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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	LON/00AL/OC9/2013/0028
Property	:	1 Pleasance Court, Well Hall Road, London SE9
Applicant	:	Linkproud Limited
Representative	:	P.Chevalier & Co
Respondents	:	George Heath and Neil Woodhouse
Representative	:	Cook Taylor Woodhouse
Type of Application	:	Enfranchisement
Tribunal Members	:	Mr Robert Latham Mr Patrick Casey MRICS
Date and venue of Hearing	:	Paper determination on 31 July 2013 at 10 Alfred Place, London WC1E 7LR
Date of Decision	:	31 July 2013

DECISION

The Tribunal finds that the costs sought by the landlord in the sum of £3,180 are payable.

Introduction

1. This is an application under section 91 of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act"). The current application by the landlord is for the determination of the costs payable by the tenants under section 60(1) of the Act.

2. On 30 May 2013, the landlord issued this application. It included a Schedule of Costs in the sum of £3,180. This includes the costs of a Valuer in the sum of £1,260. It is apparent that the tenants served five separate Notices of Claim. The first four notices were correctable; hence the need to serve a counter-notice and provide alternative proposals. The fifth notice was served more than 2 years after the death of the former leaseholder and was therefore out of time.

3. On 4 June, the Tribunal gave Directions. By 2 July, the tenants were to serve their Statement of Case and any supporting documentation. The tenants failed to do so. Had they done so, it would have been open to the landlord to file a Statement in Response.

4. The Directions permitted the parties to request an oral hearing. Had they done so, this would have taken place today. In the absence of a request for an oral hearing, the parties were notified that the application would be determined on the papers in the week commencing 29 July. Neither party requested an oral hearing.

5. Paragraph 5 of the Directions required the landlord to file two copies of a Bundle of documents by 16 July. This Bundle was to include the parties' respective Statement of cases and any material, including legal submissions on which they sought to rely. On 15 July, the landlord filed two copies of the bundle.

6. When we convened this morning to determine this application, it was apparent that there was no material filed by the tenants. We arranged for the Tribunal to contact their Solicitor, Cook Taylor Woodhouse (CTW) to check that nothing had gone astray.

7. At 13.27, Neil Woodhouse, a partner with CTW, faxed the Tribunal a letter confirming that he had received the Directions. He stated that he had not diarised the need to provide the Tribunal with a statement. He had intended to deal with the matter during the course of this week having wrongly assumed that the Tribunal would require the information during the week commencing 29 July. He suggested that the landlord had not complied with Paragraph 5 of the Direction in that it had not sent the tenants a draft index or served them with a copy of the Bundle. This was not a requirement of the Directions.

8. Mr Woodhouse requested more time in which to consider the landlord's statement and the breakdown of work down. We do not accede to this request. We are satisfied that we should determine this application. CTW have provided no adequate explanation for their failure to comply with the Directions. We have also had regard to the background to this application.

The Background

9. 21 May 2013, P.Chevalier & Co (Chevalier), the landlord's solicitor, sent CTW a breakdown of their costs. On 23 May, CTW responded. Mr Woodhouse stated that the costs were not agreed. The landlord was rather required to remit the application to a tribunal.

10. On 28 May, Chevalier responded expressing their surprise that CTW had made no attempt to state the quantum of costs which they considered to be recoverable by reference to the schedule of costs. They gave the tenants 7 days in which to make their response.

11. On 29 May, CTW responded. They stated that they had no further comments to make and would rely on the representations which they would make to the tribunal. Chevalier should not therefore delay in making their application to the tribunal.

12. On 30 May, Chevalier responded noting that CTW's position was that they were refusing to state the quantum of costs which they considered to be recoverable. The Solicitor alerted CTW to the powers of this Tribunal in respect of a party whose conduct is manifestly unreasonable. Chevalier issued the current application on the same day.

The Statutory Provisions

13. Section 60 provides, insofar as relevant for the purposes of this decision:

> "(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—
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> > (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.
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> (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...

(5) A tenant shall not be liable under this section for any costs which a party to any proceedings under this Chapter before a leasehold valuation 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... or any third party to the tenant's lease."

The Principles

14. *Drax v Lawn Court Freehold Limited* 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. 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.

15. This does, in effect, introduce 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 his costs where it has explained and substantiated them.

16. It does not follow that this is an assessment of costs on the standard basis. That is not what section 60 says, nor is *Drax* an authority for that proposition. Section 60 is self-contained.

The Tribunal's Determination

17. First, the Tribunal wish to record their disapproval of the approach adopted by CTW which is inconsistent with their duties under the overriding objectives. Matters should only be referred to a tribunal where there is a real dispute to be determined. Parties are expected to cooperate to resolve disputes in a proportionate manner and to avoid unnecessary expense. An application should only be made to a tribunal when parties have taken all reasonable steps to resolve the dispute themselves, and, despite their best endeavours, they have been unable to do so. The issues which the parties have been unable resolve should be clearly identified so that the tribunal is able to determine the same in a manner that is proportionate to the resources of the parties and to those of the Tribunal.

18. Given the approach adopted by the Respondent, we have no option but to find that the sum of £3,180 sought by the Applicant is payable. We remind ourselves of two important principles:

(i) The landlord has provided a detailed Schedule of Costs. The onus is on the tenants to establish that the costs sought are not payable. The Respondents have signally failed to do this.

(ii) It is not open to this Tribunal, on a paper determination, to take points on our own initiative. Our role is rather to adjudicate upon the issues raised by the parties and upon which the opposing party has had an opportunity to comment.

19. In his letter of 31 July, Mr Woodhouse suggests that there are numerous aspects of the breakdown which are questionable and are either not necessary or simply a duplication of work already done. The suggested duplication relates to the landlord's need to consider five separate Notices of Claim served by the tenants between August 2009 and August 2011, and to serve five separate Counter-notices.

20. We are satisfied that CTW has had more than adequate opportunity to formulate their detailed objections to the Schedule of Costs, but have failed to do so. It would not be proportionate to adjourn this determination to enable CTW to elaborate upon these points which should have been identified before this application was issued.

21. We regret that the tenants have lost their chance to challenge the landlord's claim for costs. In so far as this is due to the default of CTW, their Solicitor will advise them accordingly.

Conclusions

22. The Tribunal has no option but to find that the costs sought by the landlord in the sum of £3,180 are payable.

Robert Latham,
Tribunal Judge

31 July 2013