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

Case Reference : **LON/OOBF/OC9/2015/0226**

Property : **18 Caversham House, 18 Kingston Gardens, Croydon, CRO 4TZ**

Applicant : **Southern Land Securities Limited (landlord)**

Representative : **Southern Land Securities Limited (legal department)**

Respondent : **Mr C. Coelho (leaseholder)**

Representative : **None in connection with this application**

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**

Tribunal Member : **Professor James Driscoll (Judge)**

Date and venue of Hearing : **The tribunal considered the application on the basis of the papers filed without an oral hearing on 9 November, 2015**

Date of Decision : **12 November, 2015**

DECISION

Summary of the decision

1. The leaseholder is to pay under section 60 of the Act the costs of the landlord in connection with his claim for a new lease in the sum of £975 representing legal fees and valuers fees of £700. This (a total sum of £1,675.00 exclusive of any VAT) should be paid by the leaseholder to the landlord by 30 November, 2015.

Introduction

2. This is an application seeking a determination of the reasonableness of the costs claimed on behalf of the landlord payable under section 60 of the Act. The landlord claims the sums of £1,455.00 in respect of its legal fees and the sum of £850 for its valuers fees. The leaseholder counters with an assertion that the reasonable fees for the legal work is the sum of £535 and the sum of £300 for the valuers fees.
3. This claim arose in connection with a claim by the leaseholder for the grant of a new lease under the provisions in the Act. An application to the tribunal was made under section 48 of the Act to determine the premium to be paid and the terms of the new lease. As the parties reached agreement on these matters the application did not proceed to a hearing.
4. However, the parties did not agree on the costs payable by the leaseholder to the landlord under section 60 of the Act and accordingly an application was made under section 91(2)(d) of the Act for a determination of the costs payable.
5. Directions were given on 15 September 2015. In accordance with regulation 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 the directions included a statement that the tribunal considered that the matter was suitable for a determination without an oral hearing. However, the parties were invited to seek a hearing if they wanted one. Neither party did so. The parties were directed to exchange statements and the applicant was required to prepare a bundle of documents.

Consideration of the application

6. On 28 October 2015 the tribunal received two copies of a bundle of documents prepared by the parties. This consisted of a copy of the directions, a copy of a letter written by the landlord's legal department, a statement of their legal costs, an invoice for their valuer's fees, a letter from the leaseholder commenting on the costs, and various other copy letters and

invoices from the leaseholder which he considers supports his challenges to the fees claimed.

7. I was surprised to see that the landlord's lawyers did not produce a statement of how they justified their fees, or any response to the leaseholder's comments challenging those fees.

The decision

8. It is common ground that under section 60 of the Act the claimant leaseholders is required to pay certain professional costs incurred by the landlord in dealing with the claim. Section 91 provides that if the parties do not agree on what should be paid application must be made to this tribunal for the disputed costs to be determined.
9. Section 33(2) of the Act states that *'For the purposes of subsection (1) any costs incurred by the reversioner or any other relevant landlord 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.'*
10. Commenting on this provision the editors of *Hague on Leasehold Enfranchisement* (6th edition, 2014)) suggest that *'..this sensible measure is designed to prevent the landlord from inflating his costs merely because the tenants are paying them'* (28-32).
11. The landlord's lawyers claim their costs in checking the claim notice and other relevant documentation, preparation of the counter-notice and the work in preparing the new lease. For this work they state that most of it was undertaken by a 'Grade A' fee earner and some by a 'Grade C' fee earner charging £195 and £160 per hour respectively. In all some eight hours was claimed with three of the hours claimed by the Grade C fee earner. They do not explain how their charges were broken down in terms of the work undertaken, nor the justification for using a Grade A fee earner for most of the work.
12. According to the leaseholder, the work need not have occupied more than three hours work undertaken by Grade B fee earner charging an hourly rate of £177.50. (It is not clear whether such a fee earner was available to undertake the work).
13. The leaseholder's documents suggest that he has some considerable experience in dealing with flat lease claims and acquisitions. His submissions include evidence of the charges levied in other cases he has experience of. He makes the point that there were, on the face of it, few obvious

complications in dealing with this claim for a new lease. However, the complexities of this area of law and procedure should not be underestimated.

14. Based on my reading of the notices (no copy lease was provided), my professional knowledge of the law and the costs currently charged for this type of work, I note that the landlord's legal work would have included checking the validity of the claim, liaising with the valuer, drafting the counter-notice, the drafting of the new lease and the completion of the grant of the new lease could reasonably have been undertaken by a Grade A fee earner taking up five hours of work. The landlord is justified to use an experienced fee earner given the complexity of this area of law and practice. This produces legal fees totalling £975 (exclusive of any VAT which is chargeable).

15. Also, on the basis of my knowledge and experience, I conclude that a valuer's fee of £700 is justified for the work involved (no VAT appears to have been claimed).

16. A total sum of £1,675.00 should be paid by the leaseholder to the landlord by 30 November, 2015.

James Driscoll, 12 November, 2015

Appendix

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.