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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BC/OC9/2014/0226**
Property	:	**4B Valebrook, 2 Park Avenue, Ilford, Essex IG1 4RT**
Applicant	:	**Brickfield Properties Ltd**
Representative	:	**Wallace LLP**
Respondents	:	**Barry Howard Bloomfield** **Janice Bloomfield**
Representative	:	**MLC Solicitors**
Type of Application	:	**Costs on extension of lease**
Tribunal	:	**Judge Nicol**
Date of Decision	:	**23rd November 2015**

DECISION

Decision of the Tribunal

The Tribunal has determined that the following costs, inclusive of VAT, are payable by the Respondents to the Applicant in accordance with section 60 of the Leasehold Reform, Housing and Urban Development Act 1993:

i) £3,444.80 in relation to the first Notice of Claim; and

ii) £2,686.20 in relation to the second Notice of Claim.

Reasons for Decision

1. The Applicant seeks to recover costs incurred in responding to the Respondents' request for a new lease in accordance with section 60 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act"). In accordance with the Tribunal's directions, the Applicant has filed a bundle containing both parties' submissions and relevant documents and the Tribunal has proceeded to determine the application on those papers, without an oral hearing.

2. The Applicant is the head lessee and the Respondents the lessees of the subject property. On 23rd December 2013 the Respondents served their first Notice of Claim under s.42 of the Act seeking to acquire a new lease. The Applicant served a Counter-Notice on 20th February 2014 but at the same time made it clear in their covering letter that they regarded the Notice as invalid on three grounds.

3. None of the Applicant's grounds for challenging the validity of the first Notice of Claim are now relevant so they are not set out here. However, the Respondents' solicitors' submissions to this Tribunal give the impression that they think the principal ground was that the Notice was mistakenly served on the freeholder. At the same time as setting out their grounds in their letter of 20th February 2014, the Applicant's solicitors did point out that the Applicant was the Competent Landlord under the Act, not the freeholder, but no reasonable recipient of the letter would be in any doubt as to what the grounds were and they did not include this issue.

4. By letter dated 8th May 2014 the Respondents' valuer, Mr Derek Rona, asked for details of the Applicant's valuer. By letter dated 13th May 2014 the Applicant's solicitors pointed out that they were claiming the Notice of Claim was invalid so that the matter could not proceed.

5. In the meantime, under paragraph 2 of Schedule 2 to the Leasehold Reform (Collective Enfranchisement and Lease Renewal) Regulations 1993, a landlord may give to the tenant a notice requiring payment of a deposit on account of the premium payable for the lease at any time when the notice of claim continues in force and the Applicant's solicitors had served such a notice. Thereafter, both the Respondents' valuer and solicitors asserted that the service of the Counter-Notice and the notice requiring a deposit constituted acceptance that the original notice was valid.

6. In their submissions to this Tribunal, the Respondents' solicitors have taken this assertion further to claim that they were misled by the Applicant's solicitors. They assert that the continuing steps taken by the Applicant's solicitors after service of the Notice of Claim led them to think that its validity had been accepted.

7. The Tribunal rejects this submission. Every letter from the Applicant's solicitor made it very clear that all steps were taken without prejudice to their contention that the Notice of Claim was invalid. There appears to be no direct judicial authority on whether it is permissible to do this but it is accepted that the following passage from *Hague on Enfranchisement* (6th edition at 30-18) reflects the law:

> It is considered that if the validity of the tenant's notice is disputed, this can be included in the counter-notice, provided it is made clear that the counter-notice is served without prejudice to the contention that the initial notice was not a valid one. The preferable course, however, is to serve a counter-notice under cover of a letter stating that the counter-notice is served without prejudice to the landlord's contention that no valid notice has been served.

8. The Applicant's solicitors' correspondence in this case could not have been any more clear. No reasonable recipient could have been in any doubt that each step they took was without prejudice to the three grounds they had given for challenging the validity of the Notice of Claim. Although they did not express it in terms, there can equally be no doubt that the Respondents' solicitors at all times relied on the Notice of Claim being valid.

9. In the event, the Respondents allowed the statutory time limit of 19th August 2014 to pass without making an application to the Tribunal and so the Notice of Claim was deemed withdrawn.

10. On 30th October 2014 the Applicant initiated the current application for their costs but it was stayed following the Respondents' serving a second Notice of Claim on 26th November 2014 (11 months after the first). Eventually, in September 2015 the parties agreed the terms of acquisition of a new lease.

11. On 30th September 2015 the Tribunal issued new directions. Although the original application was only in respect of the costs arising from the first Notice of Claim, the Applicant has proceeded on the basis that these directions cover the costs relating to both Notices, as per their request in their letter dated 24th September 2015, and the Respondents have not expressed any objection to this.

12. The Applicant claims the following costs:

Fees	*First Notice (£)*	*Second Notice (£)*
Solicitor	2,022.00	1.678.00
VAT	404.40	335.60
Valuer	750.00	500.00

VAT	150.00	100.00
Land Registry	53.00	9.00
Courier	54.50	53.00
VAT	10.90	10.60
TOTAL	3,444.80	2,686.20

13. The submissions on behalf of the Respondents are brief. Their first objection, as referred to above, is that the Applicant should have opted either to rely on the invalidity of the first Notice or to accept its validity and proceed. This amounts to a submission that it is not possible to proceed on the basis that this is without prejudice to any contention as to the validity of the Notice. They provide no authority in support of this proposition.

14. The Upper Tribunal held in *Plintal SA v 36-48A Edgewood Drive RTM Co Ltd* (2008) LRX/16/2007 that a party is estopped from denying the right to costs for as long as they maintain that the Notice is valid. This case concerned RTM companies and the right to costs under s.88 of the Commonhold and Leasehold Reform Act 2002 but *Hague on Enfranchisement* (6th edition at 32-24) suggests that the principle applies equally to the right to costs under s.60. The Tribunal agrees and cannot see any reason why the principle would not be so applicable.

15. In any event, the Respondents appear to rely on this issue only in relation to the valuer's costs. Ms Genevieve Mariner BA (Hons) FRICS charged for two valuations, albeit she charged less on the second occasion to take account of time spent on the first occasion. The Respondents assert that there should have been only one valuation.

16. The Applicant's solicitors rightly point out that the consequences of not serving a Counter-Notice can be draconian. So long as the Respondents continued to assert the validity of their first Notice of Claim, there was a risk that this position would be upheld and it was only prudent for a Counter-Notice to be served. A valuer's input is required in order to put a realistic valuation into the Counter-Notice. Further, 11 months had passed between the two Notices and, again, it was only prudent that the Applicant should have their valuer update her valuation. In the circumstances, the Tribunal accepts that the Applicant acted reasonably in incurring two valuation fees.

17. In their submissions, the Respondents' solicitors asserted that the Applicant's solicitors' costs are unreasonable and excessive. However, they asserted only one basis for this, namely that a junior fee-earner could have been used instead of a partner.

18. The proper basis for the assessment of costs in enfranchisement cases under the Act, whether concerning a freehold purchase or a lease extension, was set out by the Upper Tribunal in *Drax v Lawn Court Freehold Ltd* [2010] UKUT 81 (LC). Costs must be reasonable and must have been incurred in pursuance of the Notice of Claim and in connection with the three purposes listed in s.60(1) (see the Appendix to this decision). Under s.60(2) costs are limited to those the landlord would be prepared to pay if they were using their own money rather than being paid by the tenant. This introduces a "test of proportionality of a kind associated with the assessment of costs on the standard basis" in the courts. The landlord should only receive their costs where they have explained and substantiated them.

19. The Applicant was not required to go for the cheapest possible option. The Tribunal is satisfied that it was reasonable for the Applicant to use the services of a partner familiar with them and with this complex area of law. It is clear from the information provided that a paralegal was used for simpler tasks, as was appropriate.

20. The Respondents object to the disbursements to the Land Registry and the courier as being "unnecessary and excessive" but have given no further detail. In relation to the Land Registry disbursements, the Tribunal cannot understand why they would have been thought unnecessary – title is obviously key to the enfranchisement process. Moreover, the fees are fixed.

21. In relation to the courier fees, the Applicant seeks to justify them on the basis that they need to ensure the delivery of the Counter-notice within the relevant time limit. While the Tribunal accepts the contention that recorded delivery or the DX would not provide a sufficient guarantee, the Tribunal is not sure the same can be said of the Royal Mail's guaranteed and tracked delivery service. However, the sums involved are modest. The additional amount involved for one delivery in relation to each of the two Counter-notices is reasonable given the importance of serving within time.

22. In the circumstances and for the above reasons, the Tribunal is satisfied that the costs claimed by the Applicant are recoverable.

Name: NK Nicol **Date:** 23rd November 2015

Appendix of relevant legislation

Leasehold Reform, Housing and Urban Development Act 1993

Section 60

Costs incurred in connection with new lease to be paid by tenant.

(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—

(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.

(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.

(3) Where by virtue of any provision of this Chapter the tenant's notice ceases to have effect, or is deemed to have been withdrawn, at any time, then (subject to subsection (4)) the tenant's liability under this section for costs incurred by any person shall be a liability for costs incurred by him down to that time.

(4) A tenant shall not be liable for any costs under this section if the tenant's notice ceases to have effect by virtue of section 47(1) or 55(2).

(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, any other landlord (as defined by section 40(4)) or any third party to the tenant's lease.