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

Case reference : **LON/00BB/OC9/2017/0033**

Property : **53 Carson Road, London E16 4BD**

Applicant : **Stephen Paul Thomas**

Representative : **Lewis Nedas Law Solicitors**

Respondent : **Iqbal Singh Dhani**

Representative : **J. H. Hart**

Type of application : **Costs under s.60 of the Leasehold Reform, Housing and Urban Development Act 1993**

Tribunal member(s) : **Judge Dickie**

Date of decision : **20 June 2017**

DECISION

DECISION OF THE TRIBUNAL

- 1) The tribunal determines that solicitors costs of £1200 plus VAT (and disbursements of £6), and surveyor's fees of £850 plus VAT are payable by the Respondents.

THE APPLICATION

- 2) Application has been made for a determination of costs payable by the Applicant under section 60(1) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act").

- 3) On 24 April 2017 the tribunal issued directions for this matter to be determined on the papers unless a hearing was requested. No such request having been received, the tribunal has proceeded to determine this application without an oral hearing.
- 4) The tribunal has received statements of case from both parties.

THE LAW

- 5) So far as is relevant, section 60 provides:

(1) Where a notice is given under section 42, then ... 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;....

(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 be reasonably be expected to have been incurred by him if the circumstances had been such that he was personally liable for all such costs....

(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.

EVIDENCE

- 6) On 10 June 2016 the Applicant leaseholder of 53 Carson Road. London E16 4BD ("the property"), sent to the Respondent freeholder a notice of claim pursuant to section 42 of the Act. The Respondent served a counter notice dated 5 August 2016 on the Applicant. No terms were agreed in respect of the grant of the new lease and the Applicant made an application to the tribunal under section 48(1) of the Act on 3 February 2017. The premium was subsequently agreed, but it is understood that the matter did not complete.
- 7) The costs that are the subject of this application and sought by the Respondent are
 - a) Solicitors' costs £2,200 plus VAT (plus £6 for disbursements).
 - b) Valuer's fees of £850 plus VAT and £675 plus VAT.

Solicitor's Costs

- 8) The tribunal directions ordered the Applicant to produce: "A schedule of costs sufficient for summary assessment."
- 9) A schedule of costs has been produced by solicitors for the Applicant, but it does not enable summary assessment. It amounts to a long list of activities undertaken and a total time engaged, but without a breakdown of time engaged on each activity on any date. The form of this schedule makes it impossible to understand how costs were apportioned between the various items listed in it. The Respondent's solicitors observe, and I agree, that the Applicant is able to recover costs for assessing the tenant's right to a lease extension; checking the title; preparing the counter notice and undertaking the conveyance (including in this case preparing the draft lease).
- 10) The hourly rate charged is specified as £250 plus VAT. This is reasonable and indeed no objection is taken to it. Receipt of correspondence is recorded a number of times, though I find costs for this are not reasonable. It is also clear that some of the recorded activity relates to negotiation of the premium payable.
- 11) The Respondent's solicitors suggest approximately £1000-£1200 in costs plus VAT would be expected. On the available material I consider it appropriate to adopt the higher figure and determine that £1200 plus VAT and disbursements shall be recoverable.
- 12) Complaint is made that the Respondent continued to seek to negotiate the premium even after written agreement to a premium in the sum of £11,000 had been reached on 13 December 2016. This indeed does appear to have been extraordinary conduct, for which no explanation has been offered. However, such costs relate to negotiation of the premium, and some may have been costs incurred in the proceedings, which are not recoverable under section 60. The tribunal's power to award costs in proceedings is set out in Rule 13 of The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013.

Valuer's Fees

- 13) The Respondent's solicitors agree the valuation fee of £850 plus VAT but challenge the further invoice dated 9 January 2017 for £675 plus VAT (I note that this invoice is accompanied by a breakdown of time engaged including on 14 March 2016, which date is incorrect). I find that this later invoice is clearly not for the cost of or incidental to the valuation for the purpose of fixing the premium, but for instructions thereafter to negotiate. However, such costs do not fall within the ambit of s.60(1)(b) and cannot be recovered.

Name: F Dickie

Date: 20 June 2017