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

Case Reference : **LON/00BE/OC9/2018/0259**

Property : **Flat 8, 103 Cobourg Road London
SE5 0HU**

Applicant : **Wyndhams Court Properties
Limited**

Representative : **Anthony Tse, solicitor**

Respondent : **A A Akintokun and I O Akintokun**

Representative : **Petter Otto & Co, solicitors**

Type of Application : **Determination of the landlord's
recoverable costs on an application
under section 60(1) of the
Leasehold Reform, Housing and
Urban Development Act 1993 (the
"Act")**

Tribunal Members : **Judge Pittaway
Mr D Jagger FRICS**

Date of Decision : **2 October 2018**

DECISION

Decisions of the tribunal

The tribunal determines that pursuant to section 60(1) of the Leasehold, Reform, Housing and Urban Development Act 1993 (the “Act”) the following fees of the applicant are payable by the respondent

1. Legal fees of £1,898 (which it is noted are exclusive of VAT and disbursements).
2. Valuation fees in the sum of £840 (inclusive of VAT).

Introduction and background

1. This is an application under section 91(2)(d) of the Leasehold, Reform, Housing and Urban Development Act 1993 (the “Act”) to determine the amount of the applicant’s recoverable costs in connection with a claim under section 42 of the Act to exercise the right to the grant of a new lease of Flat 8, 103 Cobourg Road London SE5 0HU (the “**Property**”).
2. On or around 8 May 2017 the respondents applied for the grant of a new lease pursuant to the provisions of Chapter II of the Act. The applicant admitted the respondents’ right. Terms were agreed by 7 February 2018 but a new lease was not entered into by the end of the “appropriate period” as defined by section 48(3) of the Act. Accordingly the respondents’ notice of claim was deemed to have been withdrawn and the applicant’ solicitor requested recoverable costs under s60 of the Act in the sum of £2,738.
3. On 31 July 2018 the applicant applied to the tribunal to determine its reasonable costs.
4. The tribunal issued directions in respect of the costs application on 6 August 2018 which set out the procedure to be adopted by the parties in terms of provision of a statement of costs by the applicant to the respondents, the provision of a statement of case by the respondents to the applicant and the preparation of bundles for the tribunal by the applicant.
5. The applicant states that the respondents did not comply with the directions and the tribunal have no documents provided by the respondents before them.
6. The applicant provided the tribunal with its statement of case on 7 September 2018 and by a letter dated 4 September 2018 requested the tribunal determine the matter on the basis of its submissions.

7. The tribunal asked the respondents why they had not complied with the directions and why they should not be barred from taking part in the proceedings and received no response.
8. As neither party requested an oral hearing the tribunal have determined this matter on the basis of the documents before it, as indicated in the directions.

The Law

9. Section 91 (1) of the Act provides that

(1)Any question arising in relation to any of the matters specified in subsection (2) shall, in default of agreement, be determined by [the appropriate tribunal].

The matters specified in Section 90 (2) of the Act include the liability of any person to pay costs on an application under section 60 (1) of the Act.

10. Section 60(1) provides that the tenant is responsible for the reasonable costs of and incidental to (a) any investigation reasonably undertaken of the tenant's right to a new lease; (b) any valuation obtained to fix the premium or other amount payable under Schedule 13 of the Act in connection with the grant of a new lease; and (c) the grant of the new lease under the section.
11. Section 60(2) provides that costs shall be regarded as reasonable if and to the extent that such section 60(1) costs might reasonably be expected to have been incurred if the person seeking them from the tenant had been personally liable for such costs.

Reasons for the tribunal's decision

12. The tribunal has had regard to the applicant's submissions on costs, which includes a breakdown of how its legal costs were incurred in reaching its decision.
13. The tribunal accepts the applicant's submission that it is reasonable for it to instruct its solicitors thoroughly to investigate that the tenant has complied strictly with each and every requirement of the Act and to keep the applicant closely informed.
14. The tribunal accepts that it is reasonable for the applicant to use an experienced fee earner and that it is reasonable for its solicitors to charge on the basis of time spent. The tribunal have no reason to question the hourly charge of £260 per hour with no claim to VAT.

15. It is unfortunate that the respondents have not made any submissions on the costs to the tribunal and this may suggest that the costs are undisputed by the respondents. Further, the absence of submissions by the respondents means that the tribunal has no means of assessing whether any of the individualised times allocated to tasks undertaken by the solicitor are unreasonable.
16. Similarly the tribunal have nothing against which to assess the fee charged by the valuer.
17. In the absence of any submissions by the respondents, the tribunal accept that, as contended by the applicant, the sum of £1,898 is a reasonable sum for legal fees in relation to costs incurred under section 60(1) of the Act and that £840 is a reasonable sum in relation to the valuer's fees.

Name: Judge Pittaway

Date: 2 October 2018

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).