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

Case Reference : **TW/LON/00AP/OC9/2014/0020**

Property : **Flat 4, 32 Woodland Rise, London
N10 3UG**

Applicant : **Mrs Flavia Gold**

Representative : **SA Law**

Respondent : **32 Woodland Rise (Management)
Limited**

Representative : **Anthony Gold**

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 Judge : **Ms N Hawkes**

**Date and venue of
paper determination** : **21.5.14 10 Alfred Place, London
WC1E 7LR**

Date of Decision : **21.5.14**

DECISION

Decision of the Tribunal

The Tribunal determines that the costs payable by the applicant are in the sum of £1,685.40.

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 applicant under section 60(1) of the 1993 Act.
2. The applicant is the leaseholder of Flat 4, 32 Woodland Rise, Muswell Hill, London N10 3UG (“the Property”) and the respondent is the freehold owner of the Property.
3. The Tribunal has been informed by that the background is as follows. On 10th April 2014, the applicant served a notice pursuant to section 42 of the 1993 Act on the respondent and on 13th June 2013 the respondent served a notice pursuant to section 45 of the 1993 Act on the applicant.
4. The principal terms of acquisition and the form of lease were subsequently agreed. The agreed premium was £23,696. The respondents are claiming costs in the sum of £3,062.16 pursuant to section 60(1) of the 1993 Act in their completion statement.
5. The applicant argues that the costs claimed by the respondent are unreasonable and, on 13th March 2014, the applicant made this application to the Tribunal seeking a determination of the statutory costs payable. Directions were given on 14th March 2014 and neither party has requested an oral hearing.
6. The without prejudice correspondence which has been erroneously sent to the Tribunal has been ignored for the purpose of making this determination.

The law

7. 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.

8. 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 costs under section 60.
9. 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.
10. 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

respondent should only receive its costs where it has explained and substantiated them.

Submissions

11. By letter dated 11th April 2014, the respondent's solicitors contend that the actions of the applicant's solicitors caused their client's costs to substantially increase. They state that their Mr Mitchell received a number of faxes and emails from SA Law on 31st March 2014 threatening to serve enforcement proceedings on the freehold company. They say that they were at a loss as to why SA law felt it necessary to issue proceedings and give less than two hours' notice of this intention.
12. The respondent's solicitors state that the terms of acquisition were agreed on 2nd February 2014 and that at no point did their client resist completing the matter or give the impression that it would not cooperate with completion. They argue that the proposed enforcement proceedings were premature.
13. By letter dated 9th May 2014, the applicant argues that lease extension was straightforward. The applicant does not accept that the terms of acquisition were agreed on 2nd February 2014. According to the applicant's solicitors records, the terms of acquisition were agreed on 2nd December 2013 when the respondent stated in an email that the premium, the rent and the terms were all agreed.
14. The applicant argues that it is not a requirement of the 1993 Act that the form of lease is settled as part of the "terms of acquisition" because the regulations provide for the draft lease to be submitted after the term of acquisition have been agreed or determined by the Tribunal.
15. The applicant's solicitors state that the applicant had until 4th April 2014 to complete or issue County Court proceedings; that the applicant had been trying to complete matters in good time and had made requests for completion statements from the respondent's solicitors on 19th and 27th March to which there was no reply. They argue that the urgency which the respondent now relies upon as increasing the level of its costs was caused by its own inaction.
16. They also deny that they gave "less than two hours' notice" of the applicant's wish to complete before 31st March 2014 citing correspondence which passed between the parties. They state that the respondent failed to respond to their correspondence or to provide a completion statement on numerous occasions and that it was this delay which unnecessarily increased the applicant's costs. They state that the applicant wanted to avoid the costs of issuing protective court proceedings and that the steps it took were reasonable in the circumstances.

The Determination

17. The costs have been assessed on an item by item basis.
18. As stated above, the respondent should only receive its costs where it has explained and substantiated them. It is noted that paragraph 4 of the directions of 24th Marcy 2014 made provision for the respondent to send to the applicant a statement in response to the applicant's statement of case (in fact, the applicant has produced schedule with a column for the insertion of the respondent's response) and that the respondent has failed to provide item by item responses to the applicant's submissions.
19. Hague on Leasehold Enfranchisement provides at paragraph 6.30 that the costs of, or incidental to, "any investigation by the landlord of that person's right to acquire the freehold" item include the landlord's costs of investigating the claimant's title to the leasehold, and (where relevant) whether the tenant has been in occupation as his only or main residence for the relevant two-year period; but not the landlord's costs of preparing and serving a Notice in Reply, serving copies on other persons interested, and taking general advice as to his rights under the Act. Accordingly, in the absence of any legal submissions from the respondent to the contrary items 1, 2, 4, 7, 11, 13, 14 and 25 are disallowed.
20. In the absence of any explanation from the respondent, is not accepted that the charges for incoming correspondence are reasonable and accordingly items 3, 5, 12, 15, 17, 20, 23, 26, 28, 31, 36, 38, 43, are disallowed. However, it has been assumed that the unit charge for correspondence going out will include perusing and considering the relevant correspondence coming in.
21. In the absence of any specific responses from the respondent to the submissions made in respect of these items in the applicant's schedule, items 8, 9, 21, 29, 45 and 48 are disallowed for the reasons set out in the applicant's schedule. Item 30 is disallowed because the time spent under item 24 is considered to be sufficient to enable an experienced solicitor to deal with all matters relating to the deed. Item 39 is disallowed because it is considered that the sum charged under item 34 is sufficient.
22. I determine that items 6, 16, 19, 22, 24, 32, 33, 34, 35, 37, 40, 41, 42, 44 and 46 are reasonable in all the circumstances.
23. As regards item 10, in the absence of any reply from the respondent to the applicant's comments, I find that an experienced Grade 1 fee earner could have carried out the perusal in 6 units.
24. As regards item 18, I determine that in all the circumstances 2 units would be reasonable for this work.

25. As regards item 27, I determine that in all the circumstances 1 unit would be reasonable. In respect of item 47 I also determine that 1 unit would be reasonable.
26. On the basis of the limited information available, I determine that reasonable valuer's costs would be in the sum of £400 + VAT. There is no suggestion that a detailed valuation report was prepared and this was a straightforward lease extension.
27. In accordance with these findings, I determine that the solicitors' costs in the sum of £1,004.50 + VAT (£1,205.40) and valuer's costs in the sum of £400 + VAT (£480) are payable by the applicant. Accordingly, the total sum payable by the applicant is £1,685.40.

Judge Naomi Hawkes

21st May 2014