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

Case Reference : **LON/00AZ/0C9/2015/0195**

Property : **45a Siddons Road, SE23 2JH**

Applicant : **Julie Robertshaw**

Representative : **Thackray Williams LLP**

Respondent : **Kamlesh Kumar Anand**

Representative : **None**

Type of Application : **Application for determination of reasonable costs – flats and premises – Section 91(2)(d) Leasehold Reform, Housing and Urban Development Act 1993**

Tribunal : **Mr M Martynski (Tribunal Judge)**

Date of Decision : **23 June 2015**

DECISION

Decision summary

1. The costs payable to the Respondent are in the sum of £2,650 (plus VAT if applicable – proof of VAT entitlement must be supplied by 4pm, 7 July 2015).
2. There is no order for costs in favour of the Applicant.

Background

3. The freehold interest of the subject building is held by the Respondent. The Applicant has a lease of the Ground Floor and Garden Flat.
4. The Applicant's application arises out of her claim to acquire a new lease of the subject flat.
5. Following service of the Notice of Claim dated 5 February 2014 and a Counter-Notice dated 12 April 2014, the Applicant made an application to this tribunal for a determination of the terms of the grant of a new lease. However, it appears that by in or about September 2014, the parties were able to agree terms for a new lease and the application was discontinued in October 2014.
6. In a schedule of costs prepared by the Respondent's representatives, the Respondent claimed costs of the enfranchisement amounting to £5,674.
7. In a letter dated 18 November 2014, the Applicant's solicitors offered the Respondent's representatives; £950 plus VAT (if applicable) for 'legal' costs and £750 plus VAT (if applicable) for the Valuation costs. That offer was increased to £2,650 (plus VAT if applicable) on 26 February 2015 and then to £3,500 (plus VAT if applicable) on 27 February 2015¹.
8. No agreement was reached and by an application dated 24 April 2015, the Applicant made an application to the tribunal to determine the amount of costs to be paid to the Respondent.
9. Directions were given on the application on 27 April 2015. The application was set down for determination on the Paper Track without a hearing.
10. The Respondent does not appear to have taken any part in this application. The Applicant did not request a hearing. This application has therefore been decided on the basis of the tribunal's own file and the bundle of documents supplied by the Applicant's solicitors.

¹ The increases were in respect of 'legal' costs

The Applicant's case

11. The Applicant set out detailed and reasoned objections to the Respondent's schedule of costs in a Statement of Case dated 22 May 2015.

The Respondent's case

12. As stated above, the Respondent has taken no part in this application and the only indication of the Respondent's case is therefore the schedule of costs referred to above.
13. The total costs claimed appear to be disproportionate and unreasonable and no submissions have been made to support them.

Decision

Costs in accordance with section 60 Leasehold Reform Housing and Urban Development Act 1993

14. I agree with the Applicant's solicitor's submissions set out in the Applicant's Statement of Case and I adopt them in their entirety. Rather than repeat those submissions, I attach a copy of them to this decision.
15. In her Statement of Case, the Applicant offers the total sum of £2,650 for the Respondent's case and that is the figure I find to be payable. VAT will be payable on that figure but only if the Respondent provides sufficient proof of entitlement to VAT to the Applicant by **4pm 7 July 2015**.

Further costs

16. In a letter dated 4 June 2015, the Applicant's solicitors seek an award of costs² against the Respondent in the light of the Respondent's conduct in failing to take part in the application and in refusing any offers made by the Applicant prior to the Application³. The amount of costs sought is not specified.
17. I do not consider that it would be appropriate to make an award of costs against the Respondent in this matter. Whilst I accept that the Respondent has not taken part in the proceedings and has been awarded considerably less costs than he sought, I am not convinced that the Applicant has been put to any additional costs (within the proceedings) over above those that may have been incurred had there been participation and negotiation. It may actually be that the

² Rule 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) rules 2013

³ However the power to award costs under Rule 13 is limited to unreasonable behaviour within the proceedings, not prior to them

Applicant has incurred less costs by the Respondent's failure to participate.

Mark Martynski, Tribunal Judge
23 June 2015

IN THE FIRST TIER-TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

BETWEEN

JULIE ROBERTSHAW

Applicant

- and -

KAMLESH KUMAR ANAND

Respondent

APPLICANT'S STATEMENT OF CASE AND SUBMISSIONS
TO THE FIRST TIER TRIBUNAL
ON THE RESPONDENT'S CLAIM FOR SECTION 60 COSTS

General Comments

1. These submissions are made in support of the Applicant's request that the Tribunal determines the costs to be paid to the Respondent pursuant to Section 60 of the Leasehold Reform Housing and Urban Development Act 1993 ("the Act") and as part of the Applicant's request for a lease extension under the Act.
2. Attached to these submissions are the following documents:-
 - i. A brief chronology which is limited to the communication between the parties in relation to Section 60 Costs.
 - ii. Copies of the correspondence between the parties in relation to the issue of Section 60 costs and referred to in the chronology.
 - iii. Some comparable s.60 costs agreed and paid in recent similar transactions involving the Applicant's solicitors (Thackray Williams LLP).
3. These submissions are made pursuant to the directions made by the Tribunal on 27 April 2015. The Respondent has failed to comply with the Tribunal's direction to provide a breakdown of his costs. Therefore for the purpose of these submissions the Applicant has referred to the "Schedule of Cost of Work Done on Documents" provided by the Respondent under cover of a letter dated 27 September 2014 addressed to the Applicant's solicitors. (See documents attached and referred to in para. 2(ii) above).
4. In determining the Respondent's Section 60 costs the Applicant refers the Tribunal to Section 60 of the Act and submits that only costs falling within this

Section are capable of being recovered by the Respondent in this matter. Furthermore those costs are only recoverable if reasonably incurred (Section 60(3) of the Act).

5. In broad terms the Applicant submits that the Respondent is entitled to recover costs that he has reasonable incurred in taking the following steps in this procedure:-
 - a. Investigating the Applicant's right to a new lease, reviewing the initial notice served by the Applicant and preparing, drafting and serving a counter notice.
 - b. Obtaining valuation evidence from a properly qualified surveyor for the purpose of fixing the premium for the new lease.
 - c. The "conveyancing" work necessarily undertaken and reasonably incurred to complete the lease extension transaction.
6. We also submit that the Tribunal can review the Respondents costs in a way similar a County Court Judge undertaking a detailed assessment of a bill of costs following litigation. Similar principals apply. The Tribunal should consider the hourly rate and seniority of the professionals involved in the work, the time spent by those professionals, the nature and complexity of the work.
7. The Tribunal should also consider whether or not the work undertaken falls squarely within the work allowed under the terms of the Act and, we would submit, the Tribunal is entitled to consider whether based on its experience of looking at these types of claims whether the overall costs being claimed by the Respondent appear to be reasonable for this type of transaction.

Objections to Fees Charged by the Respondent

(References to item numbers in the following paragraphs refer to the numbered items in the Respondent's "Schedule of Cost of Work Done on Documents" referred to above).

8. The Respondent is claiming a charge out rate of £240.00 per hour on behalf of Mr Kam Kumar who is described as a "senior property consultant". The Applicant has no information as to who Mr Kumar is, what his qualifications are or his seniority. We have no information to confirm whether or not Mr Kumar is rendering charges which are subject to VAT or not.
9. The Applicant is therefore unable to propose a suitable hourly rate that could be agreed for Mr Kumar because they do not have sufficient information in order to do so.
10. Throughout the Respondent's schedule there are items recorded which are incoming letters or emails. On the standard basis of assessment of costs time spent and costs charged for incoming correspondence is not recoverable from the paying party. Therefore, the following items should be disallowed:

7, 8, 16, 17, 18, 22, 26, 28, 32, 33, 34, 36, 38, 39, 40, 41, 42, 45, 46, 47, 48, 49, 51, 52, 54 and 55.
11. Item 13 in the Respondent's schedule of costs refers to an invoice from P K and A K Associates for the Respondent's valuation in the sum of £700.00. The Applicant has no information as to whether or not that £700.00 is inclusive or exclusive of

VAT or whether VAT is payable at all. We have no information about the valuer, his seniority or qualifications. We do not know the valuer's hourly rate.

12. Without this information the Applicant can not say whether this fee is reasonable but the Applicant is prepared to concede that in general terms a fee of £700 for the Landlord's valuation evidence in a matter of this type is not unreasonable.
13. Item 15 of the Respondent's schedule of cost details the preparation drafting of the counter notice for which the recorded time is allegedly 2.25 hours at a cost of £576.00. The counter notice is a reasonably standard document which is on 2 sides of A4. The Applicant does not believe that the preparation of that notice could have taken more than 30 minutes.
14. Item 23 refers to the preparation drafting of a new lease and the claim for 7 hours of chargeable time is included. The Applicant would submit that this item does not fall squarely within the costs recoverable under the Act in and in any event in this case the new lease is a simple lease extension. It is not a complete redraft of the lease. A claim of 7 hours is in itself unreasonable.
15. There are a number of items listed in the schedule of chargeable time which appear to relate to communication with the First Tier Tribunal. This must relate to the application to the Tribunal for the determination of the premium for the lease extension. The Applicants submit that none of this time is recoverable under Section 60 of the Act and all these items should be disallowed. They are items 17, 35, 44, 47, 51 and 54.
16. The Respondent has also included in the cost schedule time spent communicating with and negotiating with the Applicant's surveyor, David Robson. There are a number of items in the schedule which make reference to this communication and again the Applicant submits that none of this time is recoverable under Section 60 of the Act and all these items should be disallowed. The item numbers are: 16, 18, 19, 22, 36, 37, 38, 39, 40, 41, 42, 43, 46, 48 and 50.
17. Item 55 appears to include a charge of £500.00 for the Respondent to execute the lease. This amounts to approximately just over 2 hours of chargeable time based on the charge out rate of £240.00 an hour. The Applicant submits that this is an extraordinary amount of time to claim for a arranging for a landlord to sign the lease and should not be allowed.
18. Item 56 claims 1.5 hours of chargeable time for the drafting and preparing of a statement of costs. Once again the Applicant submits that this is not part and parcel of the costs that can be recovered under Section 60. In addition we would submit that this is an unreasonable sum in any event as the schedule of costs would not have taken 1.5 hours of chargeable time to prepare.
19. The Applicant has made several offers to settle the Respondents s.60 costs. The Applicant took the view that it was more cost effective to try to resolve the costs rather than make an application to the Tribunal for a determination of the costs. The offers made were: (i) £1,700.00 plus VAT (if VAT is payable) on 18 November 2014, increasing to (ii) £2,650.00 (plus VAT if chargeable) on 26 February and then finally (iii) an all inclusive figure of £3,500.00 irrespective of whether any VAT element was chargeable. This final offer was made in the hope that this application to the Tribunal and the costs incurred in doing so would be avoided.

20. In the Applicant submission these offers were reasonable and indeed more than reasonable given the lack of information being provided by the Respondent about VAT, the costs generally and whether or not the individuals acting for the Respondent are in fact professionally qualified and entitled to claim these costs.
21. In contrast the Respondent has made no counter offer but has simply requested payment of the sum set out in the schedule of costs being the £5,674.00 plus VAT (£6,808.80).
22. In the Applicant's submission on the face of it a sum of £6,808.80 for the Landlord's Section 60 costs in a matter such as this, a relatively straightforward and low value lease extension (the agreed premium for lease extension was £11,000.00), is disproportionately high. We refer to the comparisons that we have provided. Thackray Williams LLP has a Leasehold Enfranchisement Department working exclusively in enfranchisement matters. We complete hundreds of lease extensions each year. We act for both lessees and landlords. The comparisons we have provided are a sample of fees agreed to be paid in transactions that have completed in 2015. They include examples where we have acted for a large estate freeholder in lease extensions. They also include matters where we have acted for the lessee in completing lease extensions and have agreed the landlord's costs. Some of those transactions in the examples have been involving local outer London solicitors. Two of the transactions involved a firm of solicitors based in the West End of London which is a well known enfranchisement practice and where the legal fees might be expected to be relatively high.
23. None of the professional fees included in the comparables are anything like as high as the fees being claimed by the Respondent. Indeed they are typically less than half the charges being claimed by the Respondent.
24. In the circumstances the Applicant requests that the Tribunal make a determination of the landlord's Section 60 costs and takes account of the offers made to the Respondent to settle this element of the lease extension transaction. We would submit that the Respondent has acted unreasonably as he has made no counter offers and in the correspondence we have received the landlord has often been obstructive and obtuse. Whilst receiving emails and communicating by email the landlord has frequently asked for correspondence to be put in writing (i.e. by post) when it is simply not necessary to do so as email would suffice.
25. The Respondent has not responded to our request for further information about the costs and has provided no information about the individuals carrying out the work and has refused to confirm whether or not these charges are subject to VAT or not.
26. Finally, in the circumstances and in the interest of trying to resolve the matter, the Applicant remains prepared to pay a reasonable sum for Section 60 costs and would submit, in light of the above submissions and the attached comparables that a total sum of £2,650.00 would be a more than reasonable sum to pay for the landlord's Section 60 costs in this matter.

Signed Thackray Williams LLP Dated 22.05.15.

Thackray Williams LLP, Solicitors for the Applicant

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BETWEEN

JULIE ROBERTSHAW

Applicant

- and -

KAMLESH KUMAR ANAND

Respondent

APPLICANT'S SUBMISSIONS TO THE FIRST
TIER TRIBUNAL ON THE RESPONDENT'S
CLAIM FOR SECTION 60 COSTS

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