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

Case Reference : **LON/OOBC/OC9/2016/0437**

Property : **Flat 1, 43 Elgin Road, Ilford, Essex
IG3 8LL**

Applicant : **Andrew Harvey**

Representative : **Capulet Solicitors**

Respondent : **Mukhtar Hushen Patel**

Representative : **Whitmore Law LLP**

Type of Application : **Determination of costs under s60
and s91 Leasehold Reform,
Housing and Urban Development
Act 1993 and Costs - Rule 13(1)(b)
of the Tribunal Procedure (First-
tier Tribunal) (Property Chamber)
Rules 2013**

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 Respondent in respect of the Applicant's costs under the provisions of section 60 of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act) is £1836 together with the valuation fees of £780 inclusive of VAT.

The Tribunal dismisses both parties applications for costs under the provisions of Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for the reasons set out below.

BACKGROUND

1. This is an application for the determination of the costs payable by the Respondent to the Applicant 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 21st October 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 addition to the Applicant's claim for costs under the Act there was also a claim for costs said to have been incurred by the Respondent's unreasonable conduct amounting to £1,125.00. As a quid pro quo the Respondent, through his solicitors Whitmore Law LLP (WL) claimed costs under Rule 13 of £80.
4. In preparation for such determination the Applicant had lodged with the Tribunal a bundle of papers which included the application/statement of claim for the Applicant, the notices served under the Act, invoices to support the sums claimed by the Applicant, the Respondent's response, a statement in reply with exhibits and a letter from WL dated 11th November 2016. We have considered these documents before making the decision in this case.
5. In a detailed submission the Applicant via his solicitors set out the claim for legal costs which amounted to £2,825 plus VAT of £565 and disbursements of £15.45. In addition the valuer's fee of £650 plus VAT was sought. The hourly rate was £250 and according to the submission, in excess of 11 hours was spent on the matter.
6. In response the Respondent commented on the various paragraphs of the Applicant's statement of case and supplied detailed observations on the Applicant's claimed costs. This observation concluded that total figure, inclusive of the valuer's fee, should be £1,174.02, as opposed to the sum claimed by the Applicant of £4,185.45.

THE LAW

7. The provisions of section 60 are set out in the appendix and have been applied by us in reaching this decision. The contents of rule 13 is also set out below.

FINDINGS

8. In reaching our decision we have reviewed the parties statements of case and responses. One document we have noted and which we consider to be of importance in reaching our decision is a completion statement intended for completion on 13th May 2016. This records the costs being sought at £1,836 plus disbursements of £15.45 and the valuer's fee of £780.
9. The Applicant's solicitors seek to explain the apparent anomaly between the sum now being claimed and the amount that would have been accepted to complete as being a "without prejudice commercial offer". It is noted that neither the completion statement, nor the letter under which it was sent dated 10th May 2016 bears a without prejudice heading.
10. We have reminded ourselves of the provisions of section 60 and the limits it places on the costs that are recoverable. The fact that the landlord may be inexperienced does not mean that higher costs can be charged. Some of the elements, which appear to be included, such as the preliminary notice and request for a deposit do not fall within s60. The same can be said of the attendance on the client on, for example 27th November 2015 and 31st March 2016. Further some items of time spent seem excessive, for example the time spent on 4th January 2016. The costs that are recoverable are clearly set out in section 60. We find that the hourly rate of £250 is perfectly reasonable and note that the Applicant's solicitor is a sole practitioner. The suggested reductions made by the Respondent are in some cases excessive and centre around a much reduced hourly rate.
11. We are troubled by the fact that as at 10th May 2016 the Applicant was prepared to accept the sum of £1,530 plus VAT for the costs to that date. In our finding this would be the time when any further costs fell outside the provisions of the Act. No explanation is given as to why the costs have risen so alarmingly from £1,530 to £2,825. There is no evidence that the figure on the completion statement was a without prejudice one.
12. In the circumstances of the case we find, having accepted that a charge out rate of £250 per hour would be reasonable, having reviewed the Applicants costs breakdown, the response from the Respondent and given the amount sought on the completion statement, we find that a reasonable figure for section 60 costs is £1,530 plus VAT of £306. The valuation fee is, we find, perfectly reasonable and in line with the fee we would expect in cases of this nature. There appears to be no argument over the disbursements of £15.45. **This gives a total payable by the Respondent of £2,631.45.**

13. On the question of costs under Rule 13 we have considered the Upper Tribunal case of ***Willow Court Management Company Limited and Alexander [2016] UKUT 0290 (LC)***. We find that neither party has acted unreasonably under the provisions of the Rules. The Respondent was entitled to challenge the Applicant's costs and has been successful in part. The allegations contained in the Applicants response dated 18th November 2016 do not, on our findings amount to unreasonable conduct. Equally the Applicant was entitled to bring the proceedings and it cannot be said that he has acted unreasonably in the conduct of same, even though the sum claimed has been reduced. The cost incurred in responding is part of the proceedings.

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.

Orders for costs, reimbursement of fees and interest on costs

13.

—(1) The Tribunal may make an order in respect of costs only—

(a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;

(b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—

(i) an agricultural land and drainage case,

(ii) a residential property case, or

(iii) a leasehold case; or

(c) in a land registration case.

(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

(3) The Tribunal may make an order under this rule on an application or on its own initiative.

(4) A person making an application for an order for costs—

(a) must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and to the person against whom the order is sought to be made; and

(b) may send or deliver together with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal.

(5) An application for an order for costs may be made at any time during the proceedings but must be made within 28 days after the date on which the Tribunal sends—

(a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or

(b) notice of consent to a withdrawal under rule 22 (withdrawal) which ends the proceedings.

(6) The Tribunal may not make an order for costs against a person (the "paying person") without first giving that person an opportunity to make representations.

(7) The amount of costs to be paid under an order under this rule may be determined by—

(a) summary assessment by the Tribunal;

(b) agreement of a specified sum by the paying person and the person entitled to receive the costs (the "receiving person");

(c) detailed assessment of the whole or a specified part of the costs (including the costs of the assessment) incurred by the receiving person by the Tribunal or, if it so directs, on an application to a county court; and such assessment is to be on the standard basis or, if specified in the costs order, on the indemnity basis.

(8) The Civil Procedure Rules 1998(a), section 74 (interest on judgment debts, etc) of the County Courts Act 1984(b) and the County Court (Interest on Judgment Debts) Order 1991(c) shall apply, with necessary modifications, to a detailed assessment carried out under paragraph (7)(c) as if the proceedings in the Tribunal had been proceedings in a court to which the Civil Procedure Rules 1998 apply.

(9) The Tribunal may order an amount to be paid on account before the costs or expenses are assessed.