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

Case Reference : LON/00AZ/OC9/2013/0030 & 0031; 0032;
and 0033

Property : Flats 3, 4, and 18 Bannister House; and 17
Redrup House, John Williams Close, London
SE14 5XG

Applicants : Deborah Carey, Ricardo Manalo, Kevin
Eykelbosch and John Walker

Representative : Griffith Smith Farrington Webb LLP

Respondent : Amersham Insurance Brokers Ltd

Representative : Blaser Mills

Type of Application : Enfranchisement

Tribunal Members : Robert Latham
Patrick Casey MRICS

**Date and venue of
Hearing** : Paper determination - 30 July 2013 at
10 Alfred Place, London WC1E 7LR

Date of Decision : 31 July 2013

DECISION

(i) The Tribunal finds that the sums payable by each lessee in respect of legal costs (exclusive of VAT) are:

Ms Carey, Flat 3 Bannister House:	£840
Mr Manalo, Flat 4 Bannister House:	£893
Mr Eykelbosch, Flat 18 Bannister House:	£826
Mr Walker, Flat 17 Redrup House:	£924

(ii) In addition, each tenant is liable to pay £500 (+ VAT) in respect of the valuer's fees. This sum has been agreed.

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, Blaser Mills, has prepared a Detailed Statement of Costs (at p.58-73);

(ii) The Applicants' Solicitor, Griffith, Smith, Farrington Webb LLP has provided their Statement in Reply at p.74-94.

(iii) The Respondent's Solicitor provided Counter Submission on 25 July 2013.

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. Ms Carey is the tenant of 3 Bannister House. She served her Notice of Claim to exercise her right to acquire a new lease on 7 June 2012. The landlord served its Counter-notice on 9 August. Roy Rowland & Co, the landlord's Valuer, submitted an invoice in respect of a valuation report on 13 July. This bill, £500 exc VAT, is not in dispute. She rather challenges the landlord's claim for legal fees in the sum of £1,050 (exc VAT). She was granted an extension of her lease at a premium of £3,800.

8. Mr Manalo is the tenant of 4 Bannister House. He served his Notice of Claim to exercise his right to acquire a new lease on 11 May 2012. The landlord served its Counter-notice on 16 July. Roy Rowland & Co, the landlord's Valuer, submitted an invoice in respect of a valuation report on 13 July. This bill, £500 exc VAT, is not in dispute. He rather challenges the landlord's claim for legal fees in the sum of £1,116. He was granted an extension of his lease at a premium of £3,200.

9. Mr Eykelbosch is the tenant of 18 Bannister House. He served his Notice of Claim to exercise his right to acquire a new lease on 11 May 2012. The landlord served its Counter-notice on 16 July. Roy Rowland & Co, the landlord's Valuer, submitted an invoice in respect of a valuation report on 13 July. This bill, £500 exc VAT, is not in dispute. He rather challenges the landlord's claim for

legal fees in the sum of £1,032. He was granted an extension of his lease at a premium of £3,800. It is to be noted that his application was dealt with concurrently with that by Mr Manalo, both by his solicitor and the landlord's solicitor.

10. Mr Walker is the tenant of 17 Redrup House. He served his Notice of Claim to exercise his right to acquire a new lease on 23 April 2012. The landlord served its Counter-notice on 29 June. Roy Rowland & Co, the landlord's Valuer, submitted an invoice in respect of a valuation report on 28 June. This bill, £500 exc VAT, is not in dispute. He rather challenges the landlord's claim for legal fees in the sum of £1,155. He was granted an extension of his lease on a non-statutory basis, namely at an increased ground rent, but no premium.

The Tribunal's Determination

11. The Applicants have prepared a detailed schedule challenging most of the items claimed by the Respondent's Solicitors. They argue that the total bill for the four applications should be reduced from £4,353 to £1,344. They accept the hourly rate which is claimed, namely £210 per hour for a Grade A fee earner. They rather assert that the hours claimed are excessive. They note that the Solicitors have experience of dealing with other enfranchisement applications at Redrup and Bannister Houses. The statutory procedure is not complex and these applications were relatively straight forward. They suggest that much of the work did not need to be handled by a partner. It could have been delegated to more junior staff. It is suggested that there is a significant element of duplication and that much of the work is charged four times, namely once for each tenant. They suggest that the sums claimed are disproportionate.

12. The Respondent accepts that in relation to some of the correspondence during the later stages, some communications could have been combined to deal with all four tenants. However, they note that initially it was not apparent that these four cases were being handled by a single solicitor. Only the applications in respect of Flats 4 and 18 were run in tandem.

13. We turn to the Applicants' detailed submissions (at p.78-88):

(i) Item 1: We accept that the Respondent was obliged deal with each application separately. We do not consider the sums claim, of between £63 to £84 per flat to be excessive.

(ii) Item 2: We allow the sums claimed of £12 for each of just two of the flats. The Applicants dispute one of the two letters. We are not minded to make any reduction.

(iii) Item 3: This is not disputed.

(iv) Item 4: We consider that the Respondent's claim for some 39 letters at a cost of £777 is excessive. A reduction of some 33% is justified.

(v) Item 5: We allow the sums claimed of £12 for each of just two of the flats. The Applicants again dispute one of the two letters. We are not minded to make any reduction.

(vi) Item 6: This claim seems excessive and to include an element of duplication. However, the suggestion that we should reduce this from £1,239 to £106, is not justified. We reduce it by some 20%.

(vii) Item 7: £24 for each flat is claimed. We are not minded to reduce this.

(viii) Item 8: Between £63 and £105 is claimed for considering each notice. The greater sum is claimed for 4 Bannister House. We accept that the landlord needed to consider each notice, and we are not minded to reduce this.

(ix) Item 9: £21 to set up each file is not unreasonable.

(x) Item 10: Diarising dates for which £21 is claimed in respect of 3 Bannister House and 17 Redrup House does not seem unreasonable, We note that for 4 Bannister House, this is claimed under Item 8.

(xi) Item 11: Between £63 and £105 is claimed for preparing each Counter-notice. This is reasonable.

(xii) Item 12: £63 is claimed for reviewing each valuation report. These were received on three different dates. Each report required separate consideration. This is reasonable.

(xiii) Item 13: £105 is claimed in respect of each flat for perusing documents and preparing deeds. We are satisfied that this is reasonable.

(xiv) Item 14: A total of £231 is claimed for "working on Land Tribunal papers". The Applicant contend that this falls outside the scope of section 60. In their Counter submissions, the Respondent does not suggest that it does. We disallow this item.

(xv) Item 15: Between £42 and £126 is claimed for amending each draft deed. The Applicants suggest that only one draft should have been prepared. We disagree. We allow this sum.

(xvi) Item 16: The Applicants contend that the sum of £21 claimed for 17 Redrup House in "checking, amending and engrossing" should have been done by a more junior member of staff and should be reduced from £21 to £12. This is a modest claim and we are not minded to make any reduction.

Conclusions

14. Having regard to our consideration of the Applicants' Specific Considerations and the reductions which we are minded to make in respect of

Items 4, 6 and 14, we conclude that it is appropriate to reduce the costs payable by each tenant by 20%. We therefore conclude that the sums payable by each lessee in respect of legal costs (exclusive of VAT) are:

Ms Carey, Flat 3 Bannister House:	£840
Mr Manalo, Flat 4 Bannister House:	£893
Mr Eykelbosch, Flat 18 Bannister House:	£826
Mr Walker, Flat 17 Redrop House:	£924.

Robert Latham,
Tribunal Judge

Date: 31 July 2013