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

**Case Reference** : LON/00BH/0C9/2013/0036  
**Property** : 40 Perth Road, London E10 7PB  
**Applicant** : Stealth Developments Limited  
**Representative** : Verbatim Lawyers  
**Respondent** : Daejan Estates Ltd  
**Representative** : Wallace LLP  
**Type of Application** : Enfranchisement  
**Tribunal Members** : Robert Latham  
**Date and venue of Hearing** : Paper determination – 28 August 2013 at  
10 Alfred Place, London WC1E 7LR  
**Date of Decision** : 28 August 2013

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**DECISION**

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The Tribunal finds that the sums payable by the Applicant in respect of the legal costs (inclusive of VAT) are £3,639.41.

## **Introduction**

1. This is an application under section 91 of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act"). The application is for the determination of the costs payable by the Applicant under section 60(1) of the Act.

2. The Tribunal has been provided with a Bundle of Documents.

(i) The Respondent's Solicitor, Wallace LLP, has prepared a Detailed Schedule of Costs (at Section 3). This had previously been provided on 17 May 2013. The Respondent also included copy invoices in respect of Land Registry (£135) and courier fees (£39.84 exc VAT). The total claimed (inclusive of VAT) is £3,639.41.

(ii) The Applicant's Solicitor, Verbatim Lawyers, has provided their Statement in Reply at Section 2. The Applicant contends that the costs are excessive and should be in the order of £1,000 (exc of VAT) together with disbursements of £50. The Applicant disputes that the Respondent's Solicitor has done all the work that is claimed. The Applicant also contends that much of the work in responding to the first notice, including the preparation of a draft lease, was unnecessary given that the Respondent knew that the notice was defective.

(iii) The Respondent's Solicitor provided a detailed Statement in Reply at Section 1. A number of documents are exhibited (at pp.14-112).

## **The Statutory Provisions**

3. 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—

(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...

(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**

4. *Drax v Lawn Court Freehold Limited* dealt with costs under section 33 of the 1993 Act, rather than section 60, but the principles established in *Drax* have a direct bearing on costs under section 60. In summary, costs must be reasonable and have been incurred in pursuance of the section 42 notice in connection with the purposes listed in sub-paragraphs 60(1)(a) to (c). The nominee Applicant is also protected by section 60(2), which limits recoverable costs to those that the Respondent would be prepared to pay if he were using his own money rather than being paid by the Applicant.
5. This does, in effect, introduce 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 Respondent should only receive his costs where it has explained and substantiated them.
6. It does not follow that this is an assessment of costs on the standard basis. That is not what section 60 says, nor is *Drax* an authority for that proposition. Section 60 is self-contained.

### **Background**

7. On 22 March 2012, the Applicant's predecessors in title, Timothy Peagram and Rosemary Murray, issued their first Notice of Claim to exercise her right to acquire a new lease. They held a 99 year lease in the flat at 40 Perth Road, from 25 December 1963.
8. On 31 May, the landlord served its Counter-notice. This notice admitted the tenants' entitlement to a new lease, but was served without prejudice to their contention that the notice was invalid as it failed to specify the proposed terms of the new lease as required by Section 42(3)(d) of the Act. The tenants were asked to confirm that they accepted that their notice was invalid.

9. On 1 June, the tenants' Solicitor admitted that their notice was invalid. On 7 June, the tenants' Solicitor issued their second notice. On 20 July, the Respondent served its second Counter-notice admitting the tenants' entitlement to a new lease.
10. On 31 July 2012, the tenants assigned their title in the flat to the Applicant. Neither side notified the Respondent of the assignment.
11. On 17 December 2012, the Applicant made its application to the Tribunal seeking a determination of the outstanding terms of acquisition of a new lease. A copy of the application was served on the Respondent. This was the first occasion on which the Respondent became aware of the assignment. The Respondent wrote to the Applicant seeking a copy of the Transfer and Assignment of the Benefit of the second notice. On 6 January 2013, this was provided.
12. The terms of acquisition of the new lease were subsequently agreed in the sum of £31,750. On 21 June, the Applicant applied to this Tribunal seeking a determination of the statutory costs which are payable in respect of the acquisition.

#### **The Tribunal's Determination**

13. The Respondent has provided a detailed schedule of the work undertaken in responding to the two notices. It explains how Wallace LLP have been acting for the Respondent for many years. The basis of the fees charged by the Solicitors to their client are by reference to the time spent by the relevant fee earners. The Solicitors are based in Mayfair. A Partner in the property litigation department conducted much of the work and charged £360 ph rising to £375 ph in August 2012. Additionally, a Partner in the convincing department of the Respondent's Solicitors undertook work in preparing the draft lease which formed part of the Respondent's counter-proposals in the Counter-notice. This was charged out at a rate of £395 ph, rising to £400 ph in August 2012. An assistant who was a Grade B fee earner in the property litigation department had a charge out rate of £275 ph, whilst a paralegal was also engaged at a rate of £150 ph.
14. We accept that the Respondent was entitled to instruct Wallace LLP and that the rates charged are consistent with the usual charge out rates for Solicitors in Central London. We are supported in this view by the LVT decisions to which the Respondent refer at pp.91-94 and 95-104.
15. The Applicant disputes that the Respondent's Solicitors have carried out all the work that they claim. Thus at [10] of the Statement of Case, they assert: "The other costs ranging from £27.50 to £40 appears to be an exaggeration of the work undertaken by the Respondent. The Applicant does not believe that the Respondents solicitors spent that much time on such a procedural matter which such work they have undertaken for the same Respondent (Client) on many transactions". At [12], they add "The Applicant does not believe that a Partner in the Respondents lawyers firm dealt with most of the transaction so the charge out rate should be in line

Counter-notice by the date specified in the Notice of Claim, the Tribunal is satisfied that this was a prudent and justified step. The Respondent asserts that this is their normal practice. Service by recorded delivery or the DX cannot be guaranteed.

### **Conclusions**

20. The Tribunal has had careful regard to the points raised by the Applicant. However, the Tribunal is satisfied that the sums claimed are reasonable and properly incurred in pursuance of the two Section 42 notices.

Robert Latham,  
Tribunal Judge

Date: 28 August 2013