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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	: CHI/45UG/OC9/2016/0030
Property	: 41 Gordon Close, Haywards Heath, West Sussex, RH16 1ER
Applicant	: Mr Oliver Tester
Representative	: ---
Respondent	: Sinclair Gardens Investments (Kensington) Limited
Representative	: W H Matthews & Co solicitors
Type of Application	: Landlord's reasonable costs
Tribunal Member	: Judge A Johns QC
Date of Decision	: 20 January 2017

DECISION WITHOUT A HEARING

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1. This is Mr Oliver Tester's application to determine the landlord's reasonable costs incurred in relation to his claim to a new lease of property at 41 Gordon Close, Haywards Heath, West Sussex RH16 1ER. The landlord, Sinclair Gardens Investments (Kensington) Limited, asks for such costs in the sum of £3060 including VAT comprising £2070 solicitors' costs and £990 valuer's costs. Mr Tester disputes those figures and asks the Tribunal to find that reasonable solicitors' costs are £1800 and reasonable valuer's costs are £600 giving a total of £2400, again including VAT. He also asks that a deposit of £350 paid by him be credited toward such costs.

2. In accordance with directions given on 11 November 2016 this application is being determined without a hearing; no party having objected to that course within 28 days of receipt of the directions or at all.

3. The provision which entitles the landlord to its costs on a new lease and provides for the limits to those costs is s.60 of the Leasehold Reform Housing and Urban Development Act 1993 ("the 1993 Act").

4. Section 60(1) is in these terms:

"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 there were to be borne by the purchaser would be void."

5. Section 60(2) then sets out this limiting principle on the question of reasonableness:

"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."

6. As Martin Rodger QC, Deputy President of the Upper Tribunal (Lands Chamber), observed in *Metropolitan Property Realizations Ltd v Moss* [2013] UKUT 0415 (LC):

"9 These provisions are straightforward and their purpose is readily understandable. Part I of the 1993 Act is expropriatory, in that it confers valuable rights on tenants of leasehold flats to compel their landlords to grant new interests in those premises whether they are willing to do so or not. It is a matter of basic fairness, necessary to avoid the statute from becoming penal, that the tenant exercising those statutory rights should reimburse the costs necessarily incurred by any person in receipt of such a claim in satisfying themselves that the claim is

properly made, in obtaining advice on the sum payable by the tenant in consideration for the new interest and in completing the formal steps necessary to create it.

10 On the other hand, the statute is not intended to provide an opportunity for the professional advisers of landlords to charge excessive fees, nor are tenants expected to pay landlords' costs of resolving disputes over the terms of acquisition of new leases. Thus the sums payable by a tenant under section 60 are restricted to those incurred by the landlord within the three categories identified in section 60(1) and are further restricted by the requirement that only reasonable costs are payable. Section 60(2) provides a ceiling by reference to the reasonable expectations of a person paying the costs from their own pocket; the costs of work which would not have been incurred, or which would have been carried out more cheaply, if the landlord was personally liable to meet them are not reasonable costs which the tenant is required to pay.

11 Section 60 therefore provides protection for both landlords and tenants: for landlords against being out of pocket when compelled to grant new interests under the Act, and for tenants against being required to pay more than is reasonable."

7. The landlord's statement in support of its case included a breakdown showing the time spent by its solicitors WH Matthews & Co and indicated that the hourly rate charged was £250. The statement emphasised the care required in this specialised area of law and relied on a letter from the landlord to its solicitors which confirmed that it would pay the costs of complying with its instructions if paying the solicitors itself. Appendix H to the statement was a submission by Mr Holden FRICS explaining how the figure of £990 for valuer's costs is arrived at. It is apparent from that explanation that such figure includes £100 plus VAT for an abortive inspection on 21 March 2016.

8. Mr Tester in his comments challenging the figure for solicitors' costs relied on the repeat nature of the work given numerous grants of new leases in Gordon Close. He made the same point in relation to the valuer's costs and took exception to the cost of the 21 March 2016 visit being included as such was abortive, according to Mr Tester, because he was not given notice of it as he had requested and so was unable to arrange access.

9. Starting with the solicitors' costs, it is right that this is a specialised area of law in which care must be taken. And so the costs claimed in this case may well be reasonable if this were a one-off transaction. But it is not. WH Matthews & Co deal with multiple claims for new leases on this development and a landlord paying the solicitors' costs itself would, in the judgment of the Tribunal, expect the solicitors' costs per claim to reflect the repeat nature of the work. But the landlord's statement in support of the figure of £2070 does not reveal any adjustment having been made for repetition.

10. Having regard to the limiting principle in s.60(2) and the repeat nature of the work, some downward adjustment must therefore be made to arrive at a reasonable cost for the work undertaken by WH Matthews & Co. I am fortified in that conclusion by noting that a like view was arrived at by HHJ Huskinson in the recent case of *Sinclair Gardens Investments (Kensington) Limited v Wisbey* [2016] UKUT 0203

(LC). Doing the best that it can on the material available, in the judgment of the Tribunal the figure for reasonable solicitors' costs put forward by Mr Tester, being £1800, does represent a proper adjustment. I note that HHJ Huskinson applied a heavier discount, namely 20 per cent, in *Sinclair Gardens Investments (Kensington) Limited v Wisbey.*

11. Turning to the valuer's costs, the Tribunal is satisfied that the abortive inspection on 21 March 2016 was the fault of the valuer, not Mr Tester. Mr Tester gives a detailed account, supported by a statement of truth, to the effect that he contacted Mr Holden's office in February making clear he would need notice of an inspection date in order to arrange access, the property being tenanted, and leaving his mobile telephone number for that purpose, but that he was given no such notice; only being telephoned on 21 March 2016. Mr Holden's different account is not his own in that it refers to an arrangement made not by him but a member of his staff. Further, whereas Mr Holden points to the fact that his office had Mr Tester's telephone number as proving that Mr Tester had arranged the appointment, it plainly does not amount to such proof. On the contrary, it is entirely consistent with Mr Tester's account.

12. A landlord personally responsible for its valuer's costs would not expect to be charged for a visit made abortive by reason of the fault of the valuer. Accordingly, the valuer's costs must, in the judgment of the Tribunal, be reduced by £100 plus VAT.

13. However, the Tribunal does not agree with Mr Tester that there should be a further reduction in the valuer's costs by reason of the valuer having carried out other valuations in Gordon Close. Valuations are date and property sensitive. A landlord cannot expect the same scope for savings by reason of repetition; at least where the valuations are not carried out at the same time. There needed to be an inspection and proper gathering and consideration of the *current* market and other evidence. The Tribunal has considered carefully Mr Holden's account of the work undertaken for this valuation. It cannot be said that it is work which ought not to have been done or which should have been done more quickly given his experience of other valuations in Gordon Close.

14. It follows from the above that the Tribunal's determination of the reasonable costs under s.60 of the 1993 Act is **£2670**, being £1800 for solicitors' costs and £870 for valuer's costs; all including VAT.

15. Whether Mr Tester can be said to have paid part of those costs by virtue of a deposit of £350 is not a question given to the Tribunal under s.60 of the 1993 Act and so the Tribunal makes no decision on it.

16. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

17. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

18. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for

an extension of time and the reason for not complying with the 28 day time limit. The Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

19. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Judge A Johns QC

Dated 20 January 2017