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

Case Reference : **LON/00AC/OC9/2013/0041**

Property : **Flat 7, Brook Lodge, North Circular Road, NW11 9LG**

Applicants : **Gabriel & Aura Vaisbrot**

Representative : **Self Representing**

Respondent : **Newprop Company Limited**

Representative : **Wallace LLP**

Type of Application : **Costs – Section 60 Leasehold Reform, Housing and Urban Development Act 1993**

Tribunal Members : **Judge M Martynski
Mr W R Shaw FRICS**

Date and venue of Hearing : **10 Alfred Place, London WC1E 7LR**

Date of Decision : **3 September 2013**

DECISION

Decision summary

1. The Tribunal decides that the costs payable by the Applicants to the Respondent are:

Legal Fees	£1,600 plus VAT and disbursements (as claimed)
Surveyor's fees	£776.25 plus VAT and disbursements (as claimed)

Background

- This application follows a lease extension transaction pursuant to the Leasehold Reform, Housing & Urban Development Act 1993 (as amended) ['the Act'].
- The flat in question is a two-bedroomed flat within a purpose built block.
- The Applicants' notice claiming a new lease is dated 12 July 2012. The Respondent's notice in response is dated 19 September 2012. That notice admitted the Applicants' right to a new lease but disputed the premium payable and the terms of the new lease.
- From the documents seen by the Tribunal, it is clear that the Respondent wished to include in the new lease substantial new terms including the introduction of a sinking fund, increase of registration fees and introduction of interest. The Applicants required minor modifications to the draft lease with the introduction of one completely new term.
- Completion of the grant of the new lease took place on 29 May 2013.
- The Respondent claimed fees following this process from the Applicants as follows:-

Legal costs	£2,025.00
VAT	£405.00
Disbursements (inc. VAT)	£59.31
<i>Total</i>	<i>£2489.31</i>

Surveyor's fees	£888.75
VAT	£180.96
Disbursements	£16.05
<i>Total</i>	<i>£1,085.76</i>

- The Applicants challenged these fees by application to this Tribunal. The case was considered by the Tribunal on the papers alone. The papers considered were the Applicant's Statement of Case (undated), the Respondent's Reply to that (16 August 2013) and the Applicants' further Statement in Response (undated). The Tribunal was also provided with the relevant invoices and the breakdown of work charged for in respect of both legal and Surveying fees. Further, the Tribunal had the benefit of seeing the notices served by each party and the draft travelling leases and correspondence between the parties' solicitors.

9. This decision is made on the basis of the consideration of the documents referred to above.

The issues and the Tribunal's decisions

10. The Applicants raised the following specific issues;

Costs of the Counter-Notice

11. The Applicants argued that costs of the preparation of the Counter-Notice were simply not claimable under the terms of section 60 of the Act.
12. The Respondent argued that the costs of the preparation of the Counter-Notice are incidental to the investigation of the lessees' right to a new lease and that accordingly those costs were recoverable.
13. The Tribunal had specific regard to the breakdown of work claimed for by the Respondent's solicitors. In that breakdown there were specific charges for the consideration of office copy entries and the lease and for the preparation of a new lease. There are various other specific charges for other pieces of work involved in the process of the investigation of the tenants' right.
14. There are entirely separate charges, in addition to those identified above, for the preparation of a draft Counter-Notice (five units) and the finalising of that notice (one unit).
15. It therefore appears to the Tribunal that the itemisation of the work claimed for separates out the investigation of the lessees' right and the actual work of the physical preparation of the Counter-Notice. Those latter costs are not payable by the Applicants under the terms of section 60 of the Act and are accordingly disallowed.

Costs related to the preparation of the draft lease

16. The Applicants argued that these costs were increased by the introduction of new terms into the new lease by the Respondent as referred to earlier in this decision.
17. There does not appear to be any dispute that the Respondent was not entitled, as of right, to introduce these terms and it is clear to the Tribunal from the travelling draft leases that the clauses in question were argued for by the Respondent's solicitors in the travelling drafts but were ultimately conceded by them.
18. The Respondent in its Statement of Case argued that both sides sought "the addition of amendments which were disputed" and that as a result "a considerable amount of time was spent agreeing the form of new lease".

19. It is clear from the draft travelling leases and the correspondence seen by the Tribunal that additional work (over and above any that may have been caused by the Applicants' proposals on the lease) must have been created specifically by the Respondent seeking to introduce terms in the lease to which it was not entitled and in continuing to argue for those terms.
20. Accordingly, the Tribunal agrees with the Applicants' challenge that some of the costs incurred in the preparation and negotiation of the lease were unreasonably incurred.
21. From the breakdown of the work claimed by the Respondent's solicitors; post the finalising of the Counter-Notice and prior to the completion of the transaction, there are:-
 - 5 communications with the Respondent
 - 6 communications with the Applicants' solicitors
 - 3 units charged for amendments to the lease
22. The Tribunal concludes that some of this work must be attributable to the additional lease clauses in question and finds that of these 14 units, 5 of them should be disallowed as relating to the work on those clauses. The charge out rate for these units are taken as £40.00 per unit.

Effect on legal costs

23. The number of units of legal work charged for disallowed by the Tribunal is; 5 units at £40.00 per unit, 6 units at £37.50 per unit; total deduction - £425.00.

Surveyor's fees

24. As noted above, there is no suggestion that the matter was anything other than routine. A valuation fee therefore amounting to a net of £888.75 is not justifiable.
25. As to the breakdown of the fee, the Tribunal has reduced the time claimed for the draft written report to 5 units to reflect the fact that all the real work in the valuation had, by the time that the report came to be written, already been done and properly charged for.
26. The effect of the disallowance of the 5 units is to reduce the net fee claimed by £112.50.

Mark Martynski, Tribunal Judge
3 September 2013