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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	BG/LON/OOBH/OC9/17/0047
Property	:	126 Clementina Road, London, E10 7LU
Applicant	:	Daejan Estates Limited (landlord)
Representative	:	Wallace LLP (solicitors)
Respondent	:	Richard Bull (leaseholder)
Representative	:	A.H.Page (solicitors)
Type of Application	:	Application under section 91(2)(d) of the Leasehold Reform, Housing and Urban Development Act 1993 ('the Act') to determine the costs payable under section 60(1) of the Act
Tribunal Members	:	Professor James Driscoll (Judge) and Mrs Evelyn Flint FRICS (Member)
Date of Hearing	:	20 April, 2017

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Date of Decision : **20 May, 2017**

DECISION

Summary of the decision

1. The applicants are to pay the sum of 3,300 (exclusive of disbursements and VAT) in respect of the respondent's legal costs in accordance with section 60(1) of the Act. The applicant is the competent landlord and the respondent the leaseholder of a flat in the subject premises which is a block of two flats.

Introduction

2. The applicants seek a determination as to the recoverability of their costs. Their application is made under section 91(2)(d) of the Act in relation to their claim for costs under section 60(1) of that Act. The application was made by the landlord. We were told that the application for the grant of a new lease made by the respondent leaseholder has now been completed.

3. The grant of the new lease was the third attempt by the respondent to obtain a new lease. This is because the first two claim notices given under section 42 of the Act were invalid.

4. It was common ground that the applicant is entitled to seek its costs under section 60 of the lease. The issue which divided the parties is whether the costs claimed are 'reasonable' (section 60(1)). It was also agreed in principle that the landlord can claim its costs for the two invalid notices as well as the costs of third claim which led to the grant of a new lease.

5. However, the parties did not agree on the level of costs and disbursements as a result of which the competent landlord applied to this tribunal for a determination. Directions were given on 23 February 2017. The Directions proposed that the matter is suitable for a determination without an oral hearing. However, the parties indicated that they wanted a hearing.

6. This took place on 20 April 2017. The applicants were represented by Mr Serota, a partner in the firm of Wallace LLP solicitors for the applicant landlord. The claimant Mr Bull who is a solicitor and practising as A.H. Page also appeared.

7. Prior to the hearing (and as directed) Wallace LLP prepared a detailed bundle of documents running to 213 pages. This bundle included copies of the claim notices and the counter-notice, the applicant's schedule of costs, the respondent's statement of case followed by the applicant's written submissions. The respondent argues that although the landlord is entitled to recover its costs the sums claimed are too high and disproportionate to the amount of work involved.

8. At the hearing Mr Serota spoke to his written submissions and Mr Bull responded. The written submissions were supplemented by copies of several previous decisions of this tribunal on enfranchisement/new lease costs . In answer to our questions Mr Serota agreed that these decisions are not binding on the tribunal though he suggested that we consider the principles set out in a decision dated 4 May, 2004 (LON/ENF/1005/03) concerning a costs claim in a collective enfranchisement claim.

9. Mr Serota took us to the schedules of costs for the three claims (pages 106 to 109 of the bundle).

10. The first relates to a defective section 42 claim notice and the work was carried out in September 2015 when the claim was withdrawn. Fees of £985 were claimed. Most of the work was carried out by a partner at the charge out rate of £450 per hour with one item (obtaining office copy entries from the Land Registry) which was carried out by a paralegal with a charge out rate of £200 per hour. To this is to be added Land Registry fees of £21 and VAT on the fees. The total claim is the sum of £1,203.

11. The second costs schedule relates to the second claim notice that was given which also proved to be defective for which fees of £450 were claimed for work undertaken by a partner.

12. As the third costs schedule relates to the third claim which led to the new lease being granted it is more substantial. Here legal fees of £2,180 are claimed along with a valuer's fee of £925 a courier's fee of £30.50 and Land Registry fees of £24. Except for the latter fee the other fees are exclusive of VAT. With these costs some of the work was undertaken by a partner charging an hourly rate of £450 with a substantial body of work undertaken by an assistant solicitor charging £350 per hour.

13. In addition to his other challenges Mr Bull questions why a courier was used to deliver a copy of the counter-notice and he argues that the valuer's fee is too high.

Reasons for our decision

14. It is common ground that under section 60 of the Act (a copy is set out in the next paragraph to this decision) the claimant leaseholders are required

to pay certain professional costs incurred by the landlord in dealing with the claim. Section 91 provides that if the parties do not agree on what should be paid application must be made to this tribunal for the disputed costs to be determined.

15. Section 60 of the Act states that *'For the purposes of subsection (1) any costs incurred by the reversioner or any other relevant landlord 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.'*

16. Commenting on this provision the editors of Hague on Leasehold Enfranchisement (6th edition, 2014)) suggest that '..this sensible measure is designed to prevent the landlord from inflating his costs merely because the tenants are paying them' (28-32). Wallace LLP state that their fees have already been agreed with the landlords and paid in full. However, this is far from conclusive of the 'reasonableness' issue and it does not absolve the tribunal from its duty to consider the reasonableness of the costs claimed under the Act the proviso in section 33(2).

17. Dealing with the general issues involved, Wallace LLP are correct to state that enfranchisement and new lease law is a complicated area of law and practice. This complexity is such that it has prompted much litigation in the courts and in the tribunals. (And as the history this claim, where a new lease was granted at the third attempt, illustrates that mistakes are sometimes made and the other party is entitled to seek professional advice on notices).

18. We also accept as a general proposition that a party to such claims is entitled to appoint solicitors of their choice and they are not required to see if cheaper advice can be obtained elsewhere. It follows that a landlord is perfectly entitled to appoint solicitors of their choice who are expert in this field.

19. Third, just as a landlord is entitled (or well-advised) to seek specialist advice, a specialist advisor might reasonably be expected to undertake the work in less time that a non-specialist advisor.

20. We conclude that using a partner to deal with a claim notice and to consider its validity is reasonable. However, we consider that more of the work, particularly on the third and the successful claim could have been given to an assistant solicitor.

21. Mr Bull challenged the hourly rates used and he cited the 'Solicitors' Guideline hourly rates'. However, as Mr Serota pointed out this Guide is to be applied in litigation where an unsuccessful party has to pay the other

party's costs. It has no application in a case like this one where a leaseholder is required by statute to pay the landlord's reasonable costs.

22. On balance we agree that the costs of using a courier to deliver a copy of the counter-notice is reasonable considering the consequences should a posted notice not be properly delivered (if no counter-notice is received the leaseholder is entitled to apply to the Court for a vesting order on the terms proposed in the claim notice).

23. As to the valuer's report, Mr Bull told us that his valuer charged £800 and this leads him to the conclusion that the landlord's valuer's fee is too high.

24. However, we do not consider that the valuer's fee, though on the high side, was unreasonably incurred.

25. As far as their justification for the work is concerned, the tribunal accepts that the landlords were entitled to instruct specialist solicitors and that it was appropriate for a partner to take the lead in dealing with with the claim.

26. The decision by the landlords to instruct a partner was, for the reasons set out above, perfectly reasonable. But the tribunal questions whether it was necessary for the partner concerned to be so closely involved when more of the work could have been carried out by an assistant under the supervision of the partner concerned. This is particularly so with much of the work that was undertaken on the second and the third notices of claim. By then the landlord's solicitors had already had occasion to examine title and valuation issues. Thereafter with supervision the assistant could have taken the responsibility for the steps that led up to the completion of the grant of the new lease.

27. Adopting a 'broad brush approach' and taking account of our comments above we determine that (a) legal fees of £3,300 are reasonable, (b) a valuer's fee of £925 is reasonable and (c) a courier's fee of £30.50 is also reasonable. These recoverable fees are exclusive of VAT. A Land Registry fee of £24 is also payable.

Appeals

28. Under 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.

29. 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.

30. 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 it not being within the time limit.

31. The application for permission to appeal must identify the decision of the tribunal to which it relates (that is to 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.

32. If this tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

James Driscoll and Evelyn Flint

20 May, 2017

Appendix

Section 60
Costs of enfranchisement.

(1)
Where a notice is given under section 13, then (subject to the provisions of this section and sections 28(6), 29(7) and 31(5)) the nominee purchaser shall be liable, to the extent that they have been incurred in pursuance of the notice by the reversioner or by any other relevant landlord, for the reasonable costs of and incidental to any of the following matters, namely—

(a)
any investigation reasonably undertaken—

(i)
of the question whether any interest in the specified premises or other property is liable to acquisition in pursuance of the initial notice, or

(ii)
of any other question arising out of that notice;

(b)
deducing, evidencing and verifying the title to any such interest;

(c)
making out and furnishing such abstracts and copies as the nominee purchaser may require;

(d)
any valuation of any interest in the specified premises or other property;

(e)
any conveyance of any such interest;

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 the reversioner or any other relevant landlord 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 initial notice ceases to have effect at any time, then (subject to subsection (4)) the nominee purchaser'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)
The nominee purchaser shall not be liable for any costs under this section if the initial notice ceases to have effect by virtue of section 23(4) or 30(4).

(5)
The nominee purchaser 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 references to the nominee purchaser include references to any person whose appointment has terminated in accordance with section 15(3) or 16(1); but this section shall have effect in relation to such a person subject to section 15(7).
(7)
Where by virtue of this section, or of this section and section 29(6) taken together, two or more persons are liable for any costs, they shall be jointly and severally liable for them.

Section 91
Jurisdiction of leasehold valuation tribunals.
(1)
Any jurisdiction expressed to be conferred on a leasehold valuation tribunal by the provisions of this Part (except section 75 or 88) shall be exercised by a rent assessment committee constituted for the purposes of this section; and any question arising in relation to any of the matters specified in subsection (2) shall, in default of agreement, be determined by such a rent assessment committee.
(2)
Those matters are—
(a)
the terms of acquisition relating to—
(i)
any interest which is to be acquired by a nominee purchaser in pursuance of Chapter I, or
(ii)
any new lease which is to be granted to a tenant in pursuance of Chapter II,
including in particular any matter which needs to be determined for the purposes of any provision of Schedule 6 or 13;
(b)
the terms of any lease which is to be granted in accordance with section 36 and Schedule 9;
(c)
the amount of any payment falling to be made by virtue of section 18(2);
[F1(ca)
the amount of any compensation payable under section 37A;]
[F2(cb)
the amount of any compensation payable under section 61A;]
(d)
the amount of any costs payable by any person or persons by virtue of any provision of Chapter I or II and, in the case of costs to which section 33(1) or 60(1) applies, the liability of any person or persons by virtue of any such provision to pay any such costs; and
(e)
the apportionment between two or more persons of any amount (whether of costs or otherwise) payable by virtue of any such provision.
(3)
A rent assessment committee shall, when constituted for the purposes of this section, be known as a leasehold valuation tribunal; and in the following provisions of this section references to a leasehold valuation tribunal are (unless the context otherwise requires) references to such a committee.

(4)
Where in any proceedings before a court there falls for determination any question falling within the jurisdiction of a leasehold valuation tribunal by virtue of Chapter I or II or this section, the court—
(a)
shall by order transfer to such a tribunal so much of the proceedings as relate to the determination of that question; and
(b)
may then dispose of all or any remaining proceedings, or adjourn the disposal of all or any such proceedings pending the determination of that question by the tribunal, as it thinks fit;
and accordingly once that question has been so determined the court shall, if it is a question relating to any matter falling to be determined by the court, give effect to the determination in an order of the court.
(5)
Without prejudice to the generality of any other statutory provision—
(a)
the power to make regulations under section 74(1)(b) of the Rent Act 1977 (procedure of rent assessment committees) shall extend to prescribing the procedure to be followed consequent on a transfer under subsection (4) above; and
(b)
rules of court may prescribe the procedure to be followed in connection with such a transfer.
(6)
Any application made to a leasehold valuation tribunal under or by virtue of this Part must comply with such requirements (if any) as to the form of, or the particulars to be contained in, any such application as the Secretary of State may by regulations prescribe.
(7)
In any proceedings before a leasehold valuation tribunal which relate to any claim made under Chapter I, the interests of the participating tenants shall be represented by the nominee purchaser, and accordingly the parties to any such proceedings shall not include those tenants.
(8)
No costs which a party to any proceedings under or by virtue of this Part before a leasehold valuation tribunal incurs in connection with the proceedings shall be recoverable by order of any court (whether in consequence of a transfer under subsection (4) or otherwise).
(9)
A leasehold valuation tribunal may, when determining the property in which any interest is to be acquired in pursuance of a notice under section 13 or 42, specify in its determination property which is less extensive than that specified in that notice.
(10)
Paragraphs 1 to 3 and 7 of Schedule 22 to the Housing Act 1980 (provisions relating to leasehold valuation tribunals constituted for the purposes of Part I of the M3Leasehold Reform Act 1967) shall apply to a leasehold valuation tribunal constituted for the purposes of this section; but—
(a)
in relation to any proceedings which relate to a claim made under Chapter I of this Part of this Act, paragraph 7 of that Schedule shall apply as if the nominee purchaser

were included among the persons on whom a notice is authorised to be served under that paragraph; and

(b)

in relation to any proceedings on an application for a scheme to be approved by a tribunal under section 70, paragraph 2(a) of that Schedule shall apply as if any person appearing before the tribunal in accordance with subsection (6) of that section were a party to the proceedings.

(11)

In this section—

"the nominee purchaser" and "the participating tenants" have the same meaning as in Chapter I;

"the terms of acquisition" shall be construed in accordance with section 24(8) or section 48(7), as appropriate;

and the reference in subsection (10) to a leasehold valuation tribunal constituted for the purposes of Part I of the Leasehold Reform Act 1967 shall be construed in accordance with section 88(7) above.