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

Case Reference : **LON/OOAC/oC9/2014/0015**

Property : **Second Floor Flat, 27 Orchard Avenue, London N3 3NL**

Applicant : **Mr. P. Barry (leaseholder)**

Representatives : **Lewis Nedas Law (solicitors)**

Respondent : **Ms. I. Frewin (landlord)**

Representative : **Chambers Rutland & Crauford (solicitors)**

Type of Application : **Applications for the determination of the costs payable following the grant of a new lease under Part I, Leasehold Reform, Housing and Urban Development Act 1993 ('the Act')**

Tribunal Members : **Professor James Driscoll, solicitor (Tribunal Judge)**

Date and venue of Hearing : **The Tribunal met on 22 April 2014 and considered the application on the basis of the papers filed by the parties, neither party having sought an oral hearing.**

Date of Decision : **22 April 2014**

DECISION

Summary of the decision

1. This tribunal determines that under section 60 of the Act the leaseholder is to pay the landlord the sums of £2,040 for the legal costs and £1,020 for the valuer's fees. This is a total of £3,060 which should be paid by 15 May 2014.

Introduction

2. This application is made on behalf of Mr Barry the leaseholder of the subject premises which consists of a flat. He seeks a determination of his liability to pay costs in connection with his claim for the grant of a new lease under the provisions in Part I of the Act. His liability to pay the costs is provided for in section 60 of the Act and his application for a determination of those costs is made under section 91(2)(d) of the Act.
3. Ms Frewin, the respondent to the application, is the landlord of the long lease of the flat.
4. It is common ground that a leaseholder seeking the grant of a new lease is required to pay certain costs to reimburse the landlord for defined professional costs incurred in connection with the new lease claim. This is provided for in section 60(1) of the Act which provides as follows: *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; and (c) the grant of a new lease under that section;*
5. There is an important caveat to this which is contained in section 60(2) of the Act which reads as follows: *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.*

The application

6. I understand that both the terms of the new lease and the premium to be paid for it have been agreed by the two parties. However, as the parties could not agree on the amount of the costs payable by the leaseholder to the landlord this application has been made for a determination.
7. Directions were given on 28 February 2014. Neither party having sought an oral hearing I considered the application by reading the papers filed on behalf of the parties. Each party sent the tribunal a bundle of documents.
8. These documents included a schedule of the landlord's costs with a narrative written by the landlord's solicitors which was received by the tribunal on 17 March 2014. Also included is a statement in reply written by the solicitors for the leaseholder. The solicitors for the landlord responded in a reply dated 3 April 2014. Further observations are contained in a letter they sent to the tribunal which was received on 14 April 2014.

The landlord's costs submissions

9. The landlord's claim for their costs consists of their solicitors costs in the sum of £4,400 (with VAT of £888) and the sum of £1,400 for their valuer's fees (with VAT of £280).

The leaseholder's costs submissions

10. The leaseholder's solicitors responded in a statement dated 24 March 2014 stating that they consider that the reasonable costs are the sums of £1,500 (plus VAT) in respect of the legal fees and the sum of £750 (plus VAT) in respect of the fees of the valuer.
11. In the statement dated 17 March 2014 the landlord's solicitors explained the complications as they see it of the claim. The subject flat is one of three flats in a building called the 'Dell'. A fourth flat has been added which forms part of the Dell but the applicant leaseholder has the right to use its roof. An additional complication is that the freehold to the whole of the building was split. Issues over the contents of the rights which could be obtained by the leaseholder gave rise to complications both from a legal and a valuation point of view. The landlord's solicitors base their fees on an hourly rate of £200 and their surveyors also charge the same hourly rate.

Reasons for the decision

12. Section 60 refers to the 'reasonable costs' and the caveat in section 60(2) of the Act has been described by the authors of Hague 'Leasehold Enfranchisement ((5th edition, 2009) in the following terms '*This sensible measure is designed to prevent the landlord from inflating his costs merely because the tenants are paying them*' (paragraph 28-22 a comment relating to the corresponding costs provision for enfranchisement claims in section 33 of the Act). On costs payable under section 60 they comment '*..the landlord cannot instruct a professional person, or a more expensive*

professional person, simply because he will not be footing the bill' (paragraph 32-18).

13. Having considered both sets of representations (which have been fully reasoned and helpful) I have reached the following conclusions. First, I accept the point that the legal issues were more complex than the leaseholder is prepared to acknowledge. I cannot accept that this was an entirely straight forward claim as the leaseholder's advisors suggest. Second, though, this is a case where the landlord accepted in their counter-notice the leaseholder's entitlement to a new lease but they disputed the premium offered and they raised issues over the terms on which the new lease was to be granted. I accept that the valuation was complicated by the fact that there were legal complications over the leaseholder's rights over the roof of the fourth flat.
14. As against that two other factors concern me. First, and with no disrespect intended to them, the landlord's solicitors may have misunderstood the position where costs are payable under section 60 of the Act. It is clear that these costs are limited to the reasonable costs of investigating the right to a new lease, obtaining a valuation and the grant of the new lease. In other words it does not allow the landlord to charge the leaseholder all of the costs it may have incurred in connection with the claim. In their letter to the tribunal dated 11 April 2014 these solicitors refer to a court assessing the costs payable in litigation (page 1, paragraph 4). This overlooks the fact that this tribunal is essentially a costs-free tribunal where the usual costs orders of the courts simply do not apply. Our jurisdiction in 1993 Act new lease claims is limited by section 60 in the ways described. It is separate to our new rule on costs in rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 which allows for an order for costs to be made where the tribunal has concluded that a party has behaved unreasonably.
15. I note that the solicitor's hourly rate of £200 is not challenged.
16. I calculate that the landlord's solicitor is claiming to have spent some 22 hours and the surveyors spent some 7 hours. Having examined the papers and the submissions and applying my own professional knowledge and experience I consider that the solicitors are entitled to charge for investigating the claim for a new lease where there were few complications and for the new lease where there were complications over the leaseholder's rights. I have concluded that a reasonable fee, that is one which the landlord would have agreed if they were paying the fees themselves should be based on 10 hours work which produces the sum of £2,000 (with VAT of £40). Turning to the valuers fees I am surprised that there are three fee notes in all. Having accepted that there were complications in this particular case I have concluded that a reasonable valuer's fee for advising on the premium is the sum of £1,000 (plus VAT of £20) based on ten hours work. I do not consider that the landlord is entitled to claim the fees of a costs draftsman in a case such as this.

17. To summarise this tribunal determines that under section 60 of the Act the leaseholder is to pay the landlord the sums of £2,040 for the legal costs and £1,020 for the valuer's fees.

Professor James Driscoll, solicitor (Tribunal Judge)