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

Case Reference : LON/00AS/OC9/2015/0419

Property : 11 Lanresse Close, Bawtree Road,
UB8 1XU

Applicant : Amberwave Ltd.

Representative : Not applicable

Respondent : W. E. Black Ltd.

Representative : Lynch Hall & Hornby

Type of Application : (1) Determination of costs payable
under s.60(1) of the Leasehold
Reform, Housing and Urban
Development Act 1993
(2) Application for costs by the
Applicant – Rule 13

Tribunal : Judge Dickie
Mr T Johnson, FRICS

DECISION

Decision of the tribunal

Solicitors' fees of £995 plus VAT and disbursements are payable by the Applicant to the Respondent, in addition to valuation fees of £500 plus VAT. The Respondent's application for costs under Rule 13(1) is dismissed.

The application

1. The Applicant seeks a determination pursuant to section 60 of the Leasehold Reform, Housing and Urban Development Act 1993 ("The Act") of the costs to be paid by the Applicant. No party has requested an oral hearing and the tribunal has determined the matter on the papers.

2. On 20 November 2014 the Applicant, being the owner of the leasehold interest in each of the subject flat, served a Notice of Claim in accordance with section 42 of the Act. The landlord served a Counter Notice in accordance with section 45.
3. The terms of acquisition of a new lease were agreed but the Applicant disputes the Respondent's solicitors' legal fees (not disbursements). Valuation fees of £500 plus VAT are not challenged.
4. So far as is relevant, section 60(1) of the Act provides:

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;*
5. Section 60(2) provides that the costs claimed under section 60(1) will be 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.

Submissions, Determination and Reasons

6. With regard to the reasonableness of the solicitors' costs incurred, the Applicant argues that the landlord's solicitor was wrong to prepare a draft Deed of Variation, which required almost complete redrafting by the Applicant. However, whilst a Deed of Variation would take effect as a grant of a new lease, the tribunal finds that preparation of such a draft was not wrong in principle and the Applicant has not established that it would have been rejected by the Land Registry. The fact that the landlord's solicitors accepted a number of amendments made by the Applicant, including as to style, does not imply that time spent was unreasonable.

7. The solicitor's hourly charging rate of £230 is disputed, but the tribunal accepts this is entirely reasonable for this type of work and the level of fee earner reasonably engaged. The Applicant's suggested hourly rate of £120 is without foundation and plainly below established rates for this type of work.
8. The Respondent has produced a schedule of costs totalling £1748 plus VAT and disbursements. It seeks costs from the Applicant however of £995 plus VAT and disbursements. The tribunal has considered the times engaged. Notwithstanding that the number of standard letters and phone calls has not been recorded, and the Applicant's challenges to the items which could properly be recorded, the tribunal takes the view that the reasonable costs recoverable under s.60 would exceed £995 plus VAT, and allows the figure sought by the Respondent.
9. The Respondent landlord has made an application for costs against the Applicant under Rule 13(1)(b) of the Tribunal Procedure (First Tier Tribunal)(Property Chamber) Rules 2013, which empowers the tribunal to make an order for costs "if a person has acted unreasonably in bringing, defending or conducting proceedings".
10. The tribunal may not make an order for costs except in prescribed circumstances. It is not persuaded that an order for costs under Rule 13(1) is appropriate. The Applicant held a genuine view that the costs were excessive, and advanced his grounds, but the tribunal does not agree with them. The fact that it has been unsuccessful in challenging the costs sought is not of itself sufficient to establish unreasonable behaviour. Furthermore, the tribunal takes into account that the Applicant has complied with directions but the Respondent did not, in that the Respondent served its schedule of costs out of time. As a result the Applicant was required to make its written submissions before sight of the schedule of costs and then further written submissions proposing revised alternative figures upon receipt of it. The tribunal does not consider this to be unreasonable behaviour.
11. In any event, where a ground for making an order for costs is made out, the tribunal has discretion and considering the circumstances of this case, would not exercise that discretion to make an order for costs.

Name: F. Dickie

Date: 6 January 2016