FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	LON/00BK/OC9/2019/0017
Property	:	Flat 48 Mortimer Court, Abbey Road, London NW8 9AB
Applicant	:	Janet & Denis Cassidy
Representative	:	Rajesh Kalia, Goodge Law Solicitors
Respondent	:	Dorrington Residential Limited
Representative	:	Pemberton Greenish LLP
Type of Application	:	Enfranchisement - costs
Tribunal Members	:	Judge Robert Latham Helen Bowers MRICS
Date and venue of Hearing	:	1 May 2019 at 10 Alfred Place, London WC1E 7LR
Date of Decision	:	1 May 2019

DECISION

(i) The Tribunal determines the section 60 statutory costs in the sum of £3,881.16 (inc VAT). This is broken down as follows:

(a) £2,681.16 (namely legal fees of £2,220 + courier charge of £4.30 + VAT of £444.86 + Land Registry fee of £12); and

(b) Valuation Fees of £1,000 + VAT of £200.

(ii) The Tribunal determines that the Respondent shall pay the Applicants £100 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicants in respect of the substantive application.

Introduction

1. This is an application under section 91 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act"). The current application by the Applicant tenants is for the determination of the costs payable by the tenants under section 60(1) of the Act. The Respondent landlord seeks (i) legal costs in the sum of £3,017.16 (inc VAT) and (b) valuation fees of £1,500 + VAT. The Applicants also seek to recover the tribunal fees which they have paid, namely an application fee of £100 and a hearing fee of £200. This relates to the substantive application which was listed for hearing on 5 and 6 March 2019, but which was settled on 26 February.

2. On 5 March 2019, the Tribunal issued its standard Directions, pursuant to which:

   (i) The Respondent landlord has provided a Schedule of Costs, received on 11 March 2019 (at p.1-5).

   (ii) The Applicant tenants have filed their Statement of Case, dated 2 April 2019 (at p.6-10). The Applicants suggest that legal fees should be allowed in the sum of £990 and valuation fees of £640.

   (iii) The landlord has filed a Reply, dated 9 April 2019 (at p.11-45).

3. The Tribunal would normally have determined this application on the papers. However, the Applicants requested an oral hearing. Mr Rejesh Kalia appeared on behalf of the Applicants. The Respondent did not consider it necessary to appear. There was no obligation on it to do so. We have had regard to the Respondent's letters dated 24 and 30 April. Mr Kalia referred the Tribunal to the decisions in *Sinclair Gardens Investments (Kensington) Limited* [2016] UKUT 203 (LC); *Metropolitan Property Realizations Ltd* [2013] UKUT 415 (LC) and *Halliard Property Company Limited* BIR/00CN/OC9/2018/0016). The Upper Tribunal decisions set out principles which are well known to this Tribunal. The Respondent referred us to *Debra Karen Winters* (CHI/00ML/OC9/2019/0005).

The Background

4. On 28 February 2018, the tenants served their Section 42 Notice applying for a new lease. A premium of £44,000 was proposed. The tenants proposed that the terms of the new lease should be in accordance with the Act.

5. On 3 May 2018, the landlord served its Section 45 Counter-Notice. A premium of £68,433 was proposed. The landlord proposed that the new lease should be granted in the form of a draft lease attached to the Notice. It is apparent that the landlord sought to update the terms of the lease which had been granted in 1976 and to achieve consistency where other lease extensions had been granted in the block.

6. Mr Kalia informed the Tribunal that a premium of £60,000 was agreed in August 2018. However, the parties were not agreed on the terms of the new lease. It was therefore necessary for the Applicants to issue an application to this tribunal on 2 November 2018 in order to protect their statutory right to a new lease. They paid an application fee of £100. The terms were not agreed and the Tribunal set the matter down for an oral determination on 5 and 6 March 2019. The Applicants were required to pay a hearing fee of £200. The terms were finally agreed on 26 February 2019. The final form of the lease is at p.15-45. It is apparent that there were continuing negotiations about the terms of the new lease with both parties making concessions.

7. The Applicants referred the Tribunal to a letter dated 13 July 2017 from Wedlake Bell (at p.46) when the parties were negotiating a voluntary lease extension. The landlord's solicitor was proposing a premium of £66,000 plus costs. Costs were indicated at (i) £1,000 + VAT for the solicitor; (ii) disbursements of £75; and (iii) £200 as a contribution towards the costs of preparing a new lease. A new lease was not agreed so it was necessary for the tenants to assert their statutory rights to a new lease. The landlord decided to instruct Pemberton Greenish in place of Wedlake Bell. It is apparent that there have been a number of leasehold extensions at Mortimer Court.

The Statutory Provisions

8. Section 60 provides, insofar as relevant for the purposes of this decision:

> "(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—
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> > (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;
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> 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.
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> (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.

.....

(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... or any third party to the tenant's lease."

The Principles

9. In *Metropolitan Property Realisations v Moss [2013] UKUT 415*, Martin Rodger QC, the Deputy President, gave the following guidance on the approach to be adopted:

> "9. These provisions are straightforward and their purpose is readily understandable. Part I of the 1993 Act is expropriatory, in that it confers valuable rights on tenants of leasehold flats to compel their landlords to grant new interests in those premises whether they are willing to do so or not. It is a matter of basic fairness, necessary to avoid the statute from becoming penal, that the tenant exercising those statutory rights should reimburse the costs necessarily incurred by any person in receipt of such a claim in satisfying themselves that the claim is properly made, in obtaining advice on the sum payable by the tenant in consideration for the new interest and in completing the formal steps necessary to create it.
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> 10. On the other hand, the statute is not intended to provide an opportunity for the professional advisers of landlords to charge excessive fees, nor are tenants expected to pay landlords' costs of resolving disputes over the terms of acquisition of new leases. Thus the sums payable by a tenant under section 60 are restricted to those incurred by the landlord within the three categories identified in section 60(1) and are further restricted by the requirement that only reasonable costs are payable. Section 60(2) provides a ceiling by reference to the reasonable expectations of a person paying the costs from their own pocket; the costs of work which would not have been incurred, or which would have been carried out more cheaply, if the landlord was personally liable to meet them are not reasonable costs which the tenant is required to pay.
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> 11. Section 60 therefore provides protection for both landlords and tenants: for landlords against being out of pocket when compelled to grant new interests under the Act, and for tenants against being required to pay more than is reasonable."

The Tribunal's Determination

Legal Costs

10. The landlord claims legal costs in the sum of £2,500 + VAT. The claim for modest disbursements is not in dispute. The landlord has provided a Schedule listing 8 hours 42 minutes work at £370 per hour, a total of £3,219. However, it restricts its claim to £2,500.

11. The tenant's primary case is that the charge out rate of £370 per hour for two solicitors is too high. The tenants rather suggest that the work could have been done by a band C fee earner for which £165 should be allowed. This is the London 3 Rate specified in the Supreme Court Guideline Rates which were published in 2010. These have not been updated.

12. We note that Mr Kalia is a band A fee earner. He suggests that use of a band A fee earner is appropriate when the issue of proceedings have proved necessary. An alternative view is that it is better to avoid litigation by ensuring that a realistic stance is taken at the start.

13. We are satisfied that the landlord was entitled to instruct Pemberton Greenish who are based in Cadogan Gardens, SW3. Enfranchisement is a specialist area. An hourly rate of £370 is not unreasonable. However, we do accept that where an experienced solicitor does the work, the time engaged should be less than if the case was being handled by a less experienced member of staff.

14. The tenants would allow 7.5 hours work to be carried out by a grand 3 fee earner reduced by 20%, because the fee earner would be expected to be familiar with enfranchisements in respect of this block. We note that the landlord is only claiming £2,500, namely 6.75 hours at £370.

15. We have concluded that we should reduce the time claimed to 6 hours. The landlord is only entitled to claim for the work specified in section 60 of the Act. Section 60(1)(c) is restricted to the "reasonable costs of and incidental to .... the grant of a new lease under that section". This would normally be the existing terms of the lease. The landlord specified the terms of the proposed new lease on 3 May 2018, when it served its Counter-Notice. Thereafter, there might be some limited discussion about the appropriate terms. However, the moment the tenant had issued their application to this Tribunal on 2 November 2018, the dispute as to the terms shifted into a no costs jurisdiction. We note that at this date, the solicitor had been engaged for 4 hours and 24 minutes. We would allow an additional 1 hour 36 minutes to complete and execute the new lease, namely a total of six hours.

16. We thus allow six hours at £370 per hour, namely £2,220. To this, VAT must be added, together with the modest disbursements which are not in dispute.

Valuation Fees

17. The landlord claims valuation fees of £1,500 + VAT. We have been provided with an invoice from Carter Jonas, dated 2 May 2018. This gives no details of the time engaged.

18. Mr Kalia states that this is unreasonable. The tenant instructed Kinleigh Folkard and Hayward who charged £800 + VAT (see p.48). He suggests that the landlord should have paid no more than £800 from which a deduction of 20% should be made as the valuer would have had previous experience of the block. We note that Mr Kalia stated that the tenants instructed Kinleigh Folkard and Hayward because they were familiar with the block. However, he did not consider it appropriate to negotiate a 20% reduction.

19. The Tribunal accepts that there have been previous enfranchisement valuations in this block. In their letter of 13 July 2017, Wedlake Bell suggested a premium of £66,000. Having instructed Carter Jonas, the landlord specified a figure of £68,433 in its Counter-Notice. The parties finally agreed a premium of £60,000.

20. The Tribunal concludes that in the circumstances of this case a reasonable valuation fee is £1,000 + VAT.

Refund of Fees

21. The Applicants also apply for a refund of the tribunal fees that they have paid pursuant to Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. The relevant fees are the application fee of £100 and the hearing fee of £200 in respect of the substantive application.

22. We are satisfied that no order should be made in respect of the application fee. The tenants were obliged to issue their application in order to preserve their statutory right to a lease extension.

23. The hearing was only required in respect of the substantive application because of the dispute as to the terms of the new lease. It seems to us that the matter was resolved because each side was prepared to make concessions. In such circumstances, we conclude that it is appropriate to order the landlord to refund the tenants 50% of the hearing fee of £200.

24. We understand that the Applicants have paid an additional fee of £200 in respect of this costs application. We are not making any order for the refund of this fee. We are satisfied that this application could have been determined on the papers. The Applicants had a right to request an oral hearing, but they should bear the cost of this.

Judge Robert Latham,
1 May 2019

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).