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

Case Reference : LON/00BK/OC9/2016/0175

Property : Ground Floor Flat, 2B Windsor Court,
Moscow Road, London W2 4SN

Applicants : David John Scott Makinson
Alison Mary Makinson

Representative : Barker Gooch & Swailes

Respondent : Brickfield Properties Ltd

Representative : Wallace LLP

Type of Application : Costs on extension of lease

Tribunal : Judge Nicol

Date of Decision : 21st June 2016

DECISION

Decision of the Tribunal

The Tribunal has determined that the Respondent may recover their legal fees of £2,031 plus VAT under section 60 of the Leasehold Reform, Housing and Urban Development Act 1993.

Reasons for Decision

1. The Applicants applied following their request for a new lease for a determination as to the legal fees recoverable by the Respondents in accordance with section 60 of the Leasehold Reform, Housing and

Urban Development Act 1993 which is set out in the Appendix to this decision. The parties do not dispute the valuation fee or disbursements.

2. The Applicants' point is relatively simple. Some of the legal work was done by a partner at the Respondent's solicitors' firm at a charge-out rate of £420 per hour. They claim that this was such a straightforward and simple example of this kind of case that the work could and should have been done by someone more junior at half that rate. On their calculation, this would reduce the amount claimed, exclusive of VAT, from £2,031 to £1,293.50.
3. The Respondent alleged that their costs had in fact been agreed because the Applicants' solicitors had not objected when they were first served. The Tribunal rejects that. Silence by itself would rarely imply agreement and there is nothing in this case to suggest that there was anything more than a lack of a prompt response.
4. The Tribunal can understand the submission that, in hindsight, the work could possibly have been carried out by someone more junior but that is not the test to be applied. Under section 60(2), costs may 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 the Respondent if the circumstances had been such that they were personally liable for all such costs.
5. The Respondent has used the same solicitors for many years and there is no suggestion that they would not pay the rates charged. It is also entirely understandable that, when an application in this complex area of law first reaches a solicitor, it is looked at by someone suitably senior and experienced to have the best chance of identifying just how simple or straightforward it is in a quick and efficient manner. Hindsight is not always the best way to determine what should have been the best course.
6. In the circumstances, the Tribunal is satisfied that the legal fees claimed are reasonable within the meaning of section 60 and so payable by the Applicants.

Name: NK Nicol

Date: 21st June 2016

Appendix of relevant legislation

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.