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

Case Reference : **MAN/00BY/OC6/2016/0002**

Property : **33 Lucan Road, Liverpool, L17 0BR**

Applicant : **Anne Elizabeth Barr**

Represented by : **Orme Associates**

Respondent : **Fee Simple Investments Ltd**

Represented by : **Adcocks Solicitors Ltd**

Type of Application : **Application under section 21(1)(ba)
Leasehold Reform Act 1967 ("the 1967 Act")**

Tribunal Members : **Judge C Wood
Mr M Bennett**

Date of Decision : **8 November 2016**

DECISION

ORDER

1. The Tribunal orders that the reasonable costs to be paid by the Applicant under section 9(4) of the 1967 Act are £1000 plus VAT and Land Registry fees of £9.00.
2. Pursuant to Rule 13(2) of The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, (“the Rules”), the Tribunal orders that the Respondent reimburse the Applicant the application fee of £100.00.

BACKGROUND

3. Pursuant to an application dated 7 July 2016, (“the Application”), the Applicant sought a determination of the reasonable costs payable under section 9(4) of the Act.
4. Directions dated 20 July 2016 were issued which provided that the Application could be dealt with as a paper determination, and pursuant to which written submissions were received from both parties’ representatives.
5. The Application was listed for determination on Monday, 31 October 2016.

LAW

6. Sections 9(4) and 9(4A) of the 1967 Act provides as follows:
Where a person gives notice of his desire to have the freehold of a house and premises under this Part of this Act, then unless the notice lapses under any provision of this Act excluding his liability, there shall be borne by him (so far as they are incurred in pursuance of the notice) the reasonable costs of or incidental to any of the following matters:—
 - (a) any investigation by the landlord of that person’s right to acquire the freehold;
 - (b) any conveyance or assurance of the house and premises or any part thereof or of any outstanding estate or interest therein;
 - (c) deducing, evidencing and verifying the title to the house and premises or any estate or interest therein;
 - (d) making out and furnishing such abstracts and copies as the person giving the notice may require;
 - (e) any valuation of the house and premises;but so that 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.
(4A) Subsection (4) above does not require a person to bear the costs of another person in connection with an application to an appropriate tribunal.

EVIDENCE

7. The Respondent’s initial submissions are summarised as follows:

- 9.3 it is the Respondent's views that the Applicant had shown an unwillingness throughout this matter to negotiate with the Respondent and had acted preemptively in making applications to the Tribunal, the effect of which had been to increase costs. In particular, the Respondent referred to an e-mail from the Applicant's representative dated 29 July 2016 in which he suggests agreement on costs at a level of £700-800, failing which an application to the Tribunal will be made, although this post-dated the making of the Application.

TRIBUNAL'S REASONS

10. In reaching its decision, the Tribunal took into account the following matters:
- 10.1 in their submissions, both parties had made extensive reference to the history of this matter and to the costs which had been incurred as a result of applications being made to the Tribunal. Having regard to section 9(4A), such costs are not the subject of the Application and, to the extent that such costs were included in the Respondent's Schedule of Costs;
- 10.2 whilst there appeared to be nothing improper in the relationship between the Respondent and the Respondent's solicitors, and the Tribunal acknowledged that the duties of the Respondent's solicitors to its client were the same as in any other solicitor-client relationship, it was also clear that, on a practical level, instructions could be sought (if it was necessary to seek them at all) and obtained more cost-effectively than in other situations. The Tribunal did not consider that the realities of this situation had been reflected in the Schedule of Costs;
- 10.3 whilst acknowledging that, by serving two notices, the Applicant had caused some increase in the Respondent's solicitors' costs, the Tribunal also considered that, from the Schedule of Costs, it appeared that there had been some unnecessary duplication of effort on their part;
- 10.4 the Tribunal also accepted the Applicant's evidence that this was a simple transfer of a kind with which the Respondent's solicitors were, by their own admission, wholly familiar and no significant costs should have been incurred in deducing title and/or preparing the transfer;
- 10.5 with regard to the valuation fees, the Tribunal considered that this was a valuation based on a simple capitalisation of a long lease of a property of which type it appeared the valuer was also very familiar. The Tribunal noted that there had been no site visit. The Tribunal also referred to its Decision dated 17 May 2016 to determine the price payable and its comments regarding the Respondent's valuation;
- 10.6 having regard to the above, the Tribunal considered that the reasonable costs to be paid by the Applicant pursuant to section 9(4) of the 1967 Act are £750.00 plus VAT for the legal fees, £250 plus VAT for the valuation fees plus a disbursement for Land Registry fees of £9.00, a total of £1209.00;

10.7 in view of the significant disparity between the costs sought by the Respondent and those determined to be reasonable by the Tribunal, the Tribunal considered that it was appropriate to make an order pursuant to Rule 13 (2) of the Rules requiring the Respondent to reimburse to the Applicant the application fee of £100.00.