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

Case reference : **LON/00AJ/OC9/2017/0164**

Property : **Ground Floor Flat, 1 Cresta Court,
Hanger Lane, London W5 3DE**

Applicants : **Mr Israel Moskovitz and Chani
Moskovitz (“the tenants”)**

Representative : **Avon Estates (London) Ltd**

Respondent : **Dorrington Residential Ltd (“the
landlord”)**

Representative : **Pemberton Greenish LLP**

Type of application : **Section 91(2)(d) of the Leasehold
Reform, Housing and Urban
Development Act 1993**

Tribunal members : **(1) Judge Amran Vance
(2) Judge Hargreaves
(3) Mr D Jagger, FRICS**

**Date of determination
and venue** : **9 August 2017 at
10 Alfred Place, London WC1E 7LR**

Date of decision : **9 August 2017**

DECISION

Summary of the tribunal's decision

1. The tribunal determines that the section 60 statutory costs payable by the tenants to the landlord amounts to **£2,849** plus VAT where applicable.

Background

2. This is an application brought under section 91(2)(d) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") in respect of Ground Floor Flat, 1 Cresta Court, Hanger Lane, London W5 3DE ("the Flat"). The tenants seek a determination of the reasonable costs payable by them under section 60(1) of the Act following service of a Notice of Claim to acquire a new lease of the Flat.
3. The tenants' leasehold interest in the Flat is under the terms of a lease dated 29 May 1998 granted for a term of 99 years from 1 January 1994 made between (1) Acre Close Holdings Limited and (2) James O'Sullivan.
4. The tenants, through their solicitor, made a claim to acquire a new lease of the Flat by way of a notice of claim under section 42 of the Act. The proposed premium was £10,000.
5. The landlord's solicitors subsequently served a counter-notice under section 45 of the Act. We have not been provided with a copy of that counternotice and do not know the date on which it was served.
6. The landlord now seeks its statutory costs payable by the tenants to the landlord under s.60 of the Act. On 15 June 2017 the tribunal received an application from the tenants seeking a determination of those costs.
7. The landlord seeks the following costs:

Legal fees

£1,782 plus VAT

Land Registry Fees	£15
Valuation Fees	£1,575 plus VAT

The statutory provisions

8. Section 60 of the Act provides:

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 the appropriate 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.

Directions and the schedule of costs

9. The tribunal issued its standard costs directions on 16 June 2017 providing for the landlord to send the tenants a schedule of costs sufficient for summary assessment including copies of the invoices substantiating the claimed costs and for the tenants to provide a statement of case, legal submissions and any other documents or reports on which reliance was placed.
10. The tribunal directed that it was content to determine the matter on the papers unless either party requested an oral hearing. No party requested a hearing and the application was determined on the papers on 9 August 2017.

The principles

11. The proper basis of assessment of costs in enfranchisement cases under the 1993 Act, whether concerned with the purchase of a freehold or the extension of a lease, was set out in the Upper Tribunal decision of *Drax v Lawn Court Freehold Ltd* [2010] UKUT 81 (LC), LRA/58/2009. That decision (which related to the purchase of a freehold and, therefore, costs under section 33 of the Act, but which is equally applicable to a lease extension and costs under section 60) established that costs must be reasonable and have been incurred in pursuance of the initial notice and in connection with the purposes listed in sub-sections [60(1)(a) to (c)]. The applicant tenant is also protected by section 60(2) which limits recoverable costs to those that the respondent landlord would be prepared to pay if it were using its own money rather than being paid by the tenant.
12. In effect, this introduces what was described in *Drax* as a “(limited) test of proportionality of a kind associated with the assessment of costs on the standard basis.” It is also the case, as confirmed by *Drax*, that the landlord should only receive its costs where it has explained and substantiated them.
13. It does not follow that this is an assessment of costs on the standard basis (let alone on the indemnity basis). This is not what section 60 says, nor is *Drax* an authority for that proposition. Section 60 is self-contained.
14. The tribunal has had regard to the comments of Professor Farrand QC in the decision relied upon by the applicant in *Daejan Investments Freehold Ltd v Parkside 78 Ltd* (LON/ENF/1005/03), in which, at paragraph 8, he stated:

“As a matter of principle, in the view of the Tribunal, leasehold enfranchisement may understandably be regarded as a form of compulsory purchase by tenants from an unwilling seller and

at a price below market value. Accordingly, it would be surprising if reversioners were expected to be further out of pocket in respect of their inevitable incidental expenditure incurred in obtaining the professional services of valuers and lawyers for a transaction and proceedings forced upon them. Parliament has indeed provided that this expenditure is recoverable, in effect, from tenant-purchasers subject only to the requirement of reasonableness...”

The tribunal’s determination and reasons

Legal Fees

15. The landlord’s solicitor has provided a schedule of costs in accordance with the tribunal’s directions. This provides details of the work carried out between 14 March 2016 and 24 March 2016 totalling 4 hours and 50 minutes together with an additional 30 minutes for what is described as ‘anticipated time’. All work was carried out by an assistant solicitor at an hourly rate of £330.
16. The tenants’ objections are that: (a) the costs sought are excessive for what was a straightforward lease extension; and (b) the costs sought do not match the invoices sent by the solicitors to their client. They suggest that the work could have been carried out by a junior solicitor or paralegal under appropriate supervision and that the time spent by the assistant solicitor was excessive. They have provided copies of three previous decisions of this tribunal which they contend support their view that a reasonable amount for legal fees would be £1,440 inclusive of VAT.
17. No objection has been raised by the tenants regarding the landlord’s choice of solicitor or the assistant solicitor’s hourly rates. We consider its choice of solicitor and the hourly rates to be reasonable. The hourly rates are comfortably within guideline rates issued by the Senior Courts

Costs Office which currently suggest a figure between £229 to £267 for a Grade A solicitor. However, these rates have not changed since 2010 and we consider uplift appropriate given the passage of time and the solicitor's location on the border of SW1 for which the guideline hourly rates are £317 per hour. Whilst this does appear to have been a relatively straightforward transaction we consider that enfranchisement work is complex and sufficiently important to justify the involvement of a Grade A fee earner.

18. Having considered the schedule of costs provided by the landlord's solicitors we consider that all of the costs have been reasonably incurred except for: (a) the six minutes spent on 6 November 2016 for noting an incoming email from the tenant's solicitor. As a matter of principle we do not consider the costs of considering routine incoming correspondence are recoverable unless it generates additional work for the fee earner; and (b) the 'anticipated time' of 30 minutes. No explanation has been provided as to what this time relates to and we cannot therefore be satisfied that these costs are recoverable under either section 60(1)(a),(b) or (c).
19. The fact that the section 60 costs sought do not match the invoices sent to the landlord is irrelevant. As the landlord's solicitor explains in its statement of case the invoices included costs incurred that were not considered to be recoverable from the tenants as statutory costs.
20. The £15 land registry fees were not challenged by the tenants and are clearly recoverable.
21. The total legal costs payable by the tenants is therefore £1,584 (four hours 48 minutes work at £330 per hour) plus VAT and £15 for the land registry fees.

Valuer's Costs

22. Although we have not been provided with a copy of the valuer's invoice we have considered the breakdown of the time spent as recorded in an email sent by the valuer, Carter Jonas LLP, to the landlord's solicitor dated 18 July 2017.
23. The hourly rates charged were £250 plus VAT for an associate and £150 per hour for a graduate. The associate spent: (a) 1.25 hours dealing with the inspection; (b) 0.25 hours reading the lease, land registry entries and tenants notice; (c) 2 hours dealing with research into comparables on RightMove Plus, Zoopla, the Land Registry and through calling local agents; (d) 0.5 hours producing a detailed comparable spreadsheet; (e) 0.5 hours producing premium calculations; (f) 0.5 hours writing the report; (g) 1 hour revising calculations and comparables because of the presence of a regulated tenant that they only became aware of two months after producing their report. The graduate spent 0.5 hours calculating the GIA following inspection, report printing, copying and scanning.
24. The tenant objects to these costs on the basis that in its own experience a fee of £960 inclusive of VAT would be reasonable.
25. We accept that the associate's hourly rate is reasonable, having regard to their central London location and known expertise. We do not consider the work carried out by the graduate was reasonably incurred and it is disallowed. Report printing, copying and scanning are all part of overheads and we would have expected the associate to calculate the GIA within the costs of preparation of his or her report. As for the time incurred by the associate we consider all of this to be reasonable except for the two hours spent researching comparables. In our view this is excessive for the work undertaken. We allow one hour.
26. The total costs payable by the respondent in respect of valuation costs is therefore **£1,250** plus VAT (five hours work at £250 per hour).

Name: Amran Vance

Date: 9 August 2017

ANNEX 1 - RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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.