FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AK/OC9/2020/0013**
Property	:	**45 Osborne Road, Enfield, Middlesex EN3 7RW**
Applicant	:	**The Halliard Property Co Ltd**
Representative	:	**Wallace LLP**
Respondent	:	**Louis Lettings Ltd**
Representative	:	**J Stuart Solicitors**
Type of application	:	**Section 91(2)(d) of the Leasehold Reform, Housing and Urban Development Act 1993**
Tribunal member	:	**Judge Simon Brilliant**
Date of determination and venue	:	**Alfred Place, London WC1E 7LR**
Date of decision	:	**24 June 2020**

DECISION

Summary

This has been a remote hearing on the papers which has been not objected to by the parties. The form of remote hearing was P: PAPERREMOTE. A face to face hearing was not held because no-one requested the same, and all issues could be determined on paper. The documents that I was referred to are in a helpful bundle of 157 pages, the contents of which I have noted. The order made is described at the end of these reasons.

Background

1. This is an application under section 91(2)(d) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") in respect of a deemed withdrawn claim for a lease extension of the Lower Maisonette, 45 Osborne Road, Enfield, Middlesex EN3 7RW ("the Property").

2. The application is made for the determination of the reasonable costs payable by the Respondent (tenant) to the Applicant (landlord), under section 60(1) of the Act. It follows service of a Notice of Claim to acquire a new lease for the Property.

3. The Notice of Claim is dated 13 July 2018. The Respondent made a claim to acquire a new lease of the Property. By way of Counter Notice, dated 20 September 2018, the Applicant admitted the entitlement to a new lease, but made a counter proposal in respect of the value of the premium. The matter was slightly out of the ordinary, involving a grant of representation and an assignment of the benefit of the Notice of Claim.

4. Eventually, the parties agreed the premium. But the Respondent failed to take a new lease in accordance with the statutory procedure, and on 18 November 2019 the application was deemed to have been withdrawn. Subsequently, the parties were unable to agree the Applicant's costs in respect of dealing with the lease extension. The current application to the Tribunal is accordingly in respect of the costs payable to the Applicant by the Respondent, under s.60 of the Act.

Directions and Schedule of costs

5. The Tribunal issued its standard costs directions on 27 January 2020. These required the Respondent to serve its Statement of Case by 24 February 2020, and the Applicant to serve its Statement of Case by 2 March 2020. The Respondent did not serve a Statement of Case and the Applicant served its Statement of Case on time. The Respondent was allowed to serve its Statement of Case out of time on 1 June 2020. The Applicant was allowed to serve a Reply which it did on 15 June 2020.

Applicant's Case

6. The Applicant provided a schedule of the work undertaken [pages 46-48 of the bundle]. The cost of all items was said to be recoverable. For each item of the legal costs the legal the landlord provided: the date; activity; description; fee earner; hours; rate; amount. Legal work was provided variously by a partner, an assistant and a paralegal at decreasing hourly rates; £495/£475, £385; £210.

7. In addition, the schedule included the fees for the valuer acting for the Applicant and for the small disbursements of an HMLR fee and a courier. VAT was then added to these figures.

8. The schedule showed that time spent by the Applicant's solicitors was divided approximately between a partner and an assistant, with only a very small amount of support work from a paralegal. The Applicant referred the Tribunal to a number of earlier costs decisions between 2004 and 2020 in order to demonstrate a its level of costs accepted by the Tribunal in similar lease extension cases. The Respondent pointed out that Wallace LLP is its established firm of choice in such leasehold enfranchisement cases. The rates quoted reflected the very specialist nature of their skills and experience, as well as their Central London location.

9. The Applicant's' claim was broken down as follows (a) legal fees £3,185, (b) valuer's fee £895, (c) HMLR fee £33.13 and (d) cost of courier £45.25. As I have said VAT is then applied. The Respondents' total claim was accordingly £4,990.06 including VAT (this differs fractionally from the figures actually given).

Respondent's Case

10. The Respondent says that the time spent by Wallace LLP was generally excessive. It submits that costs would have been saved if the Respondent had agreed to a three-month deferment to settle the case. The Respondent offers 55 units of time spent by Wallace LLP as opposed to the 73 units claimed. The Respondent also submits that this was not a complex or unusual but a straightforward lease renewal. It says the fees charged are excessive and offers £250 per hour. This produces a total of £2,763.

Law

11. Section 60 of the Act provides:

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.

12. 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.

13. That decision (which related to the purchase of a freehold and, therefore, costs under s.33 of the Act, but which is equally applicable to a lease extension and costs under s.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 s.60(1)(a) to (c). The Respondent is also protected by s.60(2) which limits recoverable costs to those that the Applicant would be prepared to pay if it were using its own money rather than being paid by the Respondent.

14. 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.

15. 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 s.60 says, nor is *Drax* an authority for that proposition. s.60 is self- contained.

Decision

16. The Tribunal has considered such representations as it received from the parties, following its directions.

17. As far as legal costs are concerned, the Tribunal accepts the Applicant's schedule of items, the allocation of work between those responsible and the hourly rates,

without amendment. In this regard, the Tribunal is following its recent decision in Price v Daejan Investments Ltd (2020) LON/00AK/OC9/2019/0231. The Applicant has long chosen and is free to use its current legal representatives to act in such lease extension cases. There is nothing in the point that costs would have been saved if the Respondent had agreed to a three-month deferment to settle the case.

18. As far as the valuer's fees concerned, it is noted that he has charged to read the lease. This is not recoverable as it is the solicitors' task to do so. See Huff v Trustees of the Sloane Stanley Estate Unreported (1997) referred to in Hague on Lease Enfranchisement at 32-24[112]. The valuer has not broken down his charges. During the best I can, I will deduct 15% from his fee reducing it to £760.75 plus VAT.

19. Where legislation imposes a strict timetable regarding the service of notices, the use of a courier is amply justified: Gilligan v Daejan Properties Ltd (2012) LON/00AH/OLR/2012/0020.

20. T**he Tribunal determines the total costs payable by the Respondent to the Applicant under s.60(a) including VAT are: (a) legal fees £3,822.60; (b) valuer's fees £912.90; (c) Land Registry fees £39.76; and (3) courier £54.30. This totals £4,829.56.**

Name: Simon Brilliant Date: 24 June 2020

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).