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

Case Reference : **LON/OOBF/OC9/2015/0380**

Property : **832a London Road, Cheam,
Sutton, Surrey, SM3 9BJ**

Applicant : **Mr D. Bellis (leaseholder)**

Representative : **The Legal Advice Centre and
Wallakers (surveyors)**

Respondents : **Daejan Properties Limited (landlord)**

Representative : **Wallace LLP (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 of the Act and for an
order under rule 13 of the Tribunal
Procedure (First-tier Tribunal)
(Property Chamber) Rules 2013 ('the
rules').**

Tribunal Member : **Judge James Driscoll**

**Date and venue of
Hearing** : **The tribunal considered the
application on the basis of the papers
filed and without an oral hearing on
12 April 2016**

Date of Decision : **18 April 2016**

DECISIONS

Summary of the decisions

1. It is determined that the landlord is entitled to recover the following costs which are payable by the leaseholder under section 60 of the Act. These are solicitors fees in the sum of £1,803 (with VAT of £360.60), valuer's fees of £850 (with VAT of £170), a courier's fee of £101.50 (with VAT of £20.30) and a Land Registry fee of £21. The total fees of £3,326.40 should be paid by 13 May 2016. The application for a costs order under rule 13 is dismissed.

Introduction

2. This is an application for a determination of costs. It is made under section 91(2)(d) of the Act. Under section 60 a claimant leaseholder is required to pay the reasonable costs incurred by the landlord in connection with a claim for a new lease. Copies of these two statutory provisions are contained in the appendix to this decision. There is also an application for a costs order under rule 13.
3. In this matter the claimant is the leaseholder of the subject premises who has exercised his right to seek a new lease under the provisions in Chapter 2, Part I of the Act. The respondent is landlord under the lease. The landlords are represented by Wallace LLP, a firm of solicitors. The leaseholder has been advised by the Legal Advice Centre and by Wallakers a firm of surveyors.
4. His claim was made in a notice dated 24 February 2015. In response the landlords gave a counter-notice dated 22 April 2015. Their counter-notice admitted the claim but made counter-proposals on the premium and on the proposed terms of the new lease.
5. As the parties failed to reach agreement on the premium to be paid and the terms of the new lease an application was made by the leaseholder to the tribunal for a determination of these disputes.
6. In January 2016 the tribunal received letters from the parties' representatives stating that the terms had been agreed. As the question of the landlords costs under section 60 did not appear to have been agreed directions were given dated 17 February 2016 for the determination of these costs. These directions required the leaseholder to respond to the landlord's claim for costs and for the leaseholder to prepare a bundle of documents.

7. The directions also stated that the the matter should be dealt with without an oral hearing. However, each party was given the option of seeking a hearing. Neither party having sought a hearing the tribunal considered the application on the basis of the papers filed on 12 April 2016.

The decisions

8. Neither the leaseholder or those advising him prepared and filed a bundle of documents as required by the directions. Instead the landlord prepared a bundle of documents and filed two copies which were received by the tribunal on 7 April 2016. In their covering letter the landlords informed the tribunal that they sought a costs order under rule 13 of the Rules 2013 on the basis that the leaseholder had behaved unreasonably in his failure to comply with the directions thus putting the landlord to the expense of preparing the documents. (A copy of this letter was sent to Wallakers
9. I considered all of the documents in the landlord's bundle as part of my consideration of the costs claims on 12 April 2016. The bundle included the notices, the application, the directions, the landlord's schedule of costs and supporting invoices, the landlord's written submissions on costs and correspondence between the parties. Also included were copies of previous decisions on costs made by this tribunal. The bundle ran to 178 pages
10. The landlord claims the sum of £2,232.00 in relation to the costs of their solicitors, a valuation fee of £850, courier fees of £101.50 (all exclusive of VAT) and a land registry fee of £21.00.
11. I considered first, the submissions on section 60 costs. Unfortunately the tribunal received no submissions from either the leaseholder or those advising him. I note that the landlords' solicitors wrote to the leaseholder's advisors about their costs by email on 10 February 2016 and there does not appear to have been a reply. In short, the tribunal has received no documents or submissions made by or on behalf of the leaseholder.
12. A very full explanation of their charges was given by Wallace LLP the applicant's solicitors. In the absence of any challenges to these charges I considered the items of work that they covered, checked that they are all covered by section 60 of the Act and that they are not excessive. I also relied on my professional knowledge and experience to inform my consideration of the fees claimed. In addition I also considered the previous tribunal decisions which were included in the bundle all of which are determinations of costs claimed by Wallace LLP.
13. I note that under section 60 the claimant leaseholder must pay the landlord's costs of (a) investigating the leaseholder's right to a new lease, (b) any valuation of the leaseholder's flat and (c) the grant of the new lease.

14. I agree with the landlord's submission that the area of enfranchisement and new leases is a complex one and that the landlord is entitled to choose a specialist solicitor to represent its interests. The work was undertaken by a partner at Wallace LLP who charged £420 per hour. The partner was assisted by an assistant solicitor who charged the time at £300 per hour and by a paralegal whose charge out rate was £180. In my opinion these rates are in line with the charge out rates for solicitors working in central London.
15. The work included considering the claim notice, considering Land Registry entries, preparing a draft lease and preparing a counter-notice. The work also consisted of correspondence and emails with the leaseholder's solicitor and the applicant's valuer. I am satisfied that the scope of this work was reasonable.
16. The one aspect of the solicitors costs that I was unhappy with are claims for 'anticipated time to deal with completion' (£231.00) and 'anticipated further correspondence' (£198.00). I do not consider it appropriate to seek an assessment of costs that have not already been incurred. I also consider that the assessed solicitor's costs of £1,803 is a reasonable amount given that there were no obvious complexities in this case, one where the solicitors involved had to prepare and serve a counter-notice, draft a new lease and deal with valuation.
17. Otherwise all of this work was justified and in the absence of any challenges to the charges I determine that this element of the charges was reasonably incurred. I determine that the allowable solicitor's costs is the sum of £1,803 (exclusive of VAT).
18. I also conclude that the valuer's fee of £850 (exclusive of VAT) was reasonable incurred and in line with valuer's charges for new lease claims in Greater London. (I note that the valuer's second claim for fees at £1190.00 have not been included in the landlord's claim - see page 47 of the bundle).
19. I agree that it was reasonable to incur the Land Registry fee of £21 as a necessary part of the work in investigating the claim.
20. I also agree with the submission that personal delivery of the counter-notice (given the consequences to a landlord who does not give a counter-notice) is justified. The courier fee claimed (£101.50, exclusive of VAT) is on the high side but without a challenge to it by the leaseholder I consider that it is allowable as part of the landlord's costs incurred under section 60 of the Act.

The rule 13 costs application

21. The landlord also seeks an order under rule 13 of the 2013 Rules (a copy of which is also included in the appendix) contending that the leaseholder's failure to prepare the bundle of documents put the landlord to the expense of preparing the bundle. This tribunal is a 'costs-free' tribunal, that is to say that, unlike court proceedings costs, orders cannot usually be made against an unsuccessful party. The power in rule 13 should be reserved for cases where a party has behaved so unreasonably that it is appropriate to mark the tribunal's disapproval by making a costs order. I do not consider that the leaseholder's failure in this case justifies such a costs order. Moreover, I consider that it was largely to the landlord's advantage to prepare a bundle which included copies of several tribunal costs decisions. The application for a costs order under rule 13 is dismissed.

James Driscoll, 18 April 2016

Appendix

Leasehold Reform, Housing and Urban Development Act 1993

Section 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.

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.

Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

Rule 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.

In relation to the specified categories of cases:- “agricultural land and drainage case” means:-

“any case in respect of which the Tribunal has jurisdiction conferred—

(a) by or under any enactment specified in section 6A(2) of the Agriculture (Miscellaneous Provisions) Act 1954; or

(b) by the Hill Farming Act 1946;”

“residential property case” means:-

“a case in respect of which the Tribunal has jurisdiction conferred by or under the 1983 Act, the Housing Act 1985 or the 2004 Act;”

““leasehold case” means:-

“a case in respect of which the Tribunal has jurisdiction under any of the enactments specified in section 176A (2) of the Commonhold and Leasehold Reform Act 2002;”

““land registration case” means:-

“a case in respect of which the Tribunal has jurisdiction under the 2002 LR Act;”