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

Case Reference : BG/LON/00AQ/OC9/2014/0012

Property : 72 Everton Drive, Stanmore, Middlesex,
HA7 1ED

Applicant : Daejan Properties Limited

Representative : Wallace LLP

Respondents : Kieran Patrick Barry and Natalie Jacqueline
Barry

Representative : None

Type of Application : Lease extension

Tribunal Members : Mr Robert Latham
Mr Philip Tobin FRICS MCI Arb

**Date and venue of
Hearing** : Paper determination on 9 April 2014 at
10 Alfred Place, London WC1E 7LR

Date of Decision : 9 April 2014

DECISION

The Tribunal finds that the following costs sought by the landlord are payable: (i) Legal Costs of £1,600 + VAT; (ii) Disbursements of £40.50 (inc of VAT) and (iii) Valuer's Fees of £938.65 + VAT.

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 landlord is for the determination of the costs payable by the tenants under section 60(1) of the Act.
2. On 12 February 2014, the landlord issued this application. The landlord claims the following:
 - (i) Legal Costs of £2,088 (inc VAT);
 - (ii) Disbursements of £40.50. namely Land Registry fees of £36 and one courier at £4.50 + (both inc VAT); and
 - (iii) Valuer's Fees of £1,126.38 (inc VAT).
3. On 14 February 2014, the Tribunal gave Directions. The Directions permitted the parties to request an oral hearing. Otherwise, the Tribunal indicated that this was a matter which should be considered on the papers.
4. By 28 February 2014, the landlord was directed to serve a schedule of costs and copies of any relevant invoices. The landlord has done so.
5. By 14 March 2014, the Respondents were to file their statement of case, supporting documents and legal submissions. The Respondents have failed to do so.
6. The landlord has served the bundle required by the Directions. It has also filed detailed submissions. The landlord has confirmed that it is now seeking the following sums:
 - (i) Legal Costs of £1,600 + VAT (total - £1,920);
 - (ii) Disbursements of £41.40. namely Land Registry fees of £36 and one courier at 4.50 + VAT (total - £5.40); and
 - (iii) Valuer's Fees of £938.65 + VAT (total - £1,126.38).
7. On 20 February, the Applicant's Solicitor wrote to the Tribunal indicating that it required an oral hearing. On 28 February, the Tribunal notified the parties that the application would be determined today at an oral hearing. On 1 April, not having received any response from the Respondent, the Applicant informed the Tribunal that it was now content for the matter to be determined on the papers. On 2 April, the Tribunal notified the parties that the application would be dealt with today as an oral hearing as originally requested by the Applicant. In the absence of the parties, it would be determined on the papers. Neither party has attended and the matter has been determined on the papers. The Tribunal is satisfied that this is a matter which was always best determined on the papers, regardless of whether or not the Respondent had made any response.

(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

13. *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.

14. 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.

15. 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.

The Tribunal's Determination

16. The Applicant is claiming the costs which the landlord asserts are reasonable and are in consequence of the tenants' application for a new lease. The Respondents have taken no active step to challenge the costs which are claimed. No grounds have been suggested upon which we should reduce them. In these circumstances, the Tribunal are satisfied that the costs claimed are payable.

Robert Latham,
Tribunal Judge

9 April 2014