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		FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)
Case Reference	:	OLR/2013/1454
Property	:	67A Upton House, London E7 9DP
Applicants	:	Mr and Mrs Patel (joint leaseholders)
Representative	:	None
Respondent	:	Mr Ali and Mr and Ms Choudhry (joint freeholders)
Representatives	:	Mr G. Williams of Wiseman Leigh (solicitors)
Type of Application	:	Applications for the determination of the premium payable, the terms of the new lease and payment of the landlord's costs in a claim made under section 48 Leasehold Reform, Housing and Urban Development Act 1993 (the '1993 Act') for the grant of a new lease. There was also an application for an order for costs under the Commonhold and Leasehold Reform Act 2002 (the '2002 Act').
Tribunal Members	:	Professor James Driscoll, solicitor (Tribunal Judge) and Mr Ian Holdsworth BSc MSc FRICS (Tribunal Member)
Date and venue of Hearing	:	1 July 2014
Date of Decision	:	11 September 2014

DECISION

Summary of the decision

1. The parties having agreed the premium payable and the terms of the new lease we determine that the leaseholders are to pay to the landlord the sum of £2,634 (inclusive of VAT) in respect of the landlords costs (under section 60 of the Act). In addition the leaseholders are to pay an additional £500 under schedule 12 of the Commonhold and Leasehold Reform Act 2002.
2. The total costs payable is the sum of £3,134 (inclusive of VAT) which is to be paid by 30 October 2014.

Introduction

3. This is an application under section 48 of the 1993 Act for the determination of the premium payable for the grant of a new lease. It is made by the leaseholders of the subject premises and the respondents are the landlords. We will refer to the parties as the 'leaseholders' and the 'landlords' respectively.
4. There are three landlords Mr R. Ali, Mr A. Choudhury and Ms A. Choudhury. Only Mr Ali was in receipt of legal and valuation advice. The leaseholders were in receipt of professional advice, but they withdrew instructions from their solicitors shortly before the hearing.
3. The leaseholders seek the grant of a new lease under the 1993 Act. The landlords admit that they are entitled to a new lease but they disputed the proposed premium and the terms of the new lease. As the parties could not agree on these matters the leaseholders made this application to the tribunal under section 48 of the 1993 Act. Directions were given and a hearing was arranged for 1 July 2014.
4. However, by the date of the hearing the parties agreed that a premium of £12,125 should be paid. The leaseholders and one of the landlords received legal and valuation advice. However, the leaseholders decided to withdraw instructions from their solicitors. Before the hearing the leaseholders prepared a bundle of documents and a separate bundle was prepared on behalf of the landlords.

The hearing

5. At the hearing held on 1 July 2014 the leaseholders appeared unrepresented and Mr G. Williams of Wiseman Leigh solicitors appeared on behalf of the landlords. At first the leaseholders told us that they were unhappy with some of the terms of the draft lease which had been prepared by Mr Williams. As we examined the draft lease it became apparent that in fact the leaseholders did not disagree with the proposed terms. Mr Williams told us that the draft lease was based on section 57 of the 1993 Act that is it is a new lease in substitution for the existing lease for a term 90 years longer than the current lease at a nominal rent.

6. As the premium had already been agreed and the parties having now agreed the terms of the new lease all that remained was for the parties to address us on two costs matters.
7. First, whilst the parties agreed that in principle the leaseholders must pay the landlord's legal and valuation costs in accordance with section 60 of the 1993 Act, the leaseholders challenged the reasonableness of the costs claimed.
8. Mr Williams told us that he is a former partner and now a consultant with his firm and that he is a specialist in enfranchisement and new lease claims and that he charges at an hourly rate of £295 per hour (that is the same rate as he would have charged as a partner). In all he spent 5.8 hours so he claims the sum of £1,711 (exclusive of VAT). He employed the services of Mr Ryan of Harvey and Partners, chartered surveyors who charged £600 (exclusive of VAT) for inspecting the premises and advising on the premium.
9. The leaseholders told us that they considered that both of these elements of the fees are unreasonably high though they were unable to explain on what basis they had come to this conclusion, or to tell us what they considered to be a reasonable figure.
10. Mr Williams told us that he wished to make an application under the 2002 Act (paragraph 10, schedule 12) as he considered that the leaseholders had behaved unreasonably. In support of this he told us he had agreed the terms of the new lease with their former solicitors Whitmore Law (save for what he described as a few minor details). After he learned that the leaseholders had withdrawn instructions from their solicitors he wrote to them asking them to explain the why they objected to the draft lease. He also wrote to them on 27 June 2014 with comments on the draft lease and suggested that they respond to avoid the parties having to attend the scheduled hearing.
11. He added that it became apparent at the hearing that in fact the leaseholders did not dispute the terms proposed for the new lease. As the parties had already agreed the premium all that was left to agree was the payment of the landlord's costs under section 60 of the Act. However, the leaseholders failed to respond so it became necessary for him to attend the hearing. In his last letter to the leaseholders he warned them that he would make an application under the 2002 Act if they failed to respond. The leaseholders simply responded by telling us that they did not think that they had behaved unreasonably.

Our decisions and the reasons for them.

12. We deal first with the claim for costs under section 60 of the 1993 Act. We have no doubt of Mr Williams' experience and expertise in this complicated area of law but we do not agree that this case has any particular complications. Having regard to this we determine that the £1595 is recoverable based on an hourly rate of £275 for 5.8 hours work. On the basis of our professional knowledge and experience we do not consider that the valuation fee at £600 is too high for the work involved.

13. Accordingly we determine that the sum of £2,195 (exclusive of VAT) is to be paid by the leaseholders to the landlord under section 60 of the 1993 Act along with an additional £439 for the additional VAT.
14. As to the second costs claim on balance we agree that it was unreasonable for the leaseholders to fail to engage with Mr Williams over the drafting of the new lease as a result of which a hearing became necessary and as it turned out could quite easily have been avoided with all of the attendant costs. Their application, we remind ourselves, was for a determination of the both the premium to be paid and the terms of the new lease. Before the hearing the parties had agreed on the premium. The leaseholders former solicitors had also agreed almost all of the terms of the new lease. We also remind ourselves that when we examined the draft lease with the parties during the hearing the leaseholders eventually told us that they had no objections to the draft lease.
15. We consider that the tribunal could have considered the section 60 costs claim without the need for an oral hearing. The hearing could, therefore, have been avoided. It is for these reasons that we agree that in insisting on a hearing the leaseholders behaved unreasonably and they have put the landlords to unnecessary expense. We determine that they pay £500 to the landlord under the 2002 Act.
16. The total costs to be paid is the sum of £3,134 which should be paid by 30 October 2014. We trust that subject to this and the payment of the premium in the sum agreed that the new lease will be executed by the landlords.