4531

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AP/OC9/2017/0163**
Property	:	**18 Whittington Road, London N22 and land and buildings lying to the east side of Whittington Road, Wood Green, N22 8YD**
Applicant	:	**Safeguard Propco Limited ("the tenant")**
Representative	:	**Frank Forney & Partners LLP, solicitors**
Respondent	:	**Elsie Foster ("the landlord")**
Representative	:	**Stapletons & Sons, solicitors**
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	:	**11 August 2017**

DECISION

Summary of the tribunal's decision

1. The tribunal determines that the section 60 statutory costs payable by the tenant to the landlord amount to £1,750 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 18 Whittington Road, London N22 and land and buildings lying to the east side of Whittington Road, Wood Green, N22 8YD ("the Flat"). The tenant seeks a determination of the reasonable costs payable by it under section 60(1) of the Act following service of a Notice of Claim to acquire a new lease of the Flat.

3. On 5 September 2016, Jean Margret Bjork made a claim to acquire a new lease by way of a notice of claim under section 42 of the Act. She sought a new lease in respect of: (a) 18 Whittington Road, London N22 8YD; and (b) a garage located to the south east side of Whittington Road. The proposed premium was £55,000.

4. By a Deed dated 16 September 2016, Jean Margret Bjork assigned the benefit of the section 42 notice to the tenant.

5. On 4 November 2016, the landlord's solicitors served a counter-notice under section 45 of the Act. The premium proposed was £83,400.

6. The landlord now seeks its statutory costs payable by the tenant to the landlord under s.60 of the Act in the sum of £2,500 plus VAT. On 14 June 2017, the tribunal received an application from the tenant seeking a determination of those costs.

The statutory provisions

7. 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

8. The tribunal issued its standard costs directions on 15 June 2017 providing for the landlord to send the tenant a schedule of costs sufficient for summary assessment including copies of the invoices substantiating the claimed costs and for the tenant to provide a statement of case, legal submissions and any other documents or reports on which reliance was placed.

9. 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

10. 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.

11. 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.

12. 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.

13. 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

14. Contrary to the tribunal's directions, the landlord has not provided a schedule of costs sufficient for us to carry out a summary assessment. In a letter dated 25 May 2017, to the tenant's solicitors, the landlord's solicitors state that they charged their client a fixed fee of £2,500 plus VAT for the work carried out in this transaction. That is said to have been broken down as £1,000 plus VAT for drafting, engrossing and executing each lease plus £500 for all work relating to the investigation of title and the tenant's rights in respect of claiming a new lease.

15. Whilst we recognise that this work was carried out under a fixed fee arrangement the landlord's solicitor could, and in our view, should, have provided us with a schedule of time actually incurred by the fee earner or fee earners involved. This would have assisted us in carrying out this summary assessment. Given the absence of a schedule we have to the best we can on the information provided. We consider the best way to do so is to try and identify the likely work involved in this transaction, the amount of time reasonable for the carrying out of such work, and what hourly rate would be appropriate for a fee earner to charge for such work.

16. The tenant's objections are that: (a) the costs sought are excessive as the two leases were almost identical; (b) it considered reasonable legal fees should not exceed £1,500 plus VAT broken down as one hour to establish the tenant's right to a new lease and to review the new lease and notice of claim, no more than three hours to review two identical leases of 10 pages each, one hour for drafting a new lease and one hour

for arranging for execution and the preparation of a completion statement.

17. The tenant therefore suggested that six hours in total was reasonable and that given that the landlord's solicitors are located in outer London, an hourly rate of £250 would be reasonable as this was not a complicated matter.

18. From the information provided by the landlord's solicitors in its letter of 25 May 2017, and in its response to the tenant's statement of case, it appears to us that the work undertaken would have included;

    (a) checking the section 42 claim notice and Deed of Assignment;

    (b) serving a counter-notice;

    (c) investigating the title of both leases and the tenant's right to a new lease including reviewing both existing leases;

    (d) instructing a valuer/surveyor;

    (e) reviewing the new lease;

    (f) dealing with execution and completion of the lease

19. In our view there is merit in the tenant's solicitor's comment that the two existing leases were very similar. The covenants in both appear to be identical. This therefore needs to be factored in when considering the amount of time the landlord's solicitor needed to spend on reviewing both leases.

20. We consider that a total of seven hours is reasonable for carrying out the work set out in paragraph 19 above and all ancillary communications with the tenant and valuer. We consider that seven

hours is adequate for the work described in the letter dated 25 May 2017, and in the landlord' response to the tenant's statement of case.

21. We agree with the tenant's solicitor that an appropriate hourly rate, if the landlord's solicitor had billed its client at an hourly rate rather than a fixed fee, would have been £250 per hour given that the guideline rates issued by the Senior Courts Costs Office currently suggest a of figure between £229 to £267 for a Grade A solicitor in the N13 area.

22. The total legal costs payable by the tenant is therefore £1,750 (seven hours work at £250 per hour) plus VAT.

Name: Amran Vance **Date:** 11 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.