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

Case Reference : **LON/00BH/OC9/2018/0049**

Properties : **290A Hoe Street, Walthamstow,
London E17 9QD**

Applicant : **Roy Michael Bard**

Representative : **Wallace LLP**

Respondent : **Eastbank Studios Limited**

Representative : **Cartwright Cunningham
Haselgrove & Co**

Type of Application : **Application for the determination
of reasonable costs pursuant to
sections 60 of the Leasehold
Reform, Housing and Urban
Development Act 1993**

Tribunal Member : **Judge N Hawkes**

**Date and venue of
paper determination** : **4 April 2018 at 10 Alfred Place,
London WC1E 7LR**

Date of Decision : **4 April 2018**

DECISION

Decision of the Tribunal

The Tribunal determines that the total sum of £3,412 (inclusive of VAT) is payable by the respondent in respect of the applicant's legal fees and valuation costs.

Background

1. This is an application under section 91 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act"). The application is for the determination of the costs payable by the respondent under section 60(1) of the 1993 Act.
2. The Tribunal has been informed that the background is as follows.
3. The applicant is the freehold owner of 290, 292, 294, 296 and 298 Hoe Street, of which Flat 290A Hoe Street ("the Property") forms a part.
4. The respondent is the lessee of the Property pursuant to a lease dated 28 January 1977 for a term of 99 years from 29 September 1976.
5. On or about 17 March 2017, the respondent served a notice pursuant to section 42 of the 1993 Act seeking to acquire a new lease of the Property ("the Notice").
6. On or about 26 April 2017, the applicant served a counter-notice pursuant to section 45 of the 1993 Act admitting the respondent's entitlement to the grant of a new lease.
7. The terms of acquisition were not agreed and the respondent did not make an application to the Tribunal under section 48(1) of the 1993 Act within the statutory time period. Accordingly, the Notice was deemed to be withdrawn on 26 October 2017.
8. No agreement was reached as to the statutory costs payable by the respondent and, on or about 26 January 2018, the applicant issued this application.
9. The applicant seeks to recover costs in the total sum of £3,496 comprising:
 - a. legal fees in the sum of £2,025 plus VAT (£2,430 in total);
 - b. valuer's fees in the sum of £850 plus VAT (£1,020 in total);

- c. a courier's fee in the sum of £20 plus VAT (£24 in total); and
 - d. Land Registry fees in the sum of £22.
10. The respondent has offered to pay costs in the sum of £1,972 plus VAT.
11. Neither party has requested an oral hearing. Accordingly, this matter has been determined by way of a paper determination on 4 April 2018.

The law

12. Section 60 of the 1993 Act provides:

60.— 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 the appropriate 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.

13. Drax v Lawn Court Freehold Limited [2010] UKUT 81 (LC) 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 the costs payable under section 60.
14. 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 applicant is also protected by section 60(2), which limits the recoverable costs to those that the respondent would be prepared to pay if they were personally liable rather than being paid by the applicant.
15. 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 explain and substantiate the costs claimed.
16. The Tribunal has had regard to the decisions which have been referred to by the applicant in the applicant’s submissions.

The Tribunal’s determination

17. It appears from the respondent’s submissions dated 20 March 2018 that the Land Registry fee, the courier’s fee and the valuer’s fee are not disputed.
18. The VAT payable in respect of the valuer’s fee and the courier’s fee is not expressly conceded but the respondent has put forward no representations asserting that VAT is not payable (and no specific representations to the effect that the courier’s fee and the valuer’s fee are too high).
19. In any event, having considered the bundle of documents which has been provided, I am satisfied that the Land Registry fee, the courier’s fee and the valuer’s fee are reasonable and payable by the respondent pursuant to section 60 of the 1993 Act.
20. As regards the legal fees, the respondent submits that the hourly rates are excessive in all the circumstances; that no details have been provided as to the capacity and training of the assistant solicitor; and that an hourly rate of £350 per hour for a comparatively simple matter “would seem to be very high indeed”. Further, the respondent submits that a paralegal being charged out at £200 per hour is “wholly exceptional and excessive”.
21. The applicant states that the solicitor in question is a Grade A fee earner; that the rates charged by the applicant’s solicitors are entirely consistent with the usual charge out rate for solicitors in Central

London; and that it is reasonable for a fee earner with relevant experience to have conduct of this matter.

22. The applicant relies upon a number of first instance decisions in which similar and higher hourly rates than those charged in the present case have been approved.
23. Leasehold enfranchisement is a complex area of law and I accept that it was reasonable for the applicant to choose a specialist solicitor to represent his interests. I accept that the hourly rates charged both by the Grade A fee earner and the paralegal are in line with the charge out rates for London solicitors engaged in work of this nature.
24. The respondent also submits that 0.7 of an hour to consider a notice of claim; 0.7 of an hour engaged in preparing the draft counter-notice served on 26 April 2017; and 0.3 of an hour spent finalising the counter-notice are excessive.
25. I accept that an experienced solicitor could be expected to consider the counter-notice in 0.5 of an hour but I am otherwise satisfied that the time spent was reasonable. The legal fees therefore fall to be reduced by £70 + VAT (£84 inclusive of VAT).
26. Accordingly, I determine that the amount payable is as follows:
 - a. legal fees in the sum of £1,955 plus VAT (£2,346 in total);
 - b. valuer's fees in the sum of £850 plus VAT (£1,020 in total);
 - c. a courier's fee in the sum of £20 plus VAT (£24 in total); and
 - d. the Land Registry fees in the sum of £22.

Judge Hawkes

4 April 2018

ANNEX - RIGHTS OF APPEAL

1. 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.
2. 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.

3. 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.
4. 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.