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

Case Reference : **CAM/26UC/OLR/2014/0063**

Property : **Flat 13A, Melsted Road, Hemel Hempstead, Hertfordshire, HP1 1SX**

Applicants : **Nicholas Mallory & Donna Rorrance**
Unrepresented

Respondent : **Frankgiving Limited**
Represented by Bude Nathan Iwanier
Solicitors

Date of Application : **18th March 2013**

Type of Application : **To determine the terms of acquisition and costs of the new lease of the properties pursuant to sections 51(3) and 60 Leasehold Reform, Housing, and Urban Development Act 1993 (“the 1993 Act”)**

Tribunal : **Judge J. Oxlade**
M. Henington BSc MRICS

Date of Decision (paper) : **22nd July 2014**

DECISION

For the following reasons, the Tribunal finds that:

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- (i) **the Applicants shall pay to the Respondent legal costs assessed as £1236.01 (including VAT) together with valuer's costs of £300 (including vat),**
- (ii) **the terms of the lease extension shall be as found in the draft surrender and lease submitted with the Respondent's letter dated 10th June 2014, save that clauses 9,16,17 and 21 shall be deleted.**

REASONS FOR THE DECISION

Background

1. The Applicants are the lessees of 13a Melsted Road, Hemel Hempstead, Herts ("the premises"), who served on the Respondent lessor a section 42 notice to extend their lease.
2. The parties have agreed the premium payable, but not the terms of the lease nor the level of statutory costs payable by the Applicant, and so an application was issued for the Tribunal to determine these issues.
3. The parties elected a determination on the papers, pursuant to which a bundle of documents was filed.
4. In respect of the terms of the lease, the points in dispute have narrowed as the parties have corresponded, so that the only issue relates to the inclusion of one term, so the dispute is substantially about the costs payable.

Evidence

5. The Respondent filed an itemised bill of costs of £1496.67 (plus vat of £299.33) made up to 7th March 2014 which included an estimated additional hour's work, to finalise matters. Disbursements to be added to this consist of a surveyors desk top valuation of £250 plus vat, which the Applicants do not challenge.
6. The Respondent rely on a witness statement filed by the case owner, Samuel Pariente, dated 13th May 2014, and a letter dated 10th June 2014.
7. The Applicants rely on their application, two undated documents filed and headed "points in dispute" and "statement in reply to Mr. Pariente and notes on the bundle", together with a letter dated 30th May 2014 from Mr. Demsky, PhD Psychologist.

Parties Respective Positions

Applicants

Costs

8. The Applicants consider that the Respondent has behaved unreasonably throughout: failing to accept their offer at the outset, which had been based on another previous lease extension agreed two years before; costs had been unnecessarily increased by the demand for information - to which the Respondent was not entitled - when securing payment of the 10% holding deposit; costs had been unreasonably incurred when arguing over an uplift in the administration charge set in the lease from £10 to £75. The Applicants consider that a sum of £619.50 for legal costs alone would be reasonable, based on 3 1/2 hours work and making use of case law in which such sums were found to be reasonable.

9. The Applicants have taken issue with the hourly rate of the fee earner at £200 per hour, which status was not initially specified in accordance with directions. In any event, as the Applicants had been able to make use of publicly available information on the process and calculations, and to arrive at a reasonably accurate solution, quickly, it was not accepted that the process was unduly complex, and so did not require a high degree of specialist advice.

10. The Applicants consider that a total of 7 1/2 hours is excessive, as the case was neither complex nor unduly difficult. Issue was particularly taken with:

- 2.2 hours billed for resolution of the deposit. They set out the claimed difficulties with the deposit and yet it was an unnecessary over complication and capable of easy resolution. It did not require the skill (and cost) of a Solicitor to send simple queries, and which could have been done by a different staff member;
- 76 minutes billed for "lease wording", which concerned an uplift in the administration charge from £10 set by the lease, to £75. The Applicants were concerned by the open-ended nature of the proposed drafting, and with the Solicitors vagueness in specifying the statutory power available to the Respondent to re-negotiate this term. Further, section 60 of the 1993 Act would not entitle the Respondent to recover costs incurred in negotiations.

11. The Applicants replied to the Respondent's submissions on costs, enclosing a short psychologists reporting on the lead Applicant, as to his identification of the lead Applicant as having Aspergers Syndrome, being highly intelligent, and having a close attention to detail, which should not lead to the Respondent's treating his responses as personal criticisms - rather his literal interpretation to matters.

Lease terms

12. The only term now in dispute is clause 21 of the draft deed of surrender and re-grant, which provides as follows:

"It is not intended that any term of this lease shall be enforceable by any third party under section 1 of the Contracts (Rights of Third Parties) Act 1999".

13. The Applicant asked for clarification of what this term meant and why it should be included. The Respondent argues for its inclusion, without explaining why it was necessary, or how it would fall within the statutory criteria which permit variations to the lease under section 56 of the 1993 Act.

Respondent

Costs

14. The Respondent relied on the cost schedule, itemised by reference to investigating title, valuation and grant of a new lease. There was further detailing of the work by reference to deposit and lease wording.

15. Put plain and simply the Respondent's case is that all costs were reasonably incurred. The work was done by a Solicitor with a charge out rate of £200, as a grade B fee earner, and the sums claimed were typical of this type of work. The background of the transaction was set out, the issue over the deposit, and the negotiations on the lease. The Respondent's point is that they followed the proper procedures to ensure that the money laundering restrictions were not breached, and dealt with unrepresented Applicants as efficiently as possible - nevertheless this was time-consuming, and made more so by the Applicants refusal to take representation.

16. The Respondent relied on case law concerning the uplift on the administration charge set in the lease, and made the point that the parties had settled that by the Applicants conceding the point. As to instruction of a valuer, this would have been done by the managing agents, not the Solicitors.

17. The Respondent noted the Applicants section 20C application, and said that if wasted costs were to be ordered then these should be against the Applicants for their approach to the matter. The Respondent had not been aware of Mr. Mallory's diagnosis of Aspergers, nor did they consider it relevant to the matters.

Lease terms

18. In "response to Applicants' objections to draft lease" the Respondent made the point that by and large the "objections" were in fact requests for clarification, which arose because the Applicants were unrepresented (contrary to suggestions that they should seek advice) and which emphasised their point about the additional burden placed on the Respondent. The Respondent therefore would agree to deletion of clauses 9, 16, and 17, but

maintained that clause 21 was necessary on the basis that it did not amount to an amendment to the previous lease, but reflects a change in the law and practice since the lease was executed.

Relevant Law

19. The lessor is entitled to recover from the lessee the reasonable costs incurred in dealing with the section 42 notice, in accordance with section 60 of the 1993 Act, limited to:

- "(1)(a) any investigation reasonably undertaken of the tenant's rights 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.

(2) For the purpose 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 in the circumstances had been such that he was personally liable to all such costs.

Findings

Costs

20. The Tribunal has carefully considered the itemised bill of costs, and the parties various submissions.

21. At the outset we should say that the hourly rate and costs claimed by the Respondent fall well within the norm for this type of work, and which bills are frequently seen by the Tribunal.

22. However, there are two aspects of challenge which the Tribunal finds to be of significance:

- (i) firstly, the Respondent appears from the annotated bill to have spent 96¹ minutes on communications over collecting the deposit and researching the point, but this does not fall within the areas permitted by section 60(1) of the Act, and so we discount £320 (excl vat),
- (ii) secondly, the time spent (88 minutes) on effecting an alteration to the term of the lease concerning the administration fee is excessive; it is an upward alteration which substantially benefits the lessor; in the circumstances this has taken twice as long as necessary, and so in the circumstances we discount this cost to the Applicant by 50%, so £146.66 (excl vat).

¹ Time spent on 22.2.14 (6), 3.11.13(10), 11.11.13 (6), 7.11.13 (12) , 29.11.13(6), 8.11.13(6), 29.11.13 (6), 14.10.13(6), 15.10.13(10), 18.10.13 (6), 1.11.13(6), 29.11.13(6)7.3.2014(6), 12.2.14(6)

23. Whilst it is clear that the parties have not seen eye to eye during the course of the transaction, they have managed to make good progress in resolving most matters. Whilst these differences may have increased the time spent and so charged to the Respondent's costs, bearing in mind that the total sum is well within what is reasonable for this type of work, there is little to be gained from seeking to apportion costs.

24. In the circumstances, the Tribunal finds that the sum recoverable by the Respondent from the Applicant in respect of legal costs is £1236.01² (incl vat) plus surveyors disbursement of £300 (incl vat).

Terms of the Lease

25. The terms of the lease extension were largely resolved between the parties. The only outstanding issue relates to clause 21. The statutory assumption is that the new lease terms shall mirror the old, and so it is for the party seeking an amendment, to establish that it falls within one of the exceptions to the general rule. The Respondent has not explained with any clarity why this new term is needed and within which exception it falls, and so in the circumstances the Tribunal refuses the request to vary it.

26. Accordingly, the term appearing as clause 21 shall be deleted and (subject to the concessions made by the Respondent and recorded at paragraph 18 above) otherwise the draft as attached to the Respondent's letter dated 10th June 2014 shall be adopted

Conclusion

27. The Applicants were concerned that the Respondent would add to the service charge account any uncollected legal costs arising from this process, and so invited the Tribunal to make a section 20C Order. The Respondent has not communicated an intention to do so, and so it is not necessary to make the Order. No doubt if the Respondent (wrongly) sought to do so, the Applicants would make an application to the Tribunal for determination of payability of those service charges pursuant to section 27A of the Landlord and Tenant Act 1985, and would seek their own costs arising from that.

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Joanne Oxlade
Judge of the First tier Tribunal, Property Chamber

23rd July 2014

² £1496.67, less £320 and £146.66, plus vat