevalier which expressly only relates to the section 60 legal costs. If the entirely separate valuation costs are not agreed we will serve a witness statement from Geoff Holden and file it at the First Tier Tribunal*". A reply was elicited from YVA Solicitors LLP (YVA) dated 4th November saying "*The tribunal directions required you to provide details of the landlord's section 60 costs by 21st October 2016 (to include legal and valuation costs) and we responded confirming agreement to the same in full as claimed. There is no provision for further costs to be claimed*". This exchange appears to set out the nub of the dispute.
6. A witness statement of Mr Holden was lodged with the Tribunal on 9th November 2016 followed by a Response to the Tenant's submissions dated 5th December 2016. We have noted all that was said. We have also reviewed a letter from YVA dated 28th November 2016.

THE LAW

7. The provisions of section 60 are set out in the appendix and have been applied by us in reaching this decision.

FINDINGS

8. In reaching our decision we have reviewed the Landlord's statement of costs, which whilst referring to the involvement of a valuer, gives no indication as to the fee charged. It does however state that it relates to the 'legal costs incurred to date' (see para 1.1). By a letter dated 14th November WHM says, in part "*Prior thereto we were under the mistaken impression that the Valuers fees were agreed.*" We are not provided with any evidence to suggest why such an impression was reached by WHM.
9. However, we consider that the statement dated 17th October 2016 is capable of review. We say this because the Tribunal agreed that the directions may be altered and the time scales were reviewed. The inclusion of the valuers fee was more than one month before the matter came before us for determination and in that time YVA has not chosen to make any further challenge other than to suggest that agreement had been reached.
10. In fact the letter dated 31st October says that the Applicant agrees the section 60 costs in 'full and final settlement' but no such agreement is forthcoming from the Respondent and we find that no binding agreement had been reached. YVA are a firm experienced in leasehold enfranchisement work and we suspect would have noted that the valuation fee had been omitted. They did not raise this with WHM. We accept that this was mistake on the part of WHM. We do not accept that there is any evidence to suggest that the valuers fee had previously been agreed. Notwithstanding that, the inclusion of the valuers fee was made rapidly after the letter from YVA purporting to settle at £2,520 was received and gave the Applicant ample time to respond on the level of costs being sought.
11. We have considered the costs and reviewed the amounts being claimed for legal and valuers fees. The hourly charging rates are reasonable and the acceptance of the amount shown on the statement by YVA, which omitted any valuers fee, points to them being in agreement with what was actually claimed in the statement for legal fees of £2,520. The valuation fee of £870, inclusive of VAT is, we find on the basis of the statement of Mr Holden, reasonable and payable by the Applicant
12. This gives a total payable by the Applicant of £3,390.

Andrew Dutton

Tribunal Judge Dutton

12th December 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).

The Relevant Law

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.