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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**Lon/00AH/OC9/2014/0062**
Property	:	**Flat 2, 42 London Road, West Croydon CR0 2TA**
Applicant	:	**Ms Kate Victoria Mawby**
Representative	:	**Pro-Leagle**
Respondent	:	**Mr Rafee Gul Butt**
Representative	:	**Makka Solicitors Limited**
Type of Application	:	**Section 48(1) Leasehold Reform, Housing and Urban Development Act 1993 – to determine the amount of costs payable pursuant to section 60 of the Act**
Tribunal Member	:	**Judge John Hewitt**
Date of Determination	:	**13 February 2015**
Date of Decision	:	**14 February 2015**

DECISION

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Decision

1. The decision of the tribunal is that the amount of costs payable by the applicant to the respondent is:

   1.1 Legal costs: £720.00

   1.2 Valuation fees: £720.00

2. The reasons for the decision are set out below.

NB Reference to a number in square brackets '[ ]' is a reference to the oage number of the trial bundle provided to the tribunal.

Background

3. The applicant tenant gave notice to the respondent reversioner pursuant to section 42 of the Act seeking a new lease.

4. The respondent gave a counter-notice in which the applicant's right to a new lease was admitted.

5. The parties were not able to agree the terms of acquisition and the applicant made an application to the tribunal. Eventually the parties' representatives informed the tribunal that the terms of acquisition were agreed, but that they could not agree the amount of costs payable by the applicant to the respondent pursuant to section 60 of the Act.

6. Directions were duly given in order that the tribunal might determine the amount of costs payable. The parties were informed that the tribunal proposed to make the determination on the papers without an oral hearing pursuant to rule 31. No objection to it doing so has been made and no request for an oral hearing has been received.

7. Pursuant to directions I have been provided with a trial bundle.

   The respondent's schedule of costs is at [1-7]

   The applicant's points of dispute are at [9-15]

   The respondent's reply is at [27-33]

   The applicant's response it at [60 -66]

   There are a number of exhibits – mostly correspondence - annexed to the principle submissions. Paragraphs 4,9 and 10 of the applicant's final response allude to unreasonable behaviour on the part of the respondent and paragraph 16 purports to be an application for costs made pursuant to rule 13.

The statutory provisions

8. I remind myself that the material statutory provisions are:

Leasehold Reform, Housing and Urban Development Act 1993

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.

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

13.— Orders for costs, reimbursement of fees and interest on costs

(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.

(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

(3) The Tribunal may make an order under this rule on an application or on its own initiative.

(4) A person making an application for an order for costs—

(a) must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and to the person against whom the order is sought to be made; and

(b) may send or deliver together with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal.

(5) An application for an order for costs may be made at any time during the proceedings but must be made within 28 days after the date on which the Tribunal sends—

(a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or

(b) notice of consent to a withdrawal under rule 22 (withdrawal) which ends the proceedings.

(6) The Tribunal may not make an order for costs against a person (the "paying person") without first giving that person an opportunity to make representations.

(7) The amount of costs to be paid under an order under this rule may be determined by—

(a) summary assessment by the Tribunal;

(b) agreement of a specified sum by the paying person and the person entitled to receive the costs (the "receiving person");

(c) detailed assessment of the whole or a specified part of the costs (including the costs of the assessment) incurred by the receiving person by the Tribunal or, if it so directs, on an application to a county court; and such assessment is to be on the standard basis or, if specified in the costs order, on the indemnity basis.

(8) The Civil Procedure Rules 1998, section 74 (interest on judgment debts, etc) of the County Courts Act 1984 and the County Court (Interest on Judgment Debts) Order 1991 shall apply, with necessary modifications, to a detailed assessment carried out under paragraph (7)(c) as if the proceedings in the Tribunal had been proceedings in a court to which the Civil Procedure Rules 1998 apply.

(9) The Tribunal may order an amount to be paid on account before the costs or expenses are assessed.

The issues

The valuation fee £720.00

9. It is convenient to take this first.

10. Section 60(1)(b) obliges the lessee to pay the cost of *"any valuation of the tenant's flat obtained for the purpose of fixing the premium"*. The applicant submits that this cost must be incurred within the first two months and prior to the service of any counter-notice. I reject that because the Act does not impose that limitation. In practice many reversioners will seek a valuation at an early stage because that will sometimes help inform whether the lessee's proposed premium is reasonable and if not what sum by way of a counter proposal might be inserted into the counter-notice.

11. If the valuation work had been instructed and was intended to comprise expert valuation evidence for use in tribunal proceedings in which the premium payable was an issue, then such costs would not be payable by the

applicant because subsection 60(1)(5) provides that a tenant is not to be liable for any costs incurred in proceedings before the tribunal.

12. I have therefore given careful consideration to the manner in which the valuation was obtained and what it's purpose was.

13. On the materials before me I find that the valuer was instructed on 17 July 2014 and his instruction was confirmed by a letter dated 22 July 2014. I have not seen the letter of instruction, but I note the instruction was given shortly after the respondent had been notified of the issue of the application to the tribunal.

14. The valuation is dated 13 August 2014 [40]. It is rather crude and basic and was made without the valuer having made an inspection of the subject flat. In the event the valuer suggests a premium of between £5,664 and £6,410. Reading the letter it is plainly giving valuation advice on a broad, rough and ready basis to give an indication of the level of premium that might be achievable and realistic.

15. By letter dated 14 August 2014 [42] the respondent's solicitors served the valuation on the applicant's representative in purported compliance with tribunal directions as regards the service of expert valuation evidence. Expert evidence before the tribunal must comply with rule 19. The subject valuation report does not comply with that rule in several respects. Thus, in my judgment it cannot have been properly served in compliance with the directions.

16. In my experience a reversioner may obtain a valuation for a number of reasons. One might be to help inform a counter-notice, another might be to assist with negotiations about the premium. Both are embraced within the ambit of section 60(1)(b) of the Act. The fact that a reversioner might also seek to use (properly or improperly) such a valuation in tribunal proceedings does not relieve the obligation on the tenant to bear the reasonable costs of the valuation.

17. No issue has been taken as to the reasonableness of the cost of the valuation.

18. Thus in principle I find that the cost of the valuation was reasonable in amount and is payable by the applicant to the respondent.

19. A further point has been taken by the applicant. The correspondence suggests quite a heated relationship between the parties' respective advisers and negotiations did not go smoothly. By letter dated 23 September 2014 [46] the respondent's solicitor made a proposal that to save costs and the tribunal's time the respondent *"will be paying the cost of the surveyor himself"*. The respondent then proposed a premium of £5,500 plus legal fees, a breakdown of which was to be provided. Details of the legal costs were duly provided but no agreement on the amount payable was arrived at.

20. Both parties notified the tribunal that the premium had been agreed and that the only outstanding issue was costs. The applicant's representative, relying

on the 23 September letter informed the tribunal [50] that they accepted that no surveyor's costs were payable and that only s60 legal costs were in issue. In contrast the respondent's solicitor said in a letter dated 22 October 2014 [52] that *"costs have not been agreed..."*.

21. The letter of 23 September [46] is plainly of significance. In submissions the applicant's representative has focused on the words *"... our client will be paying the cost of the surveyor himself."* and suggest that they mean the respondent has abandoned all and any claim to recover such costs. I reject that submission. Of course as a matter of contract as between the respondent and the valuer the respondent is obliged to pay the valuer the agreed fee whether or not he might be able to recover reimbursement in whole or in part from a third party.

22. Reading the letter of 23 September in context I find that what in effect the respondent was proposing was that if the applicant were to agree and premium of £5,500 and pay his legal costs, details of which were to be provided late, he would forego any claim to recovery of the valuation fee. In the event the legal costs as claimed were not agreed and thus the offer by the respondent not to pursue recovery of the valuation fee falls away. I cannot see that there is any consideration for the offer to forego the valuation costs and I cannot see that any estoppel arises.

23. Accordingly I have determined that the valuation costs of £720 are payable by the applicant to the respondent.

Legal costs

23. The respondent has claimed legal costs of £3,996.00 + VAT of £799.20. The claim plainly includes costs incurred in connection with the tribunal proceedings including preparation of instructions to counsel.

24. The costs have been claimed at a charge-out rate of £180 which is not challenged.

25. The applicant submits that the costs of items 10-69 on the respondents schedule are not payable because they are costs incurred in connection with proceedings before a tribunal and thus are not payable by virtue of subsection 60(1)(5) of the Act. The respondent contends that such costs are payable because they were costs incurred in relation to agreeing the premium and the terms of the new lease. The respondent asserts that the applicant is liable for all costs for any work undertaken up to and including completion.

26. I prefer the submissions of the applicant as regards tribunal proceedings. Subsection 60(1)(5) expressly provides that the tenant is not to be liable for costs incurred in connection with proceedings before the tribunal. Thus even if the only issue before the tribunal is the premium payable the reversioner must bear his own costs, including the costs of any expert valuation evidence relied upon. However I reject the applicant's general submission that the respondent it not entitled to recover costs post service of the counter-notice. In the circumstances which prevailed I find that the modest costs of £54 (item

6) of the respondent's solicitor carrying out some limited valuation research as an aid to drafting the counter-notice are payable by the applicant.

27. I also find that the respondent is in error in asserting that a tenant is liable for all costs up to completion. Section 60, properly construed, provides only a limited range of costs payable by a tenant. Subsection 60(1)(c) is limited to costs of preparing the new lease, a modest amount of work on any amendments proposed by the tenant and the basic mechanics of completion and registration of the new lease on the landlord's title.

28. I find that the respondent is not entitled to recover the cost of preparing the schedule of costs or any costs incurred in connection with the assessment of costs and the determination by this tribunal of the costs payable by the applicant.

29. I assess that the costs payable by the applicant include items 1-9 and item 70 on the respondent's schedule. These total £378. To that must be added a modest sum to allow for the mechanics of completion. I determine that to be just over one hour's work and so I would round the costs payable up to £600 +VAT of £120 making a total of £720.00.

30. Having arrived at that position I must address the applicant's submissions that nothing should be awarded so as not to breach the indemnity rule. Detailed submissions are set out in the response dated 19 January 2015 [60] although the directions dated 15 December 2014 did not provide for such a response.

31. I reject the submission. There is no evidence before me to support the suggestion that the respondent is not liable to pay the costs of his solicitor. The fact that a retainer letter had not been produced does not advance the applicant's case. The respondent has produced an invoice addressed to his client. It is dated 5 January 2015 [36] and is signed by a director of the company. I have no reason to believe that that is not a genuine bill payable by the respondent.

32. In the circumstances I determine that the legal costs payable by the applicant to the respondent pursuant to subsection 60(1)(a) and (c) of the Act amount to £720.00.

Rule 13 costs

33. The applicant appears to purport to make an application for costs pursuant to rule 13. Such application as may have been made is not compliant with rule 13. There is no evidence before me that an application has been served on the respondent and/or that the respondent has been given the opportunity to make representations on it. The applicant has not provided a schedule of the costs claimed.

34. The gist of the applicant's case is that the respondent has acted unreasonably in connection with the issue of costs.

35. I am conscious that in general this tribunal operates in a no costs jurisdiction. However section 29 (4) Tribunals, Courts and Enforcement Act 2007 and rule 13 empower the tribunal to make orders for costs in limited circumstances.

36. Rule 13(1)(b) enables the tribunal to make an order for costs where a party has acted unreasonably in bringing, defending or conducting proceedings. I consider that the expression 'acted unreasonably' should be construed as being broadly similar to the provisions of paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 which applied to leasehold valuation tribunals, which were also a no costs jurisdiction in general terms. Guidance on the application of paragraph 10 was given by HHJ Huskinson sitting in the Lands Tribunal in *Halliard Property Company Limited v Belmont Hall and Elm Court RTM Company Limited* who adopted, in broad terms, dicta of Sir Thomas Bingham MR in *Ridehalgh v Horsfield* [1994] 3 AER 848 regarding provisions of the Supreme Court Act 1981 concerning a wasted costs order.

37. In the light of this guidance I find that a costs order under rule 13 should only be made in exceptional circumstances and where unreasonable conduct has caused a party to incur more costs that he would otherwise have incurred had it not been for the unreasonable conduct.

38. It is unfortunate that in the present case the parties' respective representatives did not get on. It is not for me to apportion blame or responsibility but I observe that some correspondence on both sides was occasionally intemperate and/or advancing incorrect points but taken overall was within the range that is often seen in the cut and thrust of contested litigation.

39. In this decision I have found that the applicant was wrong to maintain that she was not liable to pay the valuation costs and I have found the respondent was wrong to maintain an entitlement to recover costs incurred in connection with proceedings before the tribunal.

40. In these circumstances even if a formal rule 13 application for costs was before me for determination I would not have granted it.

Judge John Hewitt
14 February 2015